

Order

Michigan Supreme Court
Lansing, Michigan

October 27, 2017

Stephen J. Markman,
Chief Justice

153324

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen
Kurtis T. Wilder,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 153324
COA: 321487
Wayne CC: 10-006891-FC

RODERICK LOUIS PIPPEN,
Defendant-Appellant.

On October 12, 2017, the Court heard oral argument on the application for leave to appeal the January 14, 2016 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we REVERSE that part of the Court of Appeals judgment holding that the defendant's trial counsel's performance was objectively reasonable. Defense counsel failed to interview a witness who may have had information concerning his client's innocence prior to trial. The witness gave exculpatory statements to the defense investigator, and defense counsel was aware the witness spoke with the investigator. Failure to investigate such a witness is not a strategic decision entitled to deference. See *Wiggins v Smith*, 539 US 510; 123 S Ct 2527; 156 L Ed 2d 471 (2003); and *Towns v Smith*, 395 F3d 251 (CA 6, 2005). We also VACATE that part of the Court of Appeals judgment holding that the defendant was not prejudiced by defense counsel's performance, and we REMAND this case to the Wayne Circuit Court for a determination whether, considering the totality of the evidence presented, there is a reasonable probability that the outcome of the trial was affected. See *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

We do not retain jurisdiction.

WILDER, J., did not participate because he was on the Court of Appeals panel.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 27, 2017

Clerk