

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
August 21, 2012

v

TIMOTHY JOEMARIE TAYLOR,

Defendant-Appellee.

No. 306567
Wayne Circuit Court
LC No. 88-006879-FC

Before: SAAD, P.J., and SAWYER and CAVANAGH, JJ.

PER CURIAM.

This Court granted the prosecution’s application for leave to appeal the trial court’s order that granted defendant’s motion for relief from judgment. For the reasons set forth below, we reverse.

“We review a trial court’s decision on a motion for relief from judgment for an abuse of discretion and its findings of facts supporting its decision for clear error.” *People v Swain*, 288 Mich App 609, 628; 794 NW2d 92 (2010). An abuse of discretion occurs when a trial court’s “decision falls outside the range of reasonable and principled outcomes” or a trial court “makes an error of law.” *Id.* at 628-629.

We hold that the trial court erred by granting defendant’s successive motion for relief from judgment because defendant’s claim did not involve a retroactive change in the law or newly discovered evidence. Motions for relief from judgment are governed by MCR 6.500 *et seq.* *Swain*, 288 Mich App at 629. MCR 6.502(G) provides:

(G) Successive Motions.

(1) Except as provided in subrule (G)(2), regardless of whether a defendant has previously filed a motion for relief from judgment, after August 1, 1995, one and only one motion for relief from judgment may be filed with regard to a conviction. The court shall return without filing any successive motions for relief from judgment. A defendant may not appeal the denial or rejection of a successive motion.

(2) A defendant may file a second or subsequent motion 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. The clerk shall refer a successive motion that asserts that one of these exceptions is applicable to the judge to whom the case is assigned for a determination whether the motion is within one of the exceptions.

This Court has held “that MCR 6.502(G)(2) provides the only two exceptions to the prohibition of successive motions.” *Swain*, 288 Mich App at 632. “[T]he ‘good cause’ and ‘actual prejudice’ requirements of MCR 6.508(D)(3) are not relevant until, and are only relevant if, the trial court determines that the successive motion falls within one of the two exceptions of MCR 6.502(G)(2).” *Swain*, 288 Mich App at 632-633.

The trial court ruled that there was no retroactive change in the law. The trial court did not explicitly find any newly discovered evidence. Because the trial court did not determine that either of the exceptions applied, it was required to deny defendant’s successive motion. See *Swain*, 288 Mich App at 632-633.

At the hearing on the prosecution’s motion for reconsideration and resentencing, defendant conceded that there was no retroactive change in the law or newly discovered evidence, but asked the trial court to waive those requirements in “the interests of justice.” Here, defendant asks this Court to view the trial court’s 2011 ruling as a confession of error, reconsideration of its 1998 ruling, or a correction of a substantive mistake. Defendant cites MCR 2.119(F)(3) and MCR 6.435(B). However, the trial court did not rely on either of these court rules. Moreover, while MCR 2.119(F)(3) allows the grant of a motion for rehearing or reconsideration if the moving party demonstrates “a palpable error,” MCR 2.119(F)(1) requires a motion for rehearing or reconsideration to be served and filed no more than 21 days after the entry of the order deciding the motion. Here, defendant filed his 2006 motion for relief from judgment approximately eight years after his first motion for relief from judgment. Further, though MCR 6.435(B) allows a court to correct an erroneous order, such correction is only permitted “provided [the court] has not yet entered judgment in the case.” Therefore, these rules provide no basis for the trial court’s decision to grant the motion and the trial court abused its discretion. See *Swain*, 288 Mich App at 628.¹

Reversed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Mark J. Cavanagh

¹ Because defendant’s claim is barred under MCR 6.506(G)(2), we need not address the prosecutor’s additional arguments.