

ANSWER TO QUESTION NO. 5

Describe and discuss defendant's right to appellate review in the state court: At one time there existed a right to appeal to the Michigan Court of Appeals all criminal convictions, even convictions that were the product of a guilty plea or a nolo contendere plea. However, in 1994, the people of Michigan amended the Michigan Constitution to eliminate the right to appeal criminal convictions that result from nolo contendere and guilty pleas. See Mich Const 1963, Art 1, §20. Here, defendant's conviction is the result of a plea of guilty. Therefore, Peter has no right to an appeal.

Art 1, §20 of the Michigan Constitution provides, however, that "an appeal by an accused who pleads guilty or nolo contendere shall be by leave of the court." Peter's appellate remedies are therefore limited to the filing of an application for leave to appeal. Unlike an appeal by right, where the Michigan Court of Appeals must address the merits of every timely filed claim of appeal, the determination of whether to address the merits of claims asserted in an application for leave to appeal is left to the discretion of the Court of Appeals.

MCR 7.205(A) describes the time requirements for filing an application for leave to appeal in the Michigan Court of Appeals: "An application for leave to appeal must be filed within 21 days after entry of the judgment or order to be appealed from or within other time as allowed by law or rule." Thus, Peter has the opportunity to timely file an application for leave to appeal in the Michigan Court of Appeals.

Further, MCR 7.205(F) permits the filing of delayed applications for leave to appeal. An appellant bringing a delayed application for leave to appeal must not only provide the court with a statement of appellant's allegations of error and the relief sought, the appellant must also explain the delay for failing to timely file an application for leave to appeal. MCR 7.205(F) (1). The Court of Appeals may consider the reason for the delay in filing when passing on the merits of the application. Like a timely application for leave to appeal, the disposition of a delayed application for leave to appeal is left to the discretion of the Court of Appeals.

Should Peter be denied leave to appeal in the Court of Appeals, he may seek leave to appeal in the Michigan Supreme Court. MCR 7.302. Such applications are rarely granted. The decision whether to grant an application for leave to appeal is left to the discretion of the Supreme Court. *Id.*

Discuss whether the trial court is obligated to honor Peter's request for the appointment of appellate counsel: The Sixth Amendment to the United States Constitution provides that "[I]n all criminal prosecutions, the accused shall enjoy the right * * * to have the assistance of counsel for his defense." In *Gideon v Wainwright*, 372 US 335 (1963), the United States Supreme Court held that the Sixth Amendment right to counsel required the state to provide indigent criminal defendants with appointed counsel at state expense to assist at trial. In *Douglas v California*, 372 US 353 (1963), the Supreme Court of the United States concluded that the right to appointed counsel for indigent defendants extended to first appeals as of right, following a criminal conviction. And in *Ross v Moffitt*, 417 US 600 (1974), the Supreme Court of the United States concluded that states need not appoint counsel to aid an indigent convict to assist in discretionary appeals to the state's highest court or to the United States Supreme Court.

In *Halbert v Michigan*, 545 US 605 (2005), the Supreme Court of the United States determined that in regard to the appointment of counsel, Michigan's constitutionally mandated review system for plea-based convictions is governed by *Douglas, supra*. Therefore, Michigan must appoint counsel to indigent defendants who plead guilty or nolo contendere to assist in obtaining first leave discretionary review before the Michigan Court of Appeals. The U.S. Supreme Court based its holding in *Halbert* on two aspects of Michigan's criminal appellate process. First, in disposing of applications for leave to appeal, the Michigan Court of Appeals looks to the merits of the claims asserted by the defendant. *Id.* at 617. Accordingly, the Court of Appeals' ruling is the first and likely to be the only direct review of the merits of defendant's conviction and sentence. Second, indigent defendants seeking review before the Court of Appeals are ill equipped to represent themselves. *Id.* Persons unskilled in the law will not be able to assist the appellate court in assessing the legal merits of their claims.

The Michigan Court Rules were amended to reflect the United States Supreme Court's holding in *Halbert*. MCR 6.425(G) (1)(c) gives indigent defendants 42 days to request appellate counsel. The trial court must grant a timely filed request for the appointment of appellate counsel. *Id.* Here, defendant sent to the trial court and the clerk of the court correspondence that requested the appointment of appellate counsel. This correspondence was filed and made part of the court record within 42 days of Peter's judgment of conviction and sentence. Pursuant to MCR 6.425, *Halbert v Michigan, supra*, and the Sixth Amendment to the United States Constitution, the trial court must appoint appellate counsel to assist Peter in his pursuit of appellate review before the Michigan Court of Appeals of his plea-based conviction.