

# Order

Michigan Supreme Court  
Lansing, Michigan

February 6, 2013

145536 & (25)

Robert P. Young, Jr.,  
Chief Justice

Michael F. Cavanagh  
Stephen J. Markman  
Mary Beth Kelly  
Brian K. Zahra  
Bridget M. McCormack,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

JAMES HENRY NELSON,  
Defendant-Appellant.

SC: 145536  
COA: 306864  
Oakland CC: 2009-227279-FH

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By order of December 12, 2012, the prosecuting attorney was directed to answer the application for leave to appeal the June 21, 2012 order of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Oakland Circuit Court for the appointment of substitute appellate counsel. The record shows that initially appointed appellate counsel moved to withdraw because of a breakdown of the attorney-client relationship. The record does not show that counsel determined or advised the court that there was no non-frivolous issue to raise on appeal, and counsel's motion did not comply with MCR 7.211(C)(5) or AO 2004-6, Standard 5. Under the circumstances of this case, the circuit court erred in granting the motion to withdraw without appointing substitute appellate counsel. On remand, newly appointed appellate counsel may file an application for leave to appeal to the Court of Appeals within 12 months of the date of the circuit court's order appointing counsel, as, at the time the defendant was sentenced, he was entitled to file an application within 12 months of sentencing. See former MCR 7.205(F)(3).



h0130

I, Corbin R. Davis, 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.

February 6, 2013

*Corbin R. Davis*

Clerk