

Court of Appeals, State of Michigan

ORDER

People of MI v Hamza Gibson

Docket No. 333024

LC No. 09-030022-FH

Michael J. Talbot
Presiding Judge

Kirsten Frank Kelly

Cynthia Diane Stephens
Judges

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

Defendant's delayed application for leave to appeal is DENIED. Because in the period after August 1, 1995, defendant has filed a prior motion for relief from judgment, defendant's motion was procedurally barred unless it was "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." MCR 6.502(G)(2); *People v Swain*, 288 Mich App 609, 632; 794 NW2d 92 (2010). Defendant's motion for relief from judgment was based on a claim of error under *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015). *Lockridge* is an extension of *Alleyne v United States*, 570 US ____; 133 S Ct 2151; 186 L Ed 2d 314 (2013), to Michigan's sentencing framework. *Alleyne* does not apply retroactively to cases on collateral review. See, e.g., *Walker v United States*, 810 F3d 568, 574 (CA 8, 2016); *In re Mazzio*, 756 F3d 487, 490 (CA 6, 2014) ("[A]ny new rule announced in *Alleyne* has not been made retroactive to cases on collateral review by the Supreme Court"); *United States v Hoon*, 762 F3d 1172 (CA 10, 2014), ("No court has treated *Alleyne* as retroactive to cases on collateral review"). The Michigan Supreme Court has also indicated that it views *Alleyne* as prospective only. See *People v Carp*, 496 Mich 440, 491; 852 NW2d 801 (2014), vacated and remanded on other grounds, ____ US ____; 136 S Ct 1355; 194 L Ed 2d 339 (2016) (The defendant "failed to even argue, much less persuade this Court, that *Alleyne* established a substantive rule entitled to retroactive application Absent being so persuaded, we treat the rule in *Alleyne* as a procedural rule entitled only to prospective application"). Because defendant's motion did not raise a claim of newly discovered evidence and was not based on a retroactive change in law, it was barred by MCR 6.502(G)(1).



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

AUG 09 2016

Date


Chief Clerk