

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARWIN LEE CHAMBERS,

Defendant-Appellant.

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UNPUBLISHED  
February 26, 2008

No. 274249  
Oakland Circuit Court  
LC Nos. 1999-168815-FH  
2000-175041-FH

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

Defendant Marvin Chambers appeals by delayed leave granted a trial court order that denied his motion for relief from judgment pursuant to MCR 6.500 *et seq.* We reverse.

I. Basic Facts And Procedural History

On January 29, 2001, pursuant to a plea agreement in two separate cases, Chambers pleaded guilty to delivery of less than 50 grams of cocaine<sup>1</sup> and delivery of marijuana.<sup>2</sup> The trial court sentenced Chambers to lifetime probation.

On September 26, 2002, the trial court held a hearing after Chambers was charged with violating his probation. Defense counsel indicated that Chambers was prepared to plead guilty. The trial court asked Chambers if he understood the allegations and inquired about the circumstances that brought him before the court. The trial court advised Chambers of his right to a hearing, his right to call witnesses, and his right to testify. The trial court then stated that it was “satisfied” and set a return date. The prosecution acknowledges that the record does not show that Chambers ever pleaded guilty to the alleged probation violations or that the trial court accepted any plea.

At the beginning of the proceedings on October 17, 2002, defense counsel advised the trial court that Chambers was requesting an adjournment so that he could retain new counsel.

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<sup>1</sup> MCL 333.7401(2)(a)(iv).

<sup>2</sup> MCL 333.7401(2)(d)(iii).

The trial court denied the request, stating, “No, he’s pled, so there’s nothing more to talk about in connection with this . . . .” Chambers informed the trial court that he had not pleaded to “it.” The trial court stated that the records showed that Chambers had pleaded guilty to violating probation. Defense counsel advised that this was his understanding as well. The trial court then asked Chambers if he had anything that he wanted to say before sentencing, and Chambers asked if he could withdraw his plea. The trial court denied the request and stated that it was sentencing Chambers to 1 to 20 years’ imprisonment. Chambers did not seek appellate review.

In September 2005, Chambers moved for relief from judgment pursuant to MCR 6.502, based in part on the trial court’s denial of his request for new counsel and defects in the probation violation plea proceeding. MCR 6.508(D)(3) provides that the trial court may not grant relief to the defendant if the motion

alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence . . . , unless the defendant demonstrates

(a) good cause for failure to raise such grounds on appeal . . . , and

(b) actual prejudice from the alleged irregularities that support the claim for relief.

The trial court denied Chambers’ motion, concluding that he had not established good cause for failure to raise his issues in a prior appeal.

## II. Jurisdictional Defects

### A. Standard Of Review

We review for an abuse of discretion a trial court’s ruling on a motion for relief from judgment.<sup>3</sup>

### B. Request For New Counsel

Chambers argues that the trial court’s denial of his request to retain new counsel was a jurisdictional defect and therefore “good cause” was not required.

Mere irregularities, evidentiary or procedural errors, and allegations involving review of the merits of the case are not jurisdictional defects.<sup>4</sup> “[O]nly those challenges that question the very authority of the court to convict and sentence the defendant” constitute jurisdictional defects.<sup>5</sup> Examples of jurisdictional defects or its equivalent are improper personal jurisdiction,

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<sup>3</sup> *People v Ulman*, 244 Mich App 500, 508; 625 NW2d 429 (2001).

<sup>4</sup> *People v Carpentier*, 446 Mich 19, 45-46; 521 NW2d 195 (1994) (Riley, J., concurring), citing *In re Stone*, 295 Mich 207; 294 NW 156 (1940); *In re Lamanna*, 263 Mich 62; 248 NW 550 (1933); *Hamilton’s Case*, 51 Mich 174; 16 NW 327 (1883).

<sup>5</sup> *Id.* at 46, citing *In re Lamanna*, *supra* at 64.

improper subject-matter jurisdiction, double jeopardy, imprisonment where the trial court had no authority to sentence the defendant to the institution in question, or when the defendant was convicted of no crime at all.<sup>6</sup>

Chambers primarily relies on *People v Carpentier*, in which the Court held that a defendant may collaterally attack the validity of prior juvenile adjudications secured without the benefit of counsel or a valid waiver of counsel where those adjudications were used to enhance a sentence, and that such a claim involves a “jurisdictional defect” for purposes of MCR 6.508(D)(3).<sup>7</sup> However, the complete failure to appoint counsel is a “unique constitutional defect.”<sup>8</sup> Other constitutional violations, including the denial of the effective assistance of counsel, do not rise to the level of a jurisdictional defect.<sup>9</sup> Chambers also misplaces his reliance on *People v Johnson*,<sup>10</sup> in which this Court held that the trial court’s improper removal of retained counsel before trial began was a “structural error” not subject to a harmless error analysis. However, “structural error” is not synonymous with “jurisdictional defect.” We are not persuaded that the bounds of “jurisdictional defect” should be expanded to encompass Chambers’ claim of an infringement of his right to retain counsel of choice. Therefore, we conclude that the alleged infringement of Chamber’s right to obtain counsel of his choice at sentencing<sup>11</sup> is not a “jurisdictional defect.”

### C. Lack Of Guilty Plea

Chambers also claims that irregularities concerning his plea, specifically, the absence of any formal admissions with respect to the alleged probation violations, presented a “jurisdictional defect.” Chambers argues that, “where a trial court sentences a defendant on a plea of guilty that he never in fact made, the court has exceeded its authority as a matter of jurisdiction.” The prosecution agrees that in light of the absence of any record evidence that Chambers actually pleaded guilty to violating his probation, this Court should vacate the judgments of sentence and remand these cases for a hearing on the probation violation allegations.

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<sup>6</sup> *Id.* at 47-48, citing *People v Blume*, 443 Mich 476; 505 NW2d 843 (1993); *People v Johnson*, 396 Mich 424; 240 NW2d 729 (1976); *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973); *In re Bourne*, 300 Mich 398; 2 NW2d 439 (1942); *In re Van Dyke*, 276 Mich 32; 267 NW 778 (1936); *In re Allen*, 139 Mich 712; 103 NW 209 (1905).

<sup>7</sup> *Carpentier*, *supra* at 29-30, 38.

<sup>8</sup> *Id.* at 49 n 9 (Riley, J., concurring), quoting *Custis v United States*, 511 US 485; 114 S Ct 1732, 1738; 128 L Ed 2d 517 (1994).

<sup>9</sup> *Id.*

<sup>10</sup> *People v Johnson*, 215 Mich App 658, 666-667; 547 NW2d 65 (1996).

<sup>11</sup> Consistent with this Court’s order granting leave to appeal, we limit our review to those issues raised in Chamber’s application for leave to appeal.

“Jurisdictional defects are akin, but not identical, to those waived when a defendant pleads guilty, because ‘the state has no legitimate interest in securing a conviction’ without proving jurisdiction.”<sup>12</sup> The rights and defenses that are preserved following a guilty plea “reach beyond the factual determination of defendant’s guilt and implicate the very *authority* of the state to bring a defendant to trial . . . .”<sup>13</sup> In *People v Webb*,<sup>14</sup> this Court held that a guilty plea did not preclude a defendant from challenging his conviction on the basis that the court failed to hold a hearing before revoking his youthful trainee status. This Court reasoned, “Since the defect in failing to hold the hearing is totally irrelevant to the question of defendant’s guilt on the underlying charge to which he pled guilty, it was not waived by the guilty plea.”<sup>15</sup> Similarly, the defects in the probation violation proceeding here are not an attack on Chamber’s factual guilt. Rather, the defects implicate the authority of the trial court to sentence Chamber in the absence of a plea or a determination that Chamber violated a condition of his probation, contrary to MCR 6.445. We agree with the parties that the defects are jurisdictional in nature.

In light of the jurisdictional defects established in the record, Chambers was not required to establish “good cause” for relief from judgment.<sup>16</sup> We conclude that the trial court abused its discretion by denying Chambers’ motion on the basis that he had not established “good cause.”

Reversed and remanded for a hearing on the probation violation allegations. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Alton T. Davis

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<sup>12</sup> *Carpentier*, *supra* at 47 (Riley, J., concurring).

<sup>13</sup> *Id.* (emphasis in original) (citations and internal quotation marks omitted).

<sup>14</sup> *People v Webb*, 89 Mich App 50, 54-55; 279 NW2d 573 (1979).

<sup>15</sup> *Id.* at 55.

<sup>16</sup> MCR 6.508(D)(3).