

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CASSANDRA RENEE LEE, a/k/a CASSANDRA
RENEE VIRGINS,

Defendant-Appellee.

UNPUBLISHED

June 19, 2008

No. 277882

Kent Circuit court

LC No. 96-012118-FC

Before: Zahra, P.J., and Cavanagh and Jansen, JJ.

PER CURIAM.

Defendant, Cassandra Renee Lee, a/k/a Cassandra Renee Virgins, acting in propria persona, appeals by leave granted an order denying her request for appointed appellate counsel. We affirm.

I. Basic Facts

Defendant pleaded guilty to second-degree murder on October 7, 1997. The trial court sentenced her to a term of 30 to 50 years' imprisonment, to be served consecutive to a term of imprisonment, if any, imposed as a result of her parole violation. On December 5, 1997, defendant requested the appointment of appellate counsel. The trial court denied her request in an order entered on December 16, 1997.

Defendant sought leave to appeal the trial court's December 16, 1997, order denying the appointment of appellate counsel on February 19, 1998. This Court remanded the matter to the trial court to reconsider defendant's request in light of *People v Najjar*, 229 Mich App 393; 581 NW2d 302 (1998), overruled by *People v Bulger*, 462 Mich 495; 614 NW2d 103 (2000). *People v Lee*, unpublished order of the Court of Appeals, entered August 27, 1998 (Docket No. 209656).

On remand, the trial court again denied defendant's request for appointed appellate counsel. In denying defendant's request, the trial court opined:

In *Najar, supra*, at 403-404, the Court of Appeals held that trial courts have discretion to decline to appoint appellate attorneys to pursue appeals which are "absolutely devoid of merit." This happens to be such as case. That defendant pled guilty to a serious offense and was given a lengthy sentence does

not itself entitle her to appellate counsel, not when any appeal has no merit. That is the situation in this case. It does not involve, even remotely, any substantive issue which might have survived defendant's plea of guilty. The case does not involve any substantive issue at all arguably worth of pursuit on appeal. The only possible appellate issue pertains to defendant's sentence, and an appeal of that will get her nowhere. She got precisely the sentence for which she bargained. Accordingly, she will not be heard to complain about it. *People v Cobbs*, 443 Mich 276, 285, fn 11 (1993); and *People v Blount*, 197 Mich App 174, 175-176 (1992). In sum, this Court need not appoint an attorney to pursue an appeal. Defendant may herself appeal, but this County need not pay an attorney to assist her.

Defendant filed another request for appointed counsel pursuant to *Halbert v Michigan*, 545 US 605; 125 S Ct 2582; 162 L Ed 2d 552 (2005). The trial court denied the request by order entered on October 5, 2005. Defendant filed a third request for appointed counsel on October 2, 2006. The trial court denied defendant's request for appointed appellate counsel by order entered on October 5, 2006, which stated in part, that:

Although in *People v James*, [272 Mich App 182; 725 NW2d 71] (2006), our Court of Appeals recently reversed this Court's holding in Part B of its opinion in *People v Miklosovic*, Kent Circuit Docket No. 04-12389-FC, the holding in Part C of that opinion that *Halbert v Michigan*, 545 US [605]; 125 S Ct 2582; 162 L Ed 2d 552 (2005), does not apply to cases like this one, has not been overturned. *People v Houlihan*, 474 Mich 958[; 706 NW2d 731] (2005). Accordingly:

IT IS ORDERED AND ADJUDGED that the *Halbert* request for appointed appellate counsel filed by defendant on October 2, 2006, be and the same here is, DENIED, as was an identical request which was denied by this Court on October 5, 2005, making her most recent request a motion for reconsideration, which is both untimely and without merit.

Defendant filed her delayed application for leave to appeal with this Court on May 7, 2007, and this Court granted defendant leave to appeal on August 2, 2007. *People v Lee*, unpublished order of the Court of Appeals, entered August 2, 2007 (Docket No. 277882).

II. Right to Appellate Counsel

A. Standard of Review

Whether a rule of criminal procedure applies retroactively is a question of law that this Court reviews de novo. *People v Parker*, 267 Mich App 319, 326; 704 NW2d 734 (2005).

B. Analysis

Recently, in *Simmons v Kapture* (On Rehearing), 516 F3d 450 (CA 6, 2008), an en banc panel of the United States Sixth Circuit Court of Appeals ruled that *Halbert* does not apply retroactively. The Court explained in its opinion that:

Because petitioner Patrick Simmons’s state conviction was final when the Court decided *Halbert*, *Halbert*’s applicability to the instant action is governed by *Teague v Lane*, 489 US 288; 109 S Ct 1060; 103 L Ed 2d 334 (1988). Under *Teague*, a “new rule” of criminal procedure does not apply retroactively to cases proceeding on collateral habeas review unless the rule either decriminalizes a class of conduct or is a “watershed” rule that implicates the fundamental fairness and accuracy of a criminal proceeding. *Saffle v Parks*, 494 US 484, 494-95; 110 S Ct 1257; 108 L Ed 2d 415 (1990) (citing *Teague*, 489 US at 311). . . .

Supreme Court precedent compels the conclusion that *Teague* bars the retroactive application of *Halbert* on collateral review. *Halbert* announced a “new rule,” and that new rule neither decriminalizes a class of conduct nor is a “watershed” rule.

We agree with the above holding, and note that our Supreme Court had held a case in abeyance, *People v Houlihan*, 480 Mich 1165; 746 NW2d 879 (2008), pending the outcome of *Simmons*, and implicitly the resolution of the question whether *Halbert* would apply retroactively. Upon the issuance of *Simmons*, the Court stated that it again considered Houlihan’s application for leave to appeal, and it denied the application because the Court is “not persuaded that the questions presented should be reviewed by this Court.” Our Supreme Court has indicated approval of *Simmons*, and defendant accordingly is not entitled to appointment of appellate counsel.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen