IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **People of MI v Bernard James Stanley**
Docket No. **260056**
L. Ct. No. **98-010874-FC**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal is DISMISSED for lack of jurisdiction as the October 21, 2004 order denying appellant's motion for relief from judgment under MCR 6.500 *et seq.* stems from appellant's second motion requesting this type of relief since 1995 where no newly discovered evidence or retroactive change in the law may be found. MCR 6.502(G). Appellant's reliance upon *Blakely v Washington*, 542 US ___; 124 S Ct 2531, 2540; 159 L Ed 2d 403, 417 (2004), as a retroactive change in the law is misplaced seeing as the United States Supreme Court has already determined its holding does not apply to indeterminate sentencing systems like the one used by this state. Our Supreme Court has also determined, albeit in a footnote, that *Blakely*, *supra*, does not apply to the sentencing system used in our state. *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004). See also *People v Drohan*, ___ Mich App ___; ___ NW2d ___ (2004), slip op at 6-7 n 4 (this Court is bound by our Supreme Court's determination in *Claypool*, *supra*).

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 21 2005
Date

Sandra Schultz Mengel
Chief Clerk