

Court of Appeals, State of Michigan

ORDER

People of MI v Robin Emanuel Hammock

Docket No. 331895

LC No. 06-014450-FC

Michael J. Talbot
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray
Judges

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

Pursuant to MCR 7.205(E)(2), in lieu of granting the delayed application for leave to appeal, the trial court's January 4, 2016 opinion and order denying defendant's motion for relief from judgment is VACATED, and the matter REMANDED for further proceedings. Because defendant presented a claim of newly discovered evidence, MCR 6.502(G)(1) does not procedurally bar defendant's subsequent motion for relief from judgment. MCR 6.502(G)(2); *People v Swain*, 499 Mich 920; 878 NW2d 476 (2016). The trial court further erred when it concluded that there was no exculpatory connection between the proffered evidence and material evidence at trial. The proffered evidence alleges that someone other than defendant shot the victims, contradicting material trial testimony. See *People v Grissom*, 492 Mich 296, 321; 821 NW2d 50 (2012). On remand, the trial court must consider whether defendant is entitled to relief under MCR 6.508(D), considering the factors stated in *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003). See *Grissom*, 492 Mich at 321.

The motion to remand for an evidentiary hearing is DENIED. However, on remand, the trial court may determine whether an evidentiary hearing is necessary. See MCR 6.508(B) and (C).

The motion to hold the prosecutor in default for failing to respond to the present application is DENIED.

We do not retain jurisdiction.



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

JUL 15 2016

Date


Chief Clerk