IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **People of MI v Jeffrey Paul McKenna**
Docket No. **277909**
L.C. No. **02-021459-FH**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

The delayed application for leave to appeal is DISMISSED for lack of jurisdiction because it was not filed within 12 months of the judgment of sentence and neither of the two exceptions found in MCR 7.205(F)(4) applies. The issue in this case is how long can a defendant take after *Halbert* was decided before a request for appellate counsel is considered untimely. The Court concludes that pursuant to the second exception in MCR 7.205(F)(4) that a defendant had 12 months after *Halbert* was decided in which a request for appellate counsel must be made to be considered timely if there was a *Halbert* violation in the first instance. In this case defendant waited almost 21 months after the June 23, 2005, *Halbert* decision to request counsel. Neither the 6th Circuit Court of Appeals decision regarding retroactive application of *Halbert*, nor the Michigan Supreme Court orders conflict with this decision because in all those cases there were initial timely requests for appellate counsel and timely action taken after *Halbert* was decided. In particular, the 6th Circuit Court of Appeals decision does not address or decide the scope of retroactive application of *Halbert*.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY 21 2007
Date

Sandra Schultz Mengel
Chief Clerk