Court of Appeals, State of Michigan

ORDER

People of MI v James Darrin Moss

Docket No. 307893, 307913

LC No. 10-001769-FH, 10-000235-FH

Douglas B. Shapiro
Presiding Judge

David H. Sawyer

Jane E. Markey
Judges

The Court orders that the motion to remand pursuant to MCR 7.211(C)(1) is GRANTED, in part, and this matter is REMANDED for an evidentiary hearing and a determination whether defendant-appellant received constitutionally-deficient representation, *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1993), when counsel failed to call Novella Alliston as a defense witness. In all other regards, the motion is DENIED for failure to persuade the Court of the need for a remand at this time. The Court retains jurisdiction and the time for proceeding with the appeal in this Court shall begin to run upon issuance of an order in the trial court that disposes of the post-conviction proceedings.

Defendant-appellant shall file with this Court a copy of any motion and supporting brief filed in the trial court within 14 days after the Clerk's certification of this order. Defendant-appellant shall also file with the Clerk of this Court copies of all orders entered on remand within 14 days after entry. The trial court shall hear and decide the matter within 56 days after the Clerk's certification of this order. The trial court shall make findings of fact and a determination on the record and cause a transcript of any hearing on remand to be prepared and filed within 21 days after completion of the proceedings.

Defendant-appellant may file a supplemental brief pertaining to the issues raised on remand within 21 days after entry of the trial court's order deciding the matter or 21 days after the transcript of the hearing is filed, whichever is later. Appellee may file a supplemental brief in response. The time for proceeding with the appeal shall begin to run 14 days after the date this order is certified if the motion to initiate the post-conviction proceedings is not filed in the trial court within that 14-day period.

Sawyer, J., would deny the motion to remand.

A true copy entered and certified by Larry S. Royster, Chief Clerk, on

SEP 04 2012
Date

Chief Clerk