

Court of Appeals, State of Michigan

ORDER

People of MI v Ashley Lynn Kreiser

Docket No. 311560

LC No. 10-000457-FH

Donald S. Owens
Presiding Judge

Peter D. O'Connell

Amy Ronayne Krause
Judges

On the Court's own motion, the Clerk's Office shall treat defendant's delayed application for leave to appeal as if it had been filed within the deadline set forth in MCR 7.205(F)(4)(c) because appellate counsel's failure to file the delayed application within the applicable deadline constituted ineffective assistance of counsel. *People v Means*, 480 Mich 989 (2007); *People v McCoy*, 480 Mich 989 (2007); *People v Rodgers*, 480 Mich 989 (2007); and *People v Kipfer*, 480 Mich 990 (2007). Because appellate defense counsel was appointed in a May 30, 2012 order and the transcripts had been filed prior to entry of the order of appointment, the delayed application was required to be filed within 42 days after the order of appointment, i.e., by July 11, 2012, pursuant to MCR 7.205(F)(4)(c) both as currently in force and as in force when the judgment of sentence was entered on June 28, 2011. However, the delayed application was not filed until July 30, 2012. We note that *People v Shoffner*, 477 Mich 1054; 728 NW2d 419 (2007), is inapposite. *Shoffner* allowed for a potential 12-month period from the appointment of appellate counsel to file an application for leave to appeal in this Court or appropriate postjudgment motions in the trial court as a remedy for a possible violation of *Halbert v Michigan*, 545 US 605; 125 S Ct 2582; 162 L Ed 2d 552 (2005). In the present case, the record clearly reflects that defendant was advised of the right to seek appointed appellate counsel if indigent at sentencing and, thus, no violation of *Halbert* occurred.

Attorney Laurel Kelly Young (P40671) shall pay to the Clerk of this Court costs of \$250 within 21 days of the Clerk's certification of this order. This sanction is personal to the attorney and shall not be charged back to the county or the state.

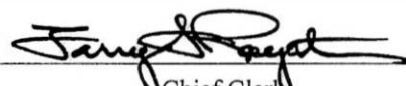
The Clerk's Office shall send a copy of this order to Thomas M. Harp, the Administrator of the Michigan Appellate Assigned Counsel System.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

AUG 22 2012

Date


Chief Clerk