

Order

Michigan Supreme Court
Lansing, Michigan

March 21, 2018

Stephen J. Markman,
Chief Justice

156088

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 156088
COA: 336811
Wayne CC: 14-004004-FC

RONALD LEE FOSTER,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the May 12, 2017 order of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Wayne Circuit Court for the appointment of new appellate counsel to represent the defendant as on direct appellate review. See *Halbert v Michigan*, 545 US 605; 125 S Ct 2582; 162 L Ed 2d 552 (2005). The record reflects that defendant's appellate counsel did not file an application for leave to appeal, seek any other relief on the defendant's behalf, or move to withdraw based on the attorney's determination, after a thorough review of the trial record, that the appeal was wholly frivolous. Thus, through no fault of the defendant, he lost the right to seek leave to appeal to the Court of Appeals on direct review. On remand, new appellate counsel, once appointed, may file an application for leave to appeal in the Court of Appeals for consideration under the standard for direct appeals, and/or any appropriate postconviction motions in the circuit court, within six months of the date of the circuit court's order appointing counsel.

Costs are imposed against the attorney, Tracie Gittleman, in the amount of \$500, to be paid to the Clerk of this Court.

We do not retain jurisdiction.



a0314

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.

March 21, 2018

Clerk