

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **People of MI v John Michael Duke**
Docket No. **278416**
L.C. No. **05-001234-FC**

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

The claim of appeal filed June 4, 2007, is DISMISSED for lack of jurisdiction because the claim of appeal was not timely filed from the December 27, 2006 judgment of sentence as this Court already found in docket number 276724. The amended judgment of sentence sets the same sentence and thus it does not restart the time period to file the claim of appeal. See MCR 7.208(C)(1). A trial court lacks the authority to enter an amended judgment of sentence to restart the time period unless defendant can satisfy one of two conditions in MCR 6.428. As demonstrated by the motion to allow right of appeal filed in docket number 276724 and signed by Kathryn L Simmons defendant cannot satisfy either condition. There was no allegation in that motion that defendant directed counsel to file a timely claim of appeal and counsel clearly did not engage in effective assistance of counsel if the facts in the motion are true. What counsel said in the motion in explaining the delay was that defendant did not know he had 42 days to file a claim of appeal after denial of his request for counsel and that it took the defendant's family "some time" to raise funds to retain counsel. Any appeal must be by application for leave to appeal as was already directed by this Court in docket number 276724.



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

JUN 15 2007

Date

Sandra Schultz Mengel

Chief Clerk