

Order

Michigan Supreme Court
Lansing, Michigan

July 24, 2017

Stephen J. Markman,
Chief Justice

154577

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: 154577
COA: 327634
Kent CC: 14-010346-FH

TODD ALLEN WHEELER,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the September 20, 2016 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals to address the defendant's claim, raised for the first time in this Court, that his appellate counsel was ineffective for failing to challenge on appeal: (1) the joinder of his and Hooper Jackson Parsley's trials; and (2) his trial counsel's ineffectiveness for failing to oppose that joinder. On remand, while retaining jurisdiction, the Court of Appeals shall remand this case to the Kent Circuit Court to conduct an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436 (1973), to determine whether the defendant was deprived of his right to the effective assistance of trial and appellate counsel. At the conclusion of the hearing, the circuit court shall forward the record and its findings to the Court of Appeals, which shall then address these issues. In all other respects, the application for leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We note that by order dated July 24, 2017, we remanded *People v Parsley* (Docket No. 154734) to the Court of Appeals for consideration of whether the error in joining Parsley's case with the defendant's was harmless.

We do not retain jurisdiction.



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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.

July 24, 2017

Clerk