

# Court of Appeals, State of Michigan

## ORDER

People of MI v Jeffery Dye

Docket No. 330488

LC No. 79-005951-FC

Douglas B. Shapiro  
Presiding Judge

Jane M. Beckering

Mark T. Boonstra  
Judges

The Court orders that the motion to waive fees is GRANTED and fees are WAIVED for this case only.

The Court further orders that the delayed application for leave to appeal is DISMISSED. Appellant has failed to demonstrate his entitlement to an application of any of the exceptions to the general rule that a movant may not appeal the denial of a successive motion for relief from judgment. MCR 6.502(G).

Shapiro, P.J., would remand this case to the trial court for an evidentiary hearing. Defendant Dye proffers sworn affidavits from two men offering exculpatory testimony that, if true, would constitute new evidence of actual innocence. One affidavit is from Lajuan Terrell, an admitted participant in the crime, who pleaded guilty to second degree murder. He avers that Dye was not involved in the robbery or murder. Further avers that he provided this information in a written statement to the investigating detective on September 10, 1979 after he was arrested and that the officer told him that Dye was guilty and that if his statement exonerated Dye, he could not "use" him as a witness. Defendant asserts that this alleged statement by Terrell was not provided to him or counsel in discovery. The other affidavit is from Clarence Gardner, who avers that he loaned a gun to the perpetrators shortly before the robbery, saw them again shortly after the crime and that defendant was not among them. Gardner, like Terrell, avers that he provided this information to the investigating detectives. The trial court concluded that the affiants were not credible. Given the exculpatory content of the affidavits and the explanation for why the evidence was not previously discovered by plaintiff, I would remand for an evidentiary hearing. If the affiants appear and offer sworn testimony consistent with their affidavits, the court will be in a far better position to determine credibility than by review of the affidavits alone and can, if necessary, review the trial transcripts, before rendering her decision on the motion.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

APR - 4 2016

Date

Chief Clerk