STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED October 1, 1999
v	No. 214807 Oakland Circuit Court
ROBERT RODRIGUEZ, Defendant-Appellee.	LC No. 97-DA6844 AR

Before: Gribbs, P.J., and Smolenski and Gage, JJ.

PER CURIAM.

The prosecutor appeals by leave granted from a circuit court affirmation of a district court order permitting defendant to withdraw a 1994 guilty plea that supported a conviction for operating a motor vehicle while having an unlawful blood alcohol level (UBAL), MCL 257.625; MSA 9.2325. We reverse and remand.

The relevant facts underlying the instant appeal are simple and undisputed. On January 3, 1994, a City of Novi police officer issued defendant a citation for "OUIL [operating a motor vehicle while under the influence of intoxicating liquor] and *Per Se Law Vio*," in violation of MCL 257.625; MSA 9.2325, noting defendant's .19 blood alcohol level. The violations actually occurred outside City of Novi boundaries. The handling of these charges was erroneously assigned to the Novi city attorney. On May 3, 1994, in the 52-1 district court, defendant pleaded guilty of UBAL. At this proceeding, defendant was represented by counsel, but no city attorney or prosecutor appeared. After a subsequent October 1995 arrest for OUIL 3d and a February 1997 arrest for OUIL/UBAL 2d, defendant on May 1, 1997 moved to withdraw his 1994 guilty plea. The 52-1 district court permitted defendant to withdraw the plea on the basis that the City of Novi had lacked subject matter jurisdiction to prosecute defendant's 1994 charges. The Oakland Circuit Court affirmed.

I

We note initially that defendant suggests in his brief on appeal that the Oakland County prosecutor lacks standing in this case. According to defendant, the "State of Michigan is not and was not a party to this litigation," because the "Uniform Vehicle Citation was issued by a Novi police officer

and reflected that it was issued in the name of the People of the City of Novi." Therefore, "the Oakland County Prosecutor . . . is a stranger to this case and . . . is not a party. This case originated as and remained a case of the People of the City of Novi versus Robert Rodriguez." As defendant acknowledges in his subsequent arguments, however, the citation issued clearly and explicitly alleges a violation of state law, specifically MCL 257.625; MSA 9.2325. No indication exists within the record that defendant ultimately pleaded guilty to a violation of any city ordinance. Because this case involved a violation of Michigan criminal law, the Oakland County prosecutor had statutory authority to prosecute defendant pursuant to MCL 600.8313; MSA 27A.8313, and thus has standing to bring this appeal concerning the state criminal charges against defendant. See *People v Yeoman*, 218 Mich App 406, 420; 554 NW2d 577 (1996) (Standing requires a showing that the party will devote himself to the sincere and vigorous advocacy of his position, and that the party has a legally protected interest at stake that differs from the interest of the citizenry at large.).

II

The prosecutor first contends that no lack of subject matter jurisdiction existed in this case and that defendant's objection to the Novi city attorney's involvement in defendant's prosecution for a state law offense that occurred outside Novi represents a nonjurisdictional defect waived by defendant's guilty plea. When a defendant moves for a post-sentencing withdrawal of a guilty plea, we review a trial court's decision on the motion for a clear abuse of discretion. *People v Ovalle*, 222 Mich App 463, 465; 564 NW2d 147 (1997). Questions of law, however, are subject to de novo review. *People v Medlyn*, 215 Mich App 338, 340; 544 NW2d 759 (1996). Whether the district court had jurisdiction to accept defendant's guilty plea is a question of law. *People v Laws*, 218 Mich App 447, 451; 554 NW2d 586 (1996).

Jurisdiction over the subject matter is the right of the court to exercise judicial power over a particular class of cases. *Michigan Coalition of State Employee Unions v Civil Serv Comm'n*, ___ Mich App ___; ___ NW2d ___ (Docket No. 212236, issued 6/8/99), slip op at 6; *People v Richards*, 205 Mich App 438, 444; 517 NW2d 823 (1994). When a court lacks subject matter jurisdiction to hear and determine a claim, any action it takes, other than to dismiss the action, is void. *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992). In this case, the district court had the right to exercise judicial power over defendant's OUIL/UBAL charges pursuant to MCL 600.8311; MSA 27A.8311, which provides as follows:

> The district court shall have jurisdiction of:
>
> (a) Misdemeanors punishable by fine or imprisonment not exceeding 1 year, or both.
>
> (b) Ordinance and charter violations punishable by a fine or imprisonment, or both.
>
> (c) Arraignments, the fixing of bail and the accepting of bonds.

> (d) Preliminary examinations in all felony cases and misdemeanor cases not cognizable by the district court, but there shall not be a preliminary examination for any misdemeanor to be tried in a district court.

Therefore, the district court had subject matter jurisdiction to accept defendant's guilty plea.

That the prosecutorial assignment scheme envisioned by MCL 600.8313; MSA 27A.8313[1] was not followed in this case did not deprive the district court of its authority to accept and enter defendant's guilty plea to the state charge. This statute does not state that jurisdiction will be lost on violation of its provisions. Here, based on defendant's violation of state law, the state unquestionably had a legitimate interest in securing a conviction, and the very authority of the state to do so is unchallenged. *People v Eaton*, 184 Mich App 649, 658; 459 NW2d 86 (1990), affirmed 439 Mich 919; 479 NW2d 639 (1992). To the extent it could be argued that MCL 600.8313; MSA 27A.8313 has some effect on the "jurisdiction" of a court, only *personal* jurisdiction, the authority of the court to bind the parties to the action, could be implicated. *Eaton*, *supra* at 652-653. Personal jurisdiction is waivable:

> The jurisdiction of the court over the subject matter is not here questioned. We are concerned only with the validity of the procedure whereby that court sought to exercise its jurisdiction over the person of the accused.
>
> Jurisdiction over the subject matter, of course, could not be conferred by consent or waiver, but no reason appears why an accused could not subject himself to the court's personal jurisdiction. The procedural safeguards spelling out the method whereby a court obtains jurisdiction over the person of an accused are all designed for his protection. If he elects not to avail himself of the established procedural rights there appears to be none who should be heard to complain. [*Id*. at 653, quoting *People v Phillips*, 383 Mich 464, 469-470; 175 NW2d 740 (1970).]

Although some defect with respect to the district court's personal jurisdiction over defendant may have existed, defendant's unconditional guilty plea relinquished this nonjurisdictional defense that was unrelated to the very authority of the state to act in the first instance. *Eaton*, *supra* at 658.

We further reject defendant's contention that *People v Stackpoole*, 144 Mich App 291; 375 NW2d 419 (1985), mandates our conclusion that the district court lacked subject matter jurisdiction to accept his guilty plea. Stackpoole received an OUIL citation in Oakland County. *Id*. at 294. An assistant Wayne County prosecutor mistakenly entered a plea bargain with Stackpoole, without the Oakland County prosecutor's knowledge. *Id*. at 295-296. The Oakland County prosecutor subsequently sought reinstatement of the charges against defendant, which reinstatement the district court denied on the basis that "the Wayne County assistant prosecutor was a de facto prosecutor and his plea bargain agreement, although without legal authority, is binding." *Id*. at 296-297. This Court determined that the assistant Wayne County prosecutor did not qualify as a de facto prosecutor because he was not exercising the duties of the office of assistant prosecuting attorney for Oakland County, nor did he claim a fair color of right or title to that office. *Id*. at 300.

This Court went on to state that "[t]he state was not officially present and the district court was without authority to pass on matters raised by an unofficial person. *People v Navarre*, 22 Mich 1, 3-4 (1870)." *Stackpoole*, *supra* at 301. Defendant relies on this statement to support his argument that the instant district court lacked subject matter jurisdiction over his guilty plea. Without addressing the merits of defendant's contention, we reject it for two reasons. First, under MCR 7.215(H), *Stackpoole* does not represent binding precedent because it was decided before November 1, 1990. Second, the *Stackpoole* language quoted by defendant was not essential to the *Stackpoole* Court's decision. After the *Stackpoole* Court determined that the assistant Wayne County prosecutor was not a de facto prosecutor and that his actions did not bind the Oakland County prosecutor, Oakland County had received the relief it sought and nothing more was required to dispose of the case. Therefore, the statement quoted by defendant constitutes dictum, which does not establish a rule of law. *People v Green*, 205 Mich App 342, 346; 517 NW2d 782 (1994).

Accordingly, we conclude that no defect in subject matter jurisdiction existed, and that defendant waived any defect in personal jurisdiction.

III

The prosecutor also contends that the Supreme Court's recent decision in *People v Ward*, 459 Mich 602; 594 NW2d 47 (1999), precludes defendant from challenging his 1994 guilty plea. Defendant Ward in February 1995 pleaded guilty of OUIL 2d and operating a vehicle with a suspended or revoked license. *Id*. at 605. In approximately April 1996, after being charged in February 1996 with OUIL 3d, Ward moved to withdraw his 1995 guilty plea. *Id*. at 606. The district judge set aside Ward's guilty plea, and the circuit court denied the prosecutor leave to appeal. Although this Court also denied leave to appeal, the Supreme Court subsequently remanded for reconsideration as on leave granted. *Id*. at 607. This Court determined that Ward's challenge represented a permissible direct attack[2] on his conviction because it was made in a case instituted for the specific purpose of prosecuting the charge at issue and it was a necessary step in the process of filing an appeal to the circuit court. *Id*. at 608, quoting *People v Ward*, 230 Mich App 95, 100-101; 583 NW2d 495 (1998).

While the Supreme Court considered as technically correct this Court's characterization of Ward's guilty plea challenge as a direct attack, the Supreme Court did not find this characterization the dispositive factor.

> Long-delayed "direct attacks" on convictions may be viewed as collateral attacks. However, regardless of the label one affixes to such long-delayed challenges, it is entirely appropriate that a much higher standard be applied to a defendant who seeks relief from a judgment long after the conviction. Just as an appellate court is to consider the length of and reasons for delay in deciding whether to grant leave to appeal, the delay in bringing such a motion is a factor that the trial court must consider in determining whether to grant relief. In such cases, our concerns for finality and the efficient and effective administration of justice grow in importance.
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> * * *

Accordingly, we hold today that long delayed direct appeals are deemed collateral.

> Where a motion to withdraw a guilty plea is made after conviction and sentencing, it must be made based on a showing of miscarriage of justice. Requests to withdraw pleas are generally regarded as frivolous where circumstances indicate that the true motivation behind the motion is sentencing concerns. No miscarriage of justice would result here by rejecting defendant's motion to withdraw the guilty plea. Defendant has never claimed actual innocence, and the principal motivation behind the motion is plainly extrication from the sentencing implications of the OUIL 3d. [*Id*. at 611, 614.]

In this case we discern no miscarriage of justice that would result from rejecting defendant's attempt to set aside his 1994 guilty plea. To the contrary, defendant's request to withdraw his plea appears patently frivolous. Under the circumstances of this case, in which defendant failed to challenge his 1994 guilty plea until approximately three years had elapsed and only after twice more being charged with OUIL and/or UBAL, defendant was certainly principally motivated by sentencing concerns. *Id*. at 611-612, 614. Defendant was represented by counsel at the time he offered his 1994 guilty plea, and defendant does not now maintain his innocence or claim that his guilty plea was involuntary. *Id*. at 614. Thus, we conclude that the district court abused its discretion in setting aside defendant's 1994 conviction. *Id*. at 611.

Reversed and remanded for an order reinstating defendant's 1994 UBAL conviction. We do not retain jurisdiction.

/s/ Roman S. Gribbs
/s/ Michael R. Smolenski
/s/ Hilda R. Gage

[1] This provision provides in relevant part as follows:

> A violation of state criminal law shall be prosecuted in the district court by the prosecuting attorney. A violation of an ordinance of a political subdivision that is a misdemeanor or that is not designated as a civil infraction shall be prosecuted in the district court by the attorney for the political subdivision whose ordinance was violated. [MCL 600.8313; MSA 27A.8313.]

[2] This Court offered the following definition of "direct attack":

> A direct attack on a judgment or decree is an attempt . . . to have it annulled, reversed, vacated, corrected, declared void, or enjoined, in a proceeding instituted for that specific purpose . . . distinguished from a collateral attack, which is an attempt to impeach the validity or binding force of the judgment or decree as a side issue or in a proceeding instituted for some other purpose. [*Ward*, 230 Mich App at 99, quoting Black's Law Dictionary (6th ed).]