IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **People of MI v Theodore W Reynolds III**
Docket No. **262282**
L. Ct. No. **88-038975-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 from the February 28, 2005 order that denied appellant's motion to correct mistake, which is in reality a motion for relief from judgment under MCR 6.500 *et seq.*, and the motion to appoint counsel are DISMISSED for lack of jurisdiction given that it is a successive motion filed since 1995 that requests relief from appellant's 1988 judgment of sentence. MCR 6.502(G)(1). On March 26, 2003, the Genesee Circuit Court entered an order that denied appellant's motion for relief from judgment that used an affidavit of the sentencing judge to support appellant's argument that the judge never intended him to serve a non-parolable life sentence. Since appellant already used the affidavit in a previous motion, it can no longer be considered newly discovered evidence for the motion at hand. MCR 6.502(G)(2). If appellant had wanted to challenge the circuit court's decision regarding the sentencing issue, he should have filed a delayed application for leave to appeal within 12 months of the entry of the March 2003 order. MCR 6.509(A).

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

MAY 20 2005
Date

Sandra Schultz Mengel
Chief Clerk