

Order

Michigan Supreme Court
Lansing, Michigan

March 26, 2010

Marilyn Kelly,
Chief Justice

139133 & (24)

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 139133
COA: 289973
St. Joseph CC: 98-009423-FC

JOSEPH JAMES KELLER,
Defendant-Appellant.

By order of December 21, 2009, the defendant's former appellate counsel was directed to file a supplemental brief. On order of the Court, the brief having been received, the application for leave to appeal the May 5, 2009 order of the Court of Appeals is again considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for reconsideration of the defendant's January 20, 2009 application for leave to appeal under the standard applicable to direct appeals. The defendant's former appellate counsel acknowledges that he failed to file an application for leave to appeal from the defendant's plea-based conviction. Accordingly, the defendant was deprived of his direct appeal as a result of constitutionally ineffective assistance of counsel. See *Roe v Flores-Ortega*, 528 US 470, 477; 120 S Ct 1029; 145 L Ed 2d 985 (2000); *Peguero v United States*, 526 US 23, 28; 119 S Ct 961; 143 L Ed 2d 18 (1999).

Costs are imposed against the defendant's former appellate attorney, only, in the amount of \$250, to be paid to the Clerk of this Court.

We do not retain jurisdiction.

CORRIGAN, J. (*concurring*).

I concur in the order requiring the Court of Appeals to reconsider the defendant's application for leave to appeal because he was deprived of the effective assistance of appellate counsel. I would also refer his appellate attorney, David M. Hartsook, to the Attorney Grievance Commission to investigate Hartsook's failure to successfully pursue the appeal.



d0323

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.

March 26, 2010

Corbin R. Davis

Clerk