

Court of Appeals, State of Michigan

ORDER

People of MI v Billy Joe English

Docket No. 308852

LC No. 2002-184901-FH

Michael J. Talbot
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray
Judges

The Supreme Court remanded this matter to this Court “for a determination of whether [it] complied with its own practices regarding the filing of certificates stating that a transcript does not exist and deadlines for applications for leave to appeal.” 493 Mich __; 825 NW2d 62 (2013).

During the pertinent time period, MCR 7.205(F)(3) provided a 12-month limitation for filing delayed appeals. MCR 7.205(F)(4) provided that this limitation did not apply where (1) the defendant filed a delayed request for appointment of counsel within 12 months after entry of the judgment of sentence; (2) transcripts were ordered within 28 days of service of the order granting the delayed request for counsel; and (3) the application for delayed appeal was filed within 42 days after the filing of the transcript. The documentation submitted to this Court shows that the first two of these requirements were met in this case. However, defendant failed to file his application for delayed appeal within 42 days after the filing of the transcripts on December 14, 2011. The January 24, 2012 amended court reporter certificate clarifying that no record existed to be transcribed for the asserted outstanding transcripts did not extend the time for filing the delayed appeal. The information contained within that certificate was stated in an October 30, 2011 court reporter certificate.

Defendant had 42 days after the filing of the transcripts on December 14, 2011 within which file his delayed appeal. His application was due January 25, 2012. He filed his application for delayed appeal on March 1, 2012. It was untimely, and this Court properly dismissed it under MCR 7.205(F)(3).



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

MAR - 8 2013

Date


Chief Clerk