

## Court of Appeals, State of Michigan

### ORDER

People of MI v Henry Lee Smith

Thomas C. Cameron  
Presiding Judge

Docket No. 353771

Karen M. Fort Hood

LC No. 14-003489-01-FC

Michael J. Riordan  
Judges

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The motion to waive fees is GRANTED 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 December 6, 2019 order denying defendant's motion for relief from judgment is VACATED, and the matter REMANDED for reconsideration of the motion for relief from judgment. Regarding defendant's claims that trial counsel was ineffective, the trial court seems to have concluded that the issues defendant faults trial counsel for failing to raise are themselves meritless. However, the court gave no analysis of those underlying issues; it did not explain why those issues lack merit, and thus, the trial court has not adequately explained its decision. On remand, the trial court must explain its reasoning. See MCR 6.508(E) ("The court, either orally or in writing, shall set forth in the record its findings of fact and its conclusions of law . . ."). See also *People v Holmes*, 505 Mich 856 (2019) (remanding for reconsideration where the trial court's order "failed to 'include a concise statement of the reasons for the denial,' as required by MCR 6.504(B)(2)."). With regard to the claims defendant presented as claims of prosecutorial misconduct, the trial court concluded that those claims were raised by defendant in his prior appeal as of right from his judgment of sentence, and thus, relief was precluded by MCR 6.508(D)(2). That is incorrect; the claims were not raised by defendant in a prior appeal, and thus, MCR 6.508(D)(2) does not preclude relief. On remand, the trial court must address these claims under the framework of MCR 6.508(D)(3). With regard to defendant's claim of new evidence, the trial court's opinion incorrectly referred to defendant having filed a motion for reconsideration and indicated that the trial court would not consider new evidence presented with such a motion. The court then cited caselaw generally applicable to claims of new evidence and denied relief, but without explaining any rationale for doing so. On remand, the trial court is directed to analyze defendant's claim of newly discovered evidence using the framework of *People v Cress*, 468 Mich 678; 664 NW2d 174 (2003), and *People v Johnson*, 502 Mich 541; 918 NW2d 676 (2018). We note that the trial court was incorrect to state that newly discovered impeachment evidence never warrants a new trial. See *People v Grissom*, 492 Mich 296, 321; 821 NW2d 50 (2012) (while "newly discovered impeachment evidence generally is insufficient to warrant a new trial[,]” “such evidence may be grounds for a new trial if it satisfies the four-part test set forth in *Cress*."). The trial court shall also reconsider its conclusions regarding whether defendant has established good cause under MCR 6.508(D)(3)(a).

Defendant's motions to remand are DENIED, but without prejudice to the trial court's ability to order an evidentiary hearing should it determine that such a hearing is necessary on remand. MCR 6.508(C); MCR 6.505(A).

The motion for bond pending appeal is DENIED.

The motion to hold the application in abeyance is DENIED.

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



A handwritten signature in blue ink, appearing to read "Joe Green".

Joe Green  
Presiding Judge



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

September 29, 2020

Date



A handwritten signature in black ink, appearing to read "Jerome W. Zimmer Jr."

Chief Clerk