Court of Appeals, State of Michigan

ORDER

People of MI v Brian Keith Schwab

Docket No. 353282

LC No. 10-005468-FH

Douglas B. Shapiro
Presiding Judge

Jane M. Beckering

James Robert Redford
Judges

The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal is DENIED as defendant has failed to establish that the trial court erred in denying his motion for relief from judgment. Specifically, as to his request to withdraw his guilty plea on the grounds that he was not informed he would be subject to lifetime electronic monitoring, we conclude that because the judgment of sentence does not impose a requirement of lifetime electronic monitoring, defendant is not subject to that requirement. Accordingly, his request to withdraw his plea on this basis is without foundation.

Presiding Judge

REDFORD, J., (concurring in part and dissenting in part). I concur with the majority's waiver of fees and conclusion that the delayed application should be denied because defendant has failed to establish that the trial court erred in denying the motion for relief from judgement. For three reasons I respectfully dissent from the remainder of the majority's order that concludes as a factual matter that defendant is not subject to lifetime electronic monitoring. First, defendant has failed to demonstrate good cause for failing to appeal his guilty plea and negotiated sentence; second, defendant has failed to demonstrate actual prejudice; and, third, the trial court correctly concluded that it did not have the authority to sua sponte correct defendant's sentence. These three conclusions should end our legal inquiry and defendant is not legally entitled to relief.

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

JUN 17 2020

Date

Chief Clerk