

# Court of Appeals, State of Michigan

## ORDER

**Marcus A Harvey-Bey v Central Mich Correctional Facility Warden**

Docket No.   **335289**

LC No.       **16-000116-AH**

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Michael F. Gadola, Judge, acting under MCR 7.211(E)(2), orders:

Initially, it is recognized that, if it could be applied, MCL 600.2963(8) would bar appellant from proceeding with this appeal based on the outstanding fee that he owes this Court in *Marcus A Harvey-Bey v Central Mich Correctional Facility Warden*, Docket Number 328904. But MCL 600.2963(8) cannot constitutionally be applied to bar this appeal as to a habeas corpus matter where it appears evident that appellant cannot pay the outstanding fee. *Smith v Bennett*, 365 US 708; 81 S Ct 895; 6 L Ed 2d 39 (1961). The motion to waive fees pursuant to MCR 7.202(4) and MCR 7.204(B)(2) is DENIED because MCL 600.2963 mandates that a prisoner pursuing a civil action be liable for the filing fees. Appellant is not required to pay an initial partial fee. MCL 600.2963(7). However, for this appeal to be filed, **appellant shall submit a copy of this order and refile the pleadings within 21 days of the certification of this order.** By doing this, appellant becomes responsible for paying the \$375 filing fee and may not file another new civil appeal or original action in this Court until such time that either the Department of Corrections remits or appellant pays the entire outstanding balance due. MCL 600.2963(8). Failure to comply with this order shall result in the appeal not being filed in this Court and appellant not being responsible for paying the filing fee. If appellant timely refiles the pleadings, monthly payments shall be made to the Department of Corrections in an amount of 50 percent of the deposits made to appellant's account until the payments equal the balance due of **\$375**. This amount shall then be remitted to this Court.

The Clerk of this Court shall furnish two copies of this order to Select Party Designation and return Select Party Designation pleadings with this order.



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

OCT 26 2016

Date

Chief Clerk