

Court of Appeals, State of Michigan

ORDER

People of MI v Terry Lee Smith

Docket No. 329256

LC No. 13-018201-FH

Mark T. Boonstra
Presiding Judge

Jane E. Markey

Jane M. Beckering
Judges

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

The trial court erred as a matter of law when it treated defendant's properly filed motion for relief from judgment as a motion to correct an invalid sentence and thereafter denied the motion as untimely. MCR 6.429(B)(4); MCR 6.501. We review defendant's delayed application under the standard for direct appeals arising from the denial of a motion for relief from judgment. So reviewed, the Court orders that the delayed application for leave to appeal is DENIED because defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D). The defendant alleges grounds for relief that could have been raised previously and he has failed to establish both good cause for failing to previously raise the issues and actual prejudice from the irregularities alleged, and has not established that good cause should be waived. MCR 6.508(D)(3)(a) and (b).



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

DEC - 7 2015

Date


Chief Clerk