

# Order

Michigan Supreme Court  
Lansing, Michigan

September 18, 2013

146675 & (21)

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

JAMES MICHAEL DeWEESE,  
Defendant-Appellant.

SC: 146675  
COA: 312171  
Kent CC: 11-006928-FH

Robert P. Young, Jr.,  
Chief Justice

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

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By order of May 28, 2013, the prosecuting attorney was directed to answer the application for leave to appeal the December 17, 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 Kent Circuit Court for the appointment of substitute appellate counsel. The defendant is entitled to appointed appellate counsel in his application to the Court of Appeals. *Halbert v Michigan*, 545 US 605, 610 (2005). 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 *Halbert*, 545 US 605, 623 (2005), citing *Anders v California*, 386 US 738, 744 (1967); 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 6 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 6 months of sentencing. See MCR 7.205(F)(3).



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I, Larry S. Royster, 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.

September 18, 2013

Clerk