

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TREMAYNE LOVETT,

Defendant-Appellee.

UNPUBLISHED

May 18, 1999

No. 212213

Genesee Circuit Court

LC No. 88-039902 FH

Before: Cavanagh, P.J., and MacKenzie and McDonald, JJ.

PER CURIAM.

The prosecution appeals as of right from an order granting defendant's motion for relief from judgment under MCR 6.500 *et seq.* The trial court ruled that a retractable nightstick that defendant had possessed did not constitute a dangerous weapon under MCL 750.224(1); MSA 28.421(1) and that defendant therefore should not have been convicted under the statute. We affirm.

In March 1989, a jury convicted defendant of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and possession of a dangerous weapon (specifically, a billy), MCL 750.224(1); MSA 28.421(1). The trial court, applying a second offense habitual offender enhancement under MCL 769.10; MSA 28.1082, sentenced defendant to 15 to 30 years in prison for the cocaine conviction and to a concurrent term of 5 to 7-1/2 years in prison for the dangerous weapon conviction. This Court affirmed defendant's convictions after he appealed them as of right, and defendant subsequently filed a motion for relief from judgment in the trial court, arguing that his sentences were disproportionate. The trial court, believing that it had no jurisdiction to address the merits of defendant's argument, denied the motion. Defendant appealed the denial to this Court, we remanded the case for resentencing, and the trial court, after realizing that it had erred in originally imposing concurrent sentences, resented defendant to consecutive terms of 11 to 30 and 2 to 7-1/2 years' imprisonment for the cocaine and dangerous weapon convictions, respectively.

This Court affirmed defendant's new sentences on appeal, and defendant then filed another motion for relief from judgment in the trial court, in which he argued that the retractable nightstick he had possessed, known as a "SIPO," was not encompassed by MCL 750.224(1); MSA 28.421(1). We note that MCR 6.502(G), which allows the filing of only one motion for relief from judgment after

August 1, 1995, did not prohibit defendant from filing a second motion for relief from judgment because the first motion was filed prior to 1995. The trial court, as it did with the first motion, refused to hear this second motion for relief. Defendant appealed the refusal to this Court, and we remanded the case for plenary consideration of the motion by the trial court. On remand, the trial court denied the motion, after which defendant moved for reconsideration of the denial. The trial court then denied the motion for reconsideration. Subsequently, defendant filed another motion that essentially amounted to a “motion to reconsider the denial of the motion for reconsideration” and that primarily reiterated prior arguments. A successor trial judge granted the motion and ordered that defendant’s dangerous weapon conviction be vacated. It is from this order that the prosecution now appeals.

Although the prosecution does not develop it as a basis for reversing the successor judge’s order, we wish, as an initial matter, to address the procedure by which defendant obtained his relief from judgment. To ultimately obtain relief, defendant, instead of repeating prior arguments in a “motion to reconsider the denial of the motion for reconsideration,” should instead have applied for leave to appeal to this Court from the denial of his second motion for post-judgment relief. See MCR 6.509(B) (appeals from decisions regarding motions for relief from judgment are by application for leave to appeal to this Court under MCR 7.205). Indeed, a defendant cannot continue to file motions for reconsideration that merely reiterate prior arguments, even if a successor judge has been appointed or elected. Because the prosecution did not develop or support this argument, however, but merely stated that the trial court “improperly permitted defendant to file a motion for reconsideration,” we will not use defendant’s procedural misstep to overturn the vacation of his conviction by ruling that the second motion for reconsideration was barred. See *People v Hanna*, 223 Mich App 466, 470; 567 NW2d 12 (1997) (argument without supporting authority is considered waived on appeal). Moreover, we decline to reverse the just result that the trial court ultimately achieved. See *Tenney v Springer*, 121 Mich App 47, 51; 328 NW2d 566 (1982) (this Court may overlook procedural missteps when justice so requires).

The prosecution argues that the trial court had no authority to grant defendant's motion for post-judgment relief under MCR 6.502 because defendant did not fulfill the requirements of MCR 6.508(D), which lists the circumstances in which such relief may or may not be granted. Specifically, the prosecution argues that defendant (1) did not show good cause for failing to raise the ultimately dispositive issue – that the object defendant possessed was not a dangerous weapon under MCL 750.224(1); MSA 28.421(1) – in a prior proceeding, and (2) did not evidence a significant possibility that he was innocent of the crime in question. See MCR 6.508(D). We note that if there is a significant possibility of a defendant’s innocence, a trial court may waive the “good cause” requirement of MCR 6.508(D)(3)(a). See MCR 6.508(D). Here, contrary to the prosecution’s argument and as discussed *infra*, there was indeed a significant possibility of defendant's innocence, and the trial court therefore properly waived the “good cause” requirement for post-judgment relief.

In his motion for post-judgment relief, defendant argued that the retractable stick he possessed – the SIPO – should not have been considered a billy for purposes of the statute under which he was charged, MCL 750.224(1); MSA 28.421(1). Whether possession of a particular object is prohibited

by § 750.224(1) is a question of law. This Court reviews questions of law de novo. *People v Lester*, 232 Mich App 262, 271; ___ NW2d ___ (1998).

We first note that because § 750.224(1) specifically lists the objects it prohibits, a conviction under the statute cannot be based on the possession of an item that the statute does not specifically mention. *People v Hassenfratz*, 99 Mich App 154, 156; 297 NW2d 641 (1980); *People v Malik*, 70 Mich App 133, 136; 245 NW2d 434 (1976). The only objects specifically mentioned in § 750.224(1) that could potentially encompass a SIPO are billys and bludgeons; therefore, for defendant's conviction to be valid, a SIPO must be considered a billy or a bludgeon. A billy is defined in CJI2d 11.29(1)(f) as "a small bludgeon that may be carried in the pocket," and a bludgeon is defined as "a short club, usually weighted at one end or bigger at one end than the other, and designed for use as a weapon." In *People v Beasley*, 198 Mich App 40, 42; 497 NW2d 200 (1993), this Court stated:

The term "bludgeon" is not defined in [§ 750.224(1)]. CJI2d 11.29 defines bludgeon as "a short club, usually weighted at one end or bigger at one end than the other, and designed for use as a weapon." See also *People v Malik*, 70 Mich App 133; 245 N.W.2d 434 (1976). Webster's New Collegiate Dictionary (1974) defines bludgeon as "a short stick that usually has one thick or loaded end and is used as a weapon."

The object involved in this case does not possess the distinguishing characteristic of having a weighted or thicker end. Rather, the object is one typically referred to as a "nightstick" that may be purchased in police equipment stores or other similar stores. We conclude that the instrument seized from defendant's vehicle was not a "bludgeon" within the meaning of the statute, and, therefore, we reverse defendant's conditional guilty plea. [Emphasis added; footnotes omitted.]

Just as in *Beasley*, the object at issue here did not have the distinguishing characteristic of having a weighted or thicker "business" end, and it was also not a typical club or stick but was retractable. Therefore, it was not a bludgeon under § 750.224(1). Moreover, because a billy is nothing more than a small bludgeon, the object defendant possessed was also not a billy under the statute. Accordingly, defendant was innocent of the charged crime and the trial court did not err in granting defendant's motion for post-judgment relief and vacating his conviction.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Barbara B. MacKenzie
/s/ Gary R. McDonald