

Order

Michigan Supreme Court
Lansing, Michigan

February 2, 2007

Clifford W. Taylor,
Chief Justice

132198

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 132198
COA: 272188
Van Buren CC: 05-014402-FH

DAVID DUANE SMITH,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the August 17, 2006 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals. The Court of Appeals shall then remand the case to the Van Buren Circuit Court, which shall, in accordance with Administrative Order 2003-03, determine whether the defendant is indigent and, if so, appoint counsel to represent the defendant at an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436 (1973), to determine whether the failure to timely seek appellate review was caused by the ineffective assistance of counsel. See *Roe v Flores-Ortega*, 528 US 470; 120 S Ct 1029; 145 L Ed 2d 985 (2000). If the trial court rules that the defendant's appellate counsel was ineffective, the Court of Appeals shall treat the defendant's application as having been timely filed. It shall then grant or deny the application, or otherwise exercise its authority under MCR 7.216(A)(7).



s0130

I, Corbin R. Davis, 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.

February 2, 2007

Corbin R. Davis

Clerk