STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMMY ORLANDO COLLIER,

Defendant-Appellant.

UNPUBLISHED
May 10, 2005

No. 253151
Oakland Circuit Court
LC No. 1998-158327-FC

Before: Donofrio, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

Defendant appeals by leave granted from the trial court's order denying his motion to file a brief in excess of twenty pages in support of his motion for relief from judgment. We affirm.

Defendant argues that the trial court erred in determining that the twenty-page limitation set forth in MCR 2.119(A)(2) applies to motions for relief from judgment under MCR 6.502(C). Defendant presented this same issue to this Court in a prior application for leave to appeal after his motion to file a ninety-page brief in support of his motion for relief from judgment was rejected by the trial court on August 12, 2002. On April 1, 2003, this Court denied defendant's application "for lack of merit in the grounds presented."

Plaintiff argues that the law of the case precludes review of defendant's appellate issues. Plaintiff contends that because this Court previously denied defendant's application for leave to appeal based on his argument that the page limitation found in MCR 2.119(A)(2) is not applicable to motions for relief from judgment under MCR 6.502(C), we are barred by the law of the case from revisiting defendant's argument. We agree.

The interpretation and construction of Michigan's court rules is reviewed de novo by this Court pursuant to *People v Petit*, 466 Mich 624, 627; 648 NW2d 193 (2002).

The law of the case doctrine generally provides that a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case. *Grievance Administrator v Lopatin*, 462 Mich 235, 259; 612 NW2d 120 (2000). Therefore, "an appellate court's determination of an issue in a case binds lower tribunals on remand and the appellate court in subsequent appeals." *Id*. at 260. "Law of the case applies, however, only to issues actually decided, either implicitly or explicitly, in the prior appeal." *Id*.

The determination whether the law of the case doctrine applies is a question of law subject to de novo review. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

Although denial of an application for leave to appeal where the court expresses no opinion on the merits does not implicate the law of the case doctrine, *Lopatin*, *supra* at 260, this Court has consistently held that denial of an application "for lack of merit in the grounds presented" is a decision on the merits of the issues raised, which precludes subsequent review of those issues pursuant to the law of the case doctrine. See, e.g., *People v Hayden*, 132 Mich App 273, 297; 348 NW2d 672 (1984); *People v Douglas*, 122 Mich App 526, 529-530; 332 NW2d 521 (1983); *People v Wiley*, 112 Mich App 344, 346; 315 NW2d 540 (1981). Because the issue raised in the instant appeal, i.e., whether the trial court erred in determining that the page limitation in MCR 2.119(A)(2) applies to motions for relief from judgment, is the same as that raised in defendant's previous application for leave to appeal, which was denied "for lack of merit in the grounds presented," the law of the case doctrine precludes a second review of that issue by this Court. Accordingly, we do not address the merits of this issue.

Next, defendant argues that, to the extent that the twenty-page limit set forth in MCR 2.119(A)(2) applies to his motion for relief from judgment, the trial court abused its discretion in denying his motion to exceed the page limitation.[1] We disagree. Defendant's motion and brief totaled twenty-eight pages. But at least eight of those pages contained arguments on issues that this Court previously decided against defendant in his earlier appeal by right following his conviction. *People v Collier*, unpublished opinion per curiam of the Court of Appeals, issued February 16, 2001 (Docket No. 214253). MCR 6.508(D)(2) specifically provides that a court may not grant relief on a ground that was decided against the defendant in a prior appeal. In the prior appeal, this Court found no merit to defendant's claim that his custodial statements should have been suppressed because they were the product of an unlawful arrest. This Court held that "there was probable cause to support defendant's arrest." *Collier*, *supra*, slip op at 4. The only difference in defendant's most recent brief is that defendant couches his arguments in terms of ineffective assistance of counsel. But given this Court's previous determination that defendant's arrest was lawful, defendant could not have succeeded on his ineffective assistance of counsel arguments. It is well established that trial counsel is not required to make a futile motion. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998). Defendant could have met the twenty-page limitation simply by eliminating these duplicate arguments. We therefore conclude that the trial court did not abuse its discretion in enforcing the page limitation.

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[1] MCR 2.119(A)(2) provides, in relevant part:

> Except as permitted by the court, the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages[.]

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ Stephen L. Borrello