

# Order

Michigan Supreme Court  
Lansing, Michigan

May 3, 2013

Robert P. Young, Jr.,  
Chief Justice

146210

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

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 146210  
COA: 297542  
Wayne CC: 09-022865-FC

ANDRE LAMAR HUNTER,  
Defendant-Appellant.

---

On order of the Court, the application for leave to appeal the August 30, 2012 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE the Wayne Circuit Court's determination that the defendant's attorney testified credibly at the hearing held pursuant to *People v Ginther*, 390 Mich 436 (1973). To establish ineffective assistance of counsel, a defendant must show: (1) that the attorney's performance was not based on strategic decisions, but was objectively unreasonable in light of prevailing professional norms; and (2) that, but for the attorney's error, a different outcome was reasonably probable. This is a mixed question of law and fact. Findings of fact are reviewed for clear error; questions of law are reviewed de novo. *People v Armstrong*, 490 Mich 281, 289-290 (2011). The trial court clearly erred in finding that the defendant's attorney was credible. We therefore VACATE those portions of the Court of Appeals opinion relying on the trial court's credibility determination to affirm the defendant's conviction in the face of his claims of ineffective assistance of counsel. We REMAND this case to the Court of Appeals for reconsideration of the defendant's ineffective assistance claims in light of this order. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.

CAVANAGH, J., would grant leave to appeal.



h0430

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.

May 3, 2013

Clerk