

Court of Appeals, State of Michigan

ORDER

People of MI v Michael Eugene Barner

Docket No. 325677

LC No. 2011-003033-FY

David H. Sawyer
Presiding Judge

Joel P. Hoekstra

Jane E. Markey
Judges

The Court orders that the motion to waive fees is GRANTED and fees are WAIVED for this case only.

The Court further orders that the motions for the appointment of appellate counsel and to remand are DENIED.

Pursuant to MCR 7.205(E)(2), in lieu of granting the delayed application for leave to appeal, the Court PEREMPTORILY REVERSES the ruling of the trial court that defendant's failure to demonstrate good cause barred consideration of the merits of his claim that the prior convictions used to support his habitual offender status were obtained without counsel. The presence of a jurisdictional defect will release a defendant from the requirement of demonstrating good cause. MCR 6.508(D)(3); *People v Bethe*, 461 Mich 910; 603 NW2d 783 (1999); *People v Carpentier*, 446 Mich 19, 30; 521 NW2d 195 (1994). Defendant's challenge raises a claim of a jurisdictional defect. *Carpentier*, 446 Mich at 23, 27-30; *People v Zinn*, 217 Mich App 340, 342-343; 551 NW2d 704 (1996). Accordingly, the Court REMANDS this matter for reconsideration of the merits of defendant's challenge to his sentencing as an habitual offender. In all other regards, the delayed application is DENIED for lack of merit on the grounds presented. The Court does not retain jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 30 2015

Date


Chief Clerk