

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BASIM AL-SAEDI,

Defendant-Appellee.

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UNPUBLISHED

April 22, 2021

No. 352840

Ingham Circuit Court

LC No. 07-000135-FH

Before: JANSEN, P.J., and RONAYNE KRAUSE and GADOLA, JJ.

PER CURIAM.

The prosecution appeals by leave granted<sup>1</sup> the trial court opinion and order granting defendant Basim Al-Saedi’s successive motion for relief from judgment pursuant to MCR 6.502. We reverse and remand to the trial court for the limited purpose of reinstating defendant’s February 8, 2007 guilty plea and conviction.

I. FACTS

Defendant, an Iraq native, came to the United States after being granted asylum on March 10, 1997. On January 11, 2007, defendant was charged with one count of being an accessory after the fact, MCL 750.505, to the January 5, 2007 murder of Deandre Hudson. During a police interview, defendant provided details of Hudson’s murder and his involvement. On February 8, 2007, defendant pled guilty to one count of accessory after the fact to a felony pursuant to a plea agreement, which required him to testify against Shane Browning, the man accused of killing Hudson. After testifying at Browning’s trial, defendant was sentenced on November 21, 2007, to 24 months’ probation and 318 days in jail with credit for 318 days served.

On February 5, 2014, defendant, through counsel, filed a motion to set aside his plea and conviction. Defendant argued that his trial counsel was ineffective by failing to advise him of

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<sup>1</sup> *People v Al-Saedi*, unpublished order of the Court of Appeals, entered June 23, 2020 (Docket No. 352840).

potential immigration consequences as a result of his plea as required by *Padilla v Kentucky*, 559 US 356; 130 S Ct 1473; 176 L Ed 2d 284 (2010). However, this Court previously ruled that *Padilla* did not apply retroactively for the purpose of demonstrating ineffective assistance of counsel. *People v Gomez*, 295 Mich App 411, 418; 820 NW2d 217 (2012). Accordingly, consistent with *Gomez*, the trial court denied defendant's motion without a hearing.

Subsequently, defendant, through different counsel, filed a motion for relief from judgment in the trial court on May 3, 2019. In this motion, defendant argued that he was denied effective assistance of counsel because his previous attorneys failed to notify him of immigration consequences related to his 2007 plea. Defendant also argued that he was denied effective assistance of counsel because his trial counsel failed to request an interpreter for his plea despite evidence indicating he struggled with the English language.

In response, the prosecution asserted that defendant's 2014 motion to set aside his plea and conviction was actually a motion for relief from judgment. Therefore, the 2019 motion was a successive motion that should be denied because none of the exceptions that allow a successive motion for relief from judgment were applicable. The prosecution also asserted that the record demonstrated that defendant is fluent in English and his claim that he needed an interpreter at the plea hearing was meritless.

The trial court ruled on defendant's motion for relief from judgment without a hearing. In its opinion and order, the trial court determined that defendant's 2014 motion should be treated as a motion for relief from judgment and that the 2019 motion was a successive motion for relief from judgment. The trial court also determined that defendant failed to establish a retroactive change in the law applicable to his plea.<sup>2</sup>

Nonetheless, the trial court reviewed defendant's successive motion for good cause and actual prejudice. The trial court found that defendant's counsel at the time of the 2014 motion to set aside his plea and conviction was ineffective and, thus, defendant had established good cause for failing to raise the issue of needing an interpreter. The trial court also found that defendant demonstrated actual prejudice because his limited proficiency in English and lack of interpreter to assist him in understanding the plea proceedings left him unable to make a plea that was knowing, intelligent, and voluntary. The trial court concluded that relief from judgment was warranted because defendant did not have a clear understanding of the plea proceedings. As a result, the trial court set aside defendant's 2007 plea and vacated his conviction. The prosecution now appeals to this Court.

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<sup>2</sup> Of note, defendant did not raise in his successive motion a claim of new evidence. Further, the trial court did not waive the provisions of MCR 6.502(G)(2) and conclude there was a "significant possibility" that defendant was innocent of being an accessory after the fact to the January 5, 2007 murder of Deandre Hudson.

## II. ANALYSIS

On appeal, the prosecution contends that the trial court abused its discretion by allowing defendant to withdraw his 2007 plea. Specifically, the prosecution contends that defendant is procedurally barred from filing a second motion for relief from judgment. We agree.

This Court reviews “a trial court’s decision on a motion for relief from judgment for an abuse of discretion and its findings of facts supporting its decision for clear error.” *People v Swain*, 288 Mich App 609, 628; 794 NW2d 92 (2010). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes or if it makes an error of law. *Id.* at 628-629. We review de novo the interpretation of a court rule. *Id.* at 629.

MCR 6.500 *et seq.* sets forth the procedure for postappeal relief from a criminal conviction and provides the exclusive means for challenging a conviction once a defendant has exhausted the normal appellate process. *People v McSwain*, 259 Mich App 654, 678; 676 NW2d 236 (2003). Generally, “one and only one motion for relief from judgment may be filed with regard to a conviction.” MCR 6.502(G)(1). MCR 6.502(G)(2) provides exceptions to this prohibition, providing in relevant part that “[a] defendant may file a second or subsequent motion based on a retroactive change in law that occurred after the first motion for relief from judgment or a claim of new evidence that was not discovered before the first such motion.”<sup>3</sup>

In this case, the trial court found that defendant’s 2019 motion for relief from judgment was a successive motion. Once the trial court made this determination, the trial court was required to determine whether defendant met the initial threshold requirement for review under MCR 6.502(G)(2). Specifically, the trial court was required to determine whether the motion properly identified a retroactive change in the law or presented a claim of new evidence. If defendant failed to fulfill one of those exceptions to the general prohibition against successive motions for relief from judgment, the trial court was required to return the successive motion to defendant without filing. MCR 6.502(G)(1). In its opinion and order, the trial court found that defendant’s successive motion did not properly identify a retroactive change in law or present a claim of new evidence that was not discovered before his motion filed in 2014. Because of this, the trial court was required to return without filing defendant’s successive motion.

Instead, the trial court analyzed defendant’s successive motion under MCR 6.508(D)(3). However, as this Court has explained, “the ‘good cause’ and ‘actual prejudice’ requirements of MCR 6.508(D)(3) are not relevant until, and are only relevant if, the trial court determines that the successive motion falls within one of the two exceptions of MCR 6.502(G)(2).” *Swain*, 288 Mich App at 632-633. Defendant failed to meet either exception under MCR 6.502(G)(2) and, therefore, the trial court abused its discretion by granting defendant’s successive motion for relief from judgment.

As a result, the issue whether defendant required an interpreter at the time of his plea hearing is moot. Nevertheless, this Court has reviewed the transcript of defendant’s February 8,

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<sup>3</sup> MCR 6.502(G)(2) also states that “[t]he court may waive the provisions of this rule if it concludes that there is a significant possibility that the defendant is innocent of the crime.”

2007 plea. The record reflects that defendant had command of the English language during his plea hearing, specifically when responding to questions posed by the trial court and explaining in detail what he did as an accessory to the murder of Deandre Hudson. Thus, this Court is not convinced that defendant lacked a clear understanding of his plea at the time it was made under oath to the trial court.

Reversed and remanded for reinstatement of defendant's February 8, 2007 guilty plea and conviction. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Amy Ronayne Krause

/s/ Michael F. Gadola