

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Supreme Court No. _____
(Leave blank.)

Plaintiff-Appellee,

Court of Appeals No. 318854
(From Court of Appeals decision.)

v
Justin Timothy Comer
(Print the name you were convicted under on this life.)

Trial Court No. 11-001804-FC
(See Court of Appeals brief or Presentence Investigation Report.)

Defendant-Appellant.

INSTRUCTIONS: Answer each question. Add more pages if you need more space. NOTE: If you are appealing a Court of Appeals decision involving an administrative agency or a civil action, you will have to replace this page with one containing the relevant information for that case.

PRO PER APPLICATION FOR LEAVE TO APPEAL

1. I was found guilty on (Date of Plea or Verdict) 09-02-2011

2. I was convicted of (Name of offense) CSCI and Home Invasion

Second degree

3. I had a guilty plea; no contest plea; jury trial; trial by judge. (Mark one that applies.)
(resentenced)

4. I was sentenced by Judge Michael J. West on 04-29-2013
(Print or type name of judge) (Print or type date you were sentenced)

in the St. Clair County Circuit Court to 3 years 6 months
(Name of county where you were sentenced) (Put minimum sentence here)

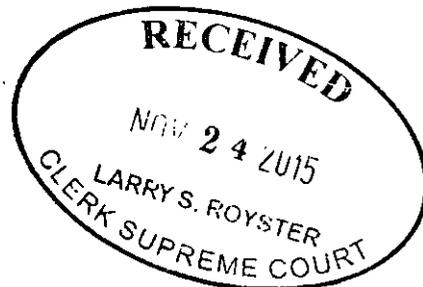
to 18 years 0 months, and to 3 years 6 months to 15 years 0 months.
(Print or type maximum sentence) (Minimum sentence) (Maximum sentence)

I am in prison at the (Released on Parole) in St. Clair, Michigan.
(Print or type name of prison) (Print or type city where prison is located.)

5. The Court of Appeals affirmed my conviction on October 8, 2015
(Print or type date stamped on Court of Appeals decision)

in case number 318854. A copy of that decision is attached.
(Print or type number on Court of Appeals decision)

6. This application is filed within 56 days of the Court of Appeals decision. (It MUST be received by the Court within 56 days of date on Court of Appeals decision in criminal cases and 42 days in civil cases. Delayed applications are NOT permitted, effective September 1, 2003.)



PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Justin Timothy Cower Defendant-Appellant

CA No. 318854

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

GROUND - ISSUES RAISED IN COURT OF APPEALS

7. I want the Court to consider the issues as raised in my Court of Appeals brief and the additional information below.

ISSUE I:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

(see Attached.)

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- 1. The issue raises a serious question about the legality of a law passed by the legislature.
- 2. The issue raises a legal principle which is very important to Michigan law.
- 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in "B" apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

(see Attached)

Pro Per Application for Leave to Appeal
Justin Timothy Comer, Defendant-Appellant
Court of Appeals No. 318854

Attachment to page 2 of 13

Paragraph 7, Issue 1, Subparagraph A

Appellant's due process rights were violated when the trial court held a hearing to add lifetime electronic monitoring to his judgment of sentence without a motion from either party and long after the judgment of sentence was imposed.

Pro Per Application for Leave to Appeal

Justin Timothy Comer, Defendant-Appellant

Court of Appeals No. 318854

Attachment to page 2 of 13

Paragraph 7, Issue I, Subparagraph C

- C. This case has previously been before the Michigan Supreme Court on defendant's request for leave to appeal and the Supreme Court remanded to the Court of Appeals in lieu of granting leave (*People v Comer*, 497 Mich 957; 858 NW2d 462 (2015)). In the subsequent Michigan Court of Appeals decision in this case, Docket No. 318854 (attached), the majority states that the Court is bound by *People v Harris*, 224 Mich App 597; 569 NW2d 525 (1997) and therefore affirmed the St. Clair County Circuit Court's decision. However, the majority did not consider MCR 6.435 (which states procedures for correcting substantive mistakes). That court rule provides that substantive mistakes may be corrected only prior to entry of a judgment. The Court of Appeals only considered MCR 6.429, which gives the trial court authority to correct an invalid sentence, but also requires the filing of a motion to start that process. No motion was filed by either party in this case.

In the concurring opinion in the Court of Appeals in this case, Judge Gleicher states: "I concur with the result reached in the majority opinion only because I am compelled to do so by *People v Harris*, 224 Mich App 597; 569 NW2d 525 (1997). In my view, *Harris* was wrongly decided and should be overruled by our Supreme Court." Judge Gleicher also stated her opinion (at page 2 of the attached concurring opinion) that the Supreme Court has come close to "implicitly" overruling *People v Harris* in *People v Holder*, 483 Mich 168; 767 NW2d 423 (2009). Finally, Judge Gleicher states: "*Harris* permits a trial court to substantively modify a defendant's sentence without a motion, and at any time. I believe that MCR 6.435 was intended to rein in a court's authority to alter even an invalid sentence, and urge the Supreme Court to consider this question."

I have previously submitted a brief regarding this issue to the Supreme Court, which contains additional cases and arguments regarding this issue. It is attached here for review.

If the Supreme Court grants my request for leave to appeal, I request that the State Appellate Defender Office be appointed to represent me during the appeal.

PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Justin Timothy Coner Defendant-Appellant

CA No. 318854

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8, on page 7.

ISSUE II:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

N/A

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- 1. The issue raises a serious question about the legality of a law passed by the legislature.
- 2. The issue raises a legal principle which is very important to Michigan law.
- 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Justin Timothy Comer, Defendant-Appellant

CA No. 318854

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

ISSUE III:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

N/A

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- 1. The issue raises a serious question about the legality of a law passed by the legislature.
- 2. The issue raises a legal principle which is very important to Michigan law.
- 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Justin ~~Timothy~~ ^{Timothy} ~~Conner~~ ^{Conner}, Defendant-Appellant

CA No. 318854

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

ISSUE IV:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

N/A

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- 1. The issue raises a serious question about the legality of a law passed by the legislature.
- 2. The issue raises a legal principle which is very important to Michigan law.
- 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Justin Timothy Comer, Defendant-Appellant

CA No. 318854

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

ISSUE V:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

N/A

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- 1. The issue raises a serious question about the legality of a law passed by the legislature.
- 2. The issue raises a legal principle which is very important to Michigan law.
- 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up 4any facts about this issue, explain here. If you need more space, you can add more pages.)

FOR MORE ISSUES, ADD PAGES. GIVE THE SAME INFORMATION. NUMBER EACH ISSUE.

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Justin Timothy Comer Defendant-Appellant

CA No. 318854

NEW ISSUES - INSTRUCTIONS: If you want the Supreme Court to look at errors which were not raised in the Court of Appeals by your attorney or you, check YES in "8." Answer parts A, B, and C for each new issue you raise. There is space provided for 2 new issues. You can add more pages. If you do not have new issues, go to question 9 on page 8.

GROUND S - NEW ISSUES

8. YES, I want the Court to consider the additional grounds for relief contained in the following issues. The issues were not raised in my Court of Appeals brief. MCR 7.302(F)(4).

NEW ISSUE I:

A. (State the new issue you want the Court to consider.) _____

B. The Court should review this issue because: (Check all the ones you think apply to your case, but you must check at least one.)

- 1. The issue raises a serious question about the legality of a law passed by the legislature.
- 2. The issue raises a legal principle which is very important to Michigan law.

C. (Explain why you think that your choices in B above apply to this issue in your case. List any cases and citations, laws, or court rules, etc. which support your argument. Explain how they apply to this issue. State the facts which support and explain this issue. If these facts were not presented in court, explain why. You can add more pages.)

RELIEF REQUESTED

9. For the above reasons I request that this Court GRANT leave to appeal, APPOINT a lawyer to represent me, and GRANT any other relief it decides I am entitled to receive.

11/22/15
(Date)

Justin Timothy Comer, 816214
(Print your name and number here.)

J = T C
(Sign your name here.)

5335 DAVIS Rd
(Print your address here.)

St. Clair, MI 48079

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

People of the State of Michigan
(Print the name of the opposing party, e.g., "People of the State of Michigan.")

Plaintiff-Appellee,

v Justin Timothy Comer
(Print the name you were convicted under on this line.)

Defendant-Appellant.

Supreme Court No. _____
(Leave blank.)

Court of Appeals No. 318854
(From Court of Appeals decision.)

Trial Court No. 11-001804-FC
(See Court of Appeals brief or Presentence Investigation Report.)

MOTION FOR WAIVER OF FEES AND COSTS

Appellant, pursuant to MCR 7.319^(B)(7)(h) and MCL 600.2963, for the reasons stated in the attached affidavit of indigency, requests that this Court: (Check the ones that apply to you.)

GRANT a waiver pursuant to MCR 7.319^(B)(7)(h) of all fees required for filing the attached pleadings because the provisions of MCL 600.2963, requiring prisoners to pay filing fees do not apply to appeals from a decision involving a criminal conviction or appeals from a decision of an administrative agency. The statute applies *exclusively* to prisoners filing civil cases and appeals in civil cases.

GRANT a waiver pursuant to MCR 7.319^(B)(7)(h) of all fees required for filing the attached pleadings because the provisions of MCL 600.2963, requiring only indigent prisoners to pay court filing fees violates the equal protection provision of the Michigan Constitution, Art I, Sec 2.

Temporarily waive the initial partial payment of filing fees for the attached pleadings and order the Michigan Department of Correction to collect and pay the money to this Court at a later date in accordance with MCL 600.2963, when the money becomes available in appellant's prison account. If the Court does not allow this, I will be prevented from filing the attached pleading in a timely manner.

Allow an initial partial payment of \$ _____ of the fee for filing the attached pleadings and order the Michigan Department of Correction to collect the remaining money and pay it to this Court at a later date in accordance with MCL 600.2963, as additional money becomes available in my prison account. If the Court does not allow this, I will be prevented from filing the attached pleading in a timely manner.

11/22/15
(Date)

JTC
(Sign your name here.)

Justin Timothy Comer 316214
(Print your name and number here.)

5335 DAVIS Rd
St. Clair, MI 48079
(Print your address here.)



IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

People of the State of Michigan
(Print the name of the opposing party, e.g. "People of the State of Michigan")

Supreme Court No. _____
(Leave blank.)

Plaintiff-Appellee,

Court of Appeals No. 318854
(From Court of Appeals decision.)

v
Justin Timothy Comer
(Print the name you were convicted under on this line.)

Trial Court No. 11-20804-FC
(See Court of Appeals Brief or Presentence Investigation Report.)

Defendant-Appellant.

AFFIDAVIT OF INDIGENCY

1. My name is Justin Timothy Comer I am in prison at (Released on Parole) in St. Clair MI.
(Type or print your name here.) (Name of prison) (city where prison is located)

My prison number is 816214. My income and assets are: (Check the ones that apply to you.)
(Your prison number.)

- My only source of income is from my prison job and I make \$ _____ per day.
- I have no income.
- I have no assets that can be converted to cash.
- I can not pay the filing fees for the attached application.

I ask this Court to waive the filing fee in this matter.

I declare that the statements above are true to the best of my knowledge, information and belief.

11/22/15
(Date)

J-T-C
(Sign your name here.)

Justin Timothy Comer
(Print your name here.)

PROOF OF SERVICE

On 11/23/15, 2005, I mailed by U.S. mail one copy of the documents checked below: (Put a check mark by the ones you mailed.)

- Affidavit of Indigency and Proof of Service
- Motion to Waive Fees and Costs
- Statement of Prisoner Account (this is not necessary in criminal appeals)
- Pro Per Application for Leave to Appeal with a copy of Court of Appeals Decision
- Court of Appeals Brief
- Supplemental Court of Appeals Brief

TO: St. Clair County Prosecutor, 201 McMorran Blvd. Rm. 3300 at
(Name of county where you were sentenced) (Address)
Port Huron, MI 48060.
(City) (Zip Code)

I declare that the statements above are true to the best of my knowledge, information and belief.

11/22/15
(Date)

J-T-C
(Sign your name here.)

Justin Timothy Comer
(Print your name here.)

