

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Supreme Court No.

Plaintiff-Appellee,

Court of Appeals No. 324071  
(Leave blank.)  
(From Court of Appeals

v

Timothy Wade Horton

decision.)

Trial Court No. 2013-247924-FH

(Print the name you were convicted under on this line.)  
Report.)

(See Court of Appeals brief or Presentence Investigation Report.)

Defendant-Appellant.

**INSTRUCTIONS:** Answer each question. Add more pages if you need more space. You MUST send a copy of the Court of Appeals decision. Your application must be RECEIVED by the Supreme Court no more than 56 days from the date stamped on the Court of Appeals decision.

(DELAYED) PRO PER APPLICATION FOR LEAVE TO APPEAL

1. I was found guilty on (Date of Plea or Verdict) APR MAY 7<sup>th</sup> 2014

2. I was convicted of (Name of offense) \_\_\_\_\_

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

4. I was sentenced by Judge LED BOWMAN on April 8<sup>th</sup> 2014  
(Print or type name of judge) (Print or type date you were sentenced)  
in the OAKLAND County Circuit Court to 15 years 47 months  
(Name of county where you were sentenced; but Recorder's Court for crimes in Detroit) (Print or type minimum sentence here)

to \_\_\_\_\_ years \_\_\_\_\_ months, and \_\_\_\_\_ years \_\_\_\_\_ months to \_\_\_\_\_ years \_\_\_\_\_ months.  
(maximum sentence) (minimum sentence) (maximum sentence)

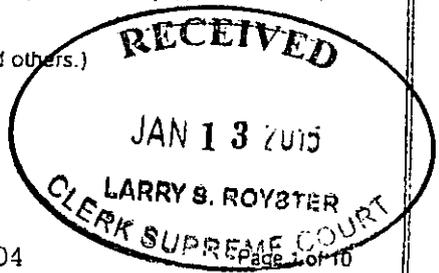
I am in prison at the Cotton Corral Facility in JACKSON, Michigan.  
(Print or type name of prison) (Print or type city where prison is located.)

5. The Court of Appeals affirmed my conviction on Nov 19<sup>th</sup> 2014 in  
(Print or type date stamped on Court of Appeals decision)  
in case number 324071. A copy of that decision is attached.  
(Print or type number on Court of Appeals decision)

6.  This application is filed on time. (Check if filing within 21 days of date on Court of Appeals decision.)  
 This application is filed late. (Check if filing more than 21 days but within 56 days of Court of Appeals decision.)

This application is late because: (Check all the reasons that apply. You can add others.)

- I had to find help.
- I could not get postage and supplies to file this application.



- I am not experienced or educated in the law.
- I did not receive my decision from my attorney in time.
- Other. Explain \_\_\_\_\_

(DELAYED) PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Timothy Wade Horton, Defendant-Appellant

CA No. 2013-247924-FH

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 which starts on page 7.

GROUND S - 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.)

MOTION TO REMAND TO REQUEST GINTHER HEARING REGARDING INEFFECTIVE ASSISTANCE OF COUNSEL AND MAKE A MOTION TO DISMISS FOR VIOLATION OF SPEEDY TRIAL.

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.)

PEOPLE V. STARLAND, SUBJECTING THE DEFENDANT TO REPEATED PEEL-EXAM, VIOLATES DEFENDANT'S DUE PROCESS RIGHTS, JUDGE SHOPPING PEOPLE V. GERRAGE, IN RE MATHISON, M.C.R. 2.111 ASSIGNMENT OF CASES. I SENT MY APPEAL & HORNEY A SUPPLEMENTAL BRIEF, BUT IT NEVER GOT FILED BY MY APPEAL ATTORNEY TRACIE R. GITTLEMAN (P45176) WHICH COULD EXPLAIN IN DETAIL WHAT'S REALLY GOING ON.

(DELAYED) PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Timothy Wade Horton, Defendant-Appellant

CA No. 2013-247924-FH

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 which starts on page 7.

ISSUE II:

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

MY ATTORNEY BRING UP IN MY COURT OF APPEALS BRIEF ABOUT THE PROSECUTOR REORDER MY CASES MORE THEN ONCE AFTER JUDGE LEO BOWMAN DISMISSED THE CASE TWICE, BECAUSE PROSECUTOR WASN'T READY TO PROCEED.

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.)

THE PROSECUTOR VIOLATED MY DUE PROCESS RIGHTS BY REORDERING THE CASE OVER AND OVER WITH OUT NEW EVIDENCE, MY ATTORNEY DID RAISE THESE ISSUES AS WELL AS SPEEDY TRIAL VIOLATION, AND ALL THE PROSECUTOR DID WAS CHANGE THE DOC #. PEOPLE V. VARGO, PEOPLE V. REDMAN, PEOPLE V. STARLAND, PEOPLE V. GEORGE, PEOPLE V. WALLS, PEOPLE V. SPENCER, ARMO STEEL CORP. V STATE, DEPT OF TREASURY, EX PARTE, IN RE MATHISON, U.S. AS DRUBAL - HERRERA, U.S. CONST, AMS 4, 5, 6, 14, F.R. CRIME P. RULE 3(10).

(DELAYED) PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Timothy Wade Horton, Defendant-Appellant

CA No. 2013-247924-FH

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 which starts on page 7.

ISSUE III:

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

Defendant-Appellant's Motion to Remand to Request GANTHER Hearing  
REGARDING INEFFECTIVE ASSISTANCE OF COUNSEL AND MAKE A  
MOTION TO DISMISS FOR VIOLATION OF SPEEDY TRIAL

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.)

ONCE AGAIN IT WAS FLAT OUT VIOLATION OF MY DUE PROCESS  
RIGHTS, THE PROSECUTOR REORDER THE CASE MORE THAN ONCE  
WITHOUT NEW EVIDENCE, TWICE JUNE 17<sup>TH</sup> OF 2013, & SEPT 23<sup>RD</sup>  
OF 2013, IN BOTH INSTANTS THE DISMISSAL WERE ON THE  
PROSECUTOR ONCE BECAUSE WITNESSES DIDN'T SHOW, AND  
THEY CLAIM THAT THEY FORGOT TO FILE A MOTION 404(B),  
THAT WAS THE REASON WHY JUDGE LEO BOWMAN DISMISSED  
WITHOUT PREJUDICE. THEY ALSO ALLOWED 18 MONTHS TO  
GO BEFORE THEY TOOK ME TO TRIAL ON THIS CASE.

(DELAYED) PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Timothy Wade Horton, Defendant-Appellant

CA No 2013-247924-FH

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 which starts on page 7.

ISSUE V:

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

Defendant-Appellant's Motion to Demand to Request Civil Court Hearing Regarding Ineffective Assistance of Counsel and Make a Motion to Dismiss for Violation of Speedy Trial.

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.)

My Attorney on the case was M. Sanford she also allowed the prosecutor to violate my due process rights by not challenging the records or the speedy trial act violation which I bring to her attention more than once. She was very aware of it because an attorney filed one in May of 2013 but was denied by Judge Leo Brisman, stating that it had not been 12 months. So when the court delayed my trial date for no reason in Feb of 2014 I asked Ms. Sanford to file the motion for speedy trial violation she refused.

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

(DELAYED) PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Timothy Wade Horton, Defendant-Appellant

CA No 2013-247924-FH

INSTRUCTIONS: If you want the Supreme Court to look at errors which were never raised in the Court of Appeals by your attorney or you, check YES in 8 below. 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 directly 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, which 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.) PROSECUTOR MISCONDUCT, PEOPLE V. STARLAND, SUBJECTING A DEFENDANT TO REPEATED PRELIM-EXM VIOLATES "DUE PROCESS" IF THE PROSECUTOR ATTEMPTS TO HARASS THE DEFENDANT OR ENGAGE IN JUDGE SHOPPING. UNLESS THE PROSECUTOR PRESENTS "NEW EVIDENCE", A SECOND PRELIM, CONSTITUTES HARASSMENT THAT VIOLATES "DUE PROCESS" VARGO, SUPRA.

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.)

Speedy trial violation, subjecting defendant to more than one prelim, without "NEW EVIDENCE" PROSECUTOR HAD NO REAL REASON TO GO ON THE WILL. THIS KNOWING THAT THEY WOULD VIOLATE MY "DUE PROCESS", MS. SANFORD ON WILLINGNESS TO REPRESENT THE DEFENDANT TO HER ABILITY, SHE ALLOW THE PROSECUTOR AND THE JUDGE TO VIOLATE MY RIGHTS. THE JUDGE VIOLATED ~~CANON 1~~ CANON 1, CANON 2, A, B, C, CANON 3, B (1), (2) C, (B), (C)

(DELAYED) PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Timothy Wade Horton, Defendant-Appellant

CA No 2013-247924-FH

NEW ISSUE II:

A. (State the new issue you want the Court to consider.) Prosecution, Misconduct, bias judge, they also withheld evidence from the discover and i raised that issue at restitution hearing April 30th i made it a matter of record that the prosecutor violated my due process right when he withheld that evidence.

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.)

A fair presue trial should be given to all defendants in this case my due process rights where violated repeatedly, when the judge or my attorney Ms. M. Stanford where attentive to making sure that state federal and local laws where intact. The prosecutor even withheld evidence out of the discover pack which i didnt receive until after the trial, sentencing was over. They withheld insurance papers of what the copie got paid, i raised that issue at the restitution hearing which they violated

RELIEF REQUESTED April 30th 2014 my due process rights

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.

(Date) Timothy Wade Horton  
(Print your name and number here.)

Timothy Wade Horton  
(Sign your name here.)

C. Robert Cotton, Corr, FAC, 3510  
(Print your address here.)

N. Elm Street JACKSON, MI 49201-8877

IN THE SUPREME COURT FOR THE  
STATE OF MICHIGAN

THE PEOPLE OF THE  
STATE OF MICHIGAN

Plaintiff-Appellee,

vs.

Court of Appeals No.324071  
Lower Ct. No.13-247924-FH

Timothy W. Horton,  
Defendant-Appellant.

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Oakland County Prosecuting Attorney  
Attorney for Plaintiff  
Appellate Division  
1200 N. Telegraph Rd.  
Pontiac, Mi 48341  
248-858-0656.

Timothy W. Horton,  
M.D.O.C. No.245679  
Defendant-Appellant  
3510 N. ELM Rd.  
Jackson Mi,49201

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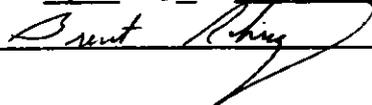
AFFIDAVIT OF Timothy W. Horton

I, Timothy W. Horton, swear and attest to the following and if called to testify, would testify to the following:

1. my trial attorney failed to inform me at any time during his/er representation that if i pled no contest to the charges unconditionally i would waive my rights for an application for leave to appeal which included ineffective assistance of counsel and issues of violation of speedy trial.
2. I would have not offered a plea of no contest unless i could have pled to a conditional plea permitting an appeal by leave for the issues of violation of speedy trial, due process violation, due to a number of dismissal by the prosecutor's office, and number of reorders which is harrassment, during dispositionary, stage for continuing to reorder criminal process againsts defendant, with out introducing new evidence admissible to prelim exam, and judge shopping.
3. I sought to withdrawal my plea because my plea was defective and due to ineffective assistance of counsel.

  
Timothy W. Horton

Subscribed and sworn to before me  
this 8<sup>TH</sup> day of JANUARY, 2015.



BRENT M. ROHRIG  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF CALHOUN  
MY COMMISSION EXPIRES May 24, 2010  
ACTING IN COUNTY OF JACKSON

1-8-15

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

THE PEOPLE OF THE  
STATE OF MICHIGAN,

Plaintiff-Appellee,

vs.

TIMOTHY WADE HORTON,

Defendant-Appellant.

Court of Appeals No.

Lower Ct. No. 13-247924-FH

Hon. Leo Bowman

---

Oakland County Prosecuting Attorney  
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---

Tracie R. Gittleman (P45176)  
Court Appted Appellate Defense Atty  
31731 Northwestern Hwy, Ste. 101E  
Farmington Hills, MI 48334  
248-354-6615

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**APPLICATION FOR LEAVE TO APPEAL**

**PROOF OF SERVICE**

By: Tracie R. Gittleman (P45176)  
Attorney for Defendant-Appellant  
31731 Northwestern Hwy, Ste. 101E  
Farmington Hills, MI 48334  
248-354-6615

**TABLE OF CONTENTS**

INDEX OF AUTHORITIES.....i

DATE OF NATURE OF ORDER BEING APPEALED.....ii

STATEMENT REGARDING TRANSCRIPT.....iii

STATEMENT OF APPELLATE JURISDICTION.....iv

STATEMENT OF QUESTION INVOLVED.....v

STATEMENT OF FACTS.....1

ARGUMENT I: DEFENDANT’S TRIAL COUNSEL WAS  
INEFFECTIVE FOR (1) FAILURE TO MAKE A MOTION  
TO DISMISS FOR VIOLATION OF A SPEEDY TRIAL;  
AND (2) FAILURE TO INFORM DEFENDANT IF HE  
PLED NO CONTEST UNCONDITIONALLY WITHOUT  
RESERVING THE RIGHT TO APPEAL ISSUES INVOLVING  
SPEEDY TRIAL VIOLATIONS BY THE TRIAL COURT,  
IT CONSTITUTES A PLEA WAIVER OF THESE ISSUES,  
AND THUS THE PLEA WAS NOT KNOWING,  
INTELLIGENT AND VOLUNTARY VIOLATING  
MCR 6.310, AND, THUS IT WAS ERROR TO DENY  
DEFENDANT’S MOTION TO WITHDRAW HIS  
PLEA PRIOR TO SENTENCING.....3

RELIEF REQUESTED.....10

PROOF OF SERVICE.....11

**INDEX OF AUTHORITIES**

**CASES:**

*Barker v Wingo*, 407 U.S. 514; 92 S Ct 2182; 33 L Ed 2d 101 (1972).....7

*In re Oakland Prosecutor*, 191 Mich App 113; 477 NW2d 455 (1991).....4

*People v Armstrong*, 490 Mich 281; 806 NW2d 281 (2011).....6

*People v Bordash*, 208 Mich App 1; 527 NW2d 17 (1994).....5, 6

*People v Chapo*, 284 Mich App 360; 770 NW2d 68 (2009).....6

*People v Collins*, 388 Mich 680; 202 NW2d 769 (1972).....7

*People v Connor*, 208 Mich App 419; 531 NW2d 734 (1995).....3

*People v Harris*, 224 Mich App 130; 568 NW2d 149 (1997).....3

*People v Irwin*, 192 Mich App 216; 480 NW2d 611 (1991).....3, 4

*People v Lown*, 488 Mich 242; 794 NW2d 9 (2011).....4

*People v Rivera*, 301 Mich App 188; 835 NW2d 464 (2013).....7

*People v Swain*, 288 Mich App 609; 794 NW2d 92 (2010).....4

*People v Thew*, 201 Mich App 78; 506 NW2d 547 (1993).....4, 6

*People v Vonins (After Remand)*, 203 Mich App 173; 511 NW2d 706 (1993).....5-6

**RULES:**

MCR 7.203(B) (1).....iv

MCR 7.203(B) (4).....iv

MCR 7.205(A) (1).....iv

MCR 7.205(F) (4).....iv

**STATUTES:**

US Const, Am VI.....7

Michigan Const 1963, art 1, sec. 20.....7

MCL 750.110.....1

MCL 768.1.....7

**DATE AND NATURE OF ORDER BEING APPEALED**

Defendant-Appellant seeks leave to appeal from an order of the Oakland County Circuit Court entered in civil action 13-247924-FH, Honorable Leo Bowman presiding, on April 8, 2014, sentencing defendant to 47 months to 15 years. A copy of the order being appealed and the Register of Actions are attached.

**STATEMENT REGARDING TRANSCRIPT**

The hearing transcripts of the Guilty Plea, dated March 7, 2014 and Sentencing, dated April 8, 2014 are attached herein.

**STATEMENT OF APPELLATE JURISDICTION**

The jurisdiction of this Court is properly invoked under MCR 7.203(B) (1) and (4) and MCR 7.205(A) (1) and MCR 7.205(F) (4) and MCR 6.310(C). Defendant pled guilty on March 4, 2014 and was sentenced on April 7, 2014. Within six months of April 8, 2014, defendant filed this Application for Leave to Appeal and a Motion to Remand to the trial court contemporaneously.

STATEMENT OF QUESTIONS INVOLVED

I. WHETHER DEFENDANT'S TRIAL COUNSEL WAS INEFFECTIVE FOR (1) FAILURE TO MAKE A MOTION TO DISMISS FOR VIOLATION OF A SPEEDY TRIAL; AND (2) FAILURE TO INFORM DEFENDANT IF HE PLED NO CONTEST UNCONDITIONALLY WITHOUT RESERVING THE RIGHT TO APPEAL ISSUES INVOLVING SPEEDY TRIAL VIOLATIONS BY THE TRIAL COURT, IT CONSTITUTES A PLEA WAIVER OF THESE ISSUES, AND THUS THE PLEA WAS NOT KNOWING, INTELLIGENT AND VOLUNTARY VIOLATING MCR 6.310, AND, THUS IT WAS ERROR TO DENY DEFENDANT'S MOTION TO WITHDRAW HIS PLEA PRIOR TO SENTENCING?

Plaintiff-Appellee would answer "no."

Defendant-Appellant answers "yes."

The trial court has not answered.

## STATEMENT OF FACTS

Defendant Horton pled no contest on March 7, 2014 to Breaking and Entering with intent to commit the crime of Larceny, MCL 750.110, habitual second. See plea transcript. A plea agreement was entered into by the defendant in which defendant pled no contest to one count of breaking and entering and the habitual four would be amended to habitual second. See attached March 7, 2014 order of the trial court attached herein and plea transcript, p. 5. Further, the prosecutor filed twice and dismissed without prejudice twice before filing the present case, all of which arose from the same incident on May 21, 2012. The prior case numbers were 13-242967-FH and 13-246601-FH. See attached register of actions of all case numbers which indicate the same date of offense was May 21, 2012. Also see the plea and sentencing transcripts in which the prosecutor and trial court document the two prior filing and dismissals of the same breaking and entering charge arising out of the same incident. The defendant was incarcerated since the arrest arising out of the first charge of breaking and entering in case number 12-242967-FH. The defendant remained incarcerated through the dismissal of the first case, the filing and dismissal of the second case and through the sentencing in the present case. All three cases arose out of the same incident of a B&E on May 21, 2012 to the same victim. Plea transcript, p. 9-10. Thus, part of the plea deal included the trial court promising to give jail credit from the first filing of 13-242967-FH through the sentencing of the present case. See plea transcript, p. 9-13, 17. The defendant's attorney informed the defendant he would receive at least 553 days jail credit. Plea transcript, p. 6-7.

At the sentencing, defendant moved to withdraw his plea stating it was not freely, knowingly and voluntarily made which was denied by the trial court. Sentencing

transcript, p. 3-6. The trial court sentenced defendant to 47 months to 15 years with jail credit of 585 days. Sentencing transcript, p.10.

From the Judgment of Conviction order, defendant files this Application for Leave to Appeal and has filed a Motion to Remand to the trial court contemporaneously with this Application.

**ARGUMENT I:** DEFENDANT'S TRIAL COUNSEL WAS INEFFECTIVE FOR (1) FAILURE TO MAKE A MOTION TO DISMISS FOR VIOLATION OF A SPEEDY TRIAL; AND (2) FAILURE TO INFORM DEFENDANT IF HE PLED NO CONTEST UNCONDITIONALLY WITHOUT RESERVING THE RIGHT TO APPEAL ISSUES INVOLVING SPEEDY TRIAL VIOLATIONS BY THE TRIAL COURT, IT CONSTITUTES A PLEA WAIVER OF THESE ISSUES, AND THUS THE PLEA WAS NOT KNOWING, INTELLIGENT AND VOLUNTARY VIOLATING MCR 6.310, AND, THUS IT WAS ERROR TO DENY DEFENDANT'S MOTION TO WITHDRAW HIS PLEA PRIOR TO SENTENCING.

A. Issue Preservation:

Defendant-Appellant has filed a motion to remand to the trial court for request to hold a *Ginther* Hearing based on ineffective assistance of counsel with regard to whether defendant's trial counsel was ineffective and for failure to file and make a motion to dismiss based on violations of speedy trial, and to remand for a motion to dismiss for violation of speedy trial, and for failure to inform defendant that pleading no contest unconditionally waived defendant's right under the plea waiver doctrine to file an application for leave to appeal the violation of a speedy trial guaranteed by the United States Constitution and for failure to file and make a motion to dismiss based on violations of speedy trial.

Defendant-Appellant made an oral motion to withdraw his plea on April 8, 2014 which was heard and denied on April 8, 2014.

B. Standard of Review

A trial court's denial of a defendant's motion to withdraw a guilty plea is reviewed for an abuse of discretion. People v. Harris, 224 Mich App 130; 568 NW2d 149 (1997). Whether the court is legally required to adhere to the sentence contained in the *Cobbs* agreement is a matter of law. People v. Connor, 209 Mich App 419; 531 NW2d 734 (1995).

With regard to whether defendant received ineffective assistance of counsel, the trial court's factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. People v. Swain, 288 Mich App 609; 794 NW2d 92 (2010).

### C. Analysis

When reviewing a claim of ineffective assistance of counsel arising out of a guilty plea, the appellate court must determine whether the defendant tendered a plea voluntarily and understandingly made. *In re Oakland Prosecutor*, 191 Mich App 113, 120; 477 NW2d 455 (1991).

Guilty pleas may be found to be involuntary or unknowing on the basis of ineffective assistance of counsel where the defense counsel has failed to discuss possible defenses to the charges to which the defendant is pleading guilty. People v. Thew, 201 Mich App 78; 506 NW2d 547 (1993). Likewise, in this, where defense counsel failed to inform the defendant regarding the plea waiver doctrine that if he pleads guilty unconditionally, he will lose his right to appeal by application by leave the 180 day rule. MCL 750.131, MCR 6.004 and constitutional speedy trial violations.

A defendant who pleads to a charge by an unconditional guilty plea waives his right to challenge a denial of his/her motion to dismiss based on 180 day rule or speedy trial violations under the plea waiver doctrine. *People v Lown*, 488 Mich 242, 267-268; 794 NW2d 9 (2011). See also, *People v Irwin*, 192 Mich App 216, 218; 480 NW2d 611 (1991).

In this case, defendant's attorney should have informed defendant to preserve the right to file an application for leave to appeal any speed trial violation. that the only way

to preserve these issues is to plead to a conditional plea permitting defendant to file an application for leave to appeal where the plea waiver doctrine would not apply to speedy trial violations. Defendant could have made the choice to go forward with a trial or attempt to negotiate a conditional plea to preserve these issues for appeal. Attached is defendant's Affidavit indicating he was never informed by his trial counsel if he pled guilty unconditionally without preserving his right to preserve the speedy trial violation issue, he would lose the right to appeal such issues based on the plea waiver doctrine. Defendant's affidavit further states if he could not achieve a conditional plea deal, then he would have gone to trial to preserve these issues. See attached affidavit.

In *People v Bordash*, 208 Mich App 1, 3; 527 NW2d 187 (1994), the appeals court stated: "It seems obvious to us that her attorney failed to advise her of the legal effect of the 180 day rule violation in this case. We cannot conceive that, otherwise, she would have pleaded guilty to the charges against her. We do not believe that counsel's error was trivial."

The *People v Bordash*, *infra* at 208 Mich App 1, 3-4: the court further noted:

We acknowledge that, in numerous other instances, waiver of a supplemental claim of ineffective assistance is proper when a defendant waives an underlying issue by an unconditional guilty plea. A defendant and defense counsel are not permitted to harbor error and create an appellate parachute. But no such advantage accrues to a defendant if his attorney refrains from advising that the 180 day rule has been violated.

Where the alleged deficient actions of defense counsel relate to issues that are waived by a valid unconditional guilty plea, the claim of ineffective assistance of counsel relating to those actions is also waived. *People v Vonins (After Remand)*, 203 Mich App

173, 175; 511 NW2d 706 (1993). However, defendant states this is unfair as it relates to losing the right to have to possibly have an appeals court hear an argument with regard to the denial of a motion for violation of 180 day rule or speedy trial because as the *People v Bordash, infra*. court held, it is such an important issue with regard to defendant's rights to be informed of unconditional versus conditional pleas.

To establish ineffective assistance of counsel, a defendant must show that first counsel's performance fell below an objective standard of reasonableness; and second, the defendant must show that, but for counsel's deficient performance, a different result would have been reasonably probable. People v. Armstrong, 490 Mich 281; 806 NW2d 281 (2011). "Trial counsel is responsible for preparing, investigating and presenting all substantial defenses." People v. Chapo, 284 Mich App 360, 371; 770 NW2d 68 (2009). To establish ineffective assistance in the context of guilty pleas, courts must determine whether the defendant tendered a plea voluntarily and understandingly. People v. Thew, 201 Mich App 78, 89; 506 NW2d 547 (1993).

Defendant's plea was not voluntary and understanding at the time of taking his plea. Defendant's attorney was ineffective for failing to file or make a motion to dismiss based on speedy trial violations. Trial counsel is responsible for preparing and presenting all substantial defenses. One defense was filing a motion to dismiss based on violation of a speedy trial.

Four factors to be balanced when determining whether a defendant's constitutional right to a speedy trial has been violated are: the "length of delay, the reason for the delay, the defendant's assertion of his right and prejudice to the defendant."

*People v Collins*, 388 Mich 680, 687-688; 202 NW2d 769 (1972), quoting *Barker v Wingo*, 407 U.S. 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972).

Where there has been ineffective assistance of counsel, the plea withdraw motion should be granted.

Defendant also claims speedy trial violations. Defendant's counsel was ineffective for failure to file a motion to dismiss based on speedy trial violations.

A defendant's right to a speedy trial is guaranteed by the United States and Michigan Constitutions. U.S. Const. Amend, VI; Const. 1963, art 1, sec. 20. The federal and state constitutions and Michigan statutory law guarantee defendants a speedy trial without reference to a fixed number of days. The right to a speedy trial is codified at MCL 768.1, which provides that persons charged with a crime are entitled to and shall have a speedy trial and that the case be brought to a final determination without delay except as may be necessary to secure the accused a fair and impartial trial. *People v Rivera*, 301 Mich App 188; 835 NW2d 464 (2013).

Four factors to be balanced when determining whether a defendant's constitutional right to a speedy trial has been violated are: the "length of delay, the reason for the delay, the defendant's assertion of his right and prejudice to the defendant." *People v Collins*, 388 Mich 680, 687-688; 202 NW2d 769 (1972), quoting *Barker v Wingo*, 407 U.S. 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972).

When the delay is more than 18 months, prejudice is presumed, and the prosecution must show no injury occurred. *People v Rivera*, 301 Mich App 188, 193; 835 NW2d 464 (2013).

When the delay is less than 18 months, the defendant must prove that he suffered prejudice. The time for judging whether the right to a speedy trial has been violated runs from the date of the defendant's arrest. *Id.*

In this case, the defendant was arrested on August 31, 2012, see the presentence report in this case, p. 2, and arraigned on September 19, 2012 in the first case involving this crime, case number 12-242967-FH, which was subsequently dismissed on July 16, 2013, rewritten and refiled on July 1, 2013 and again dismissed on September 23, 2013 and then again refiled and rewritten on or about October 17, 2013. All three cases involved the same incident of a breaking and entering incident arising on the same day. They are the same case which was discussed and admitted by both the trial court and prosecutor in the plea and sentencing transcript. See also the presentence report documenting the arrest of August 31, 2012. February 31, 2014 is 18 months from the arrest date. March 7, 2014 was the trial date that did not go because defendant pled no contest. Thus, the arrest date to the trial date was more than 18 months. Based on the law, it was presumed defendant was prejudiced and the prosecution had to show no injury occurred to the defendant. However, in this case, defendant's trial counsel failed to make the dismissal motion and failed to inform defendant regarding conditional and unconditional pleas of no contest and the plea waiver of an unconditional plea of no contest waiving the right to the ineffective assistance of counsel claim.

Defendant suffered injury by fading of memories, lack of witnesses and spoliation of evidence. The length of delay occurred because of the prosecutor and their failure to file proper motions timely. The prosecution should not be permitted to write complaints

and warrants numerous times and dismiss them at their whim due to failure to file the appropriate motions or documents or failure to have evidence lined up for a trial.

Further, defendant's speedy trial rights were violated due to the length of time between the investigation, issuance of complaint and warrant and trial.

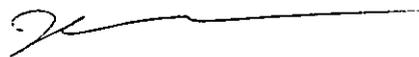
**RELIEF REQUESTED**

Defendant-Appellant respectfully requests to remand to the trial court for a *Ginther* hearing and/or permit the defendant to withdraw his plea, and permit the defendant to make their motion to dismiss for violation of speedy trial.

Defendant-Appellant requests this court grant his application for leave to appeal and dismiss for violation of speedy trial.

Respectfully submitted,

BY:



Tracie R. Gittleman (P45176)  
Attorney for Plaintiff-Appellant  
31731 Northwestern Hwy, Ste. 101E  
Farmington Hills, MI 48334  
248.354.6615

Dated: October 7, 2014

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

THE PEOPLE OF THE  
STATE OF MICHIGAN.

Plaintiff-Appellee,  
vs.

TIMOTHY WADE HORTON,

Defendant-Appellant.

Court of Appeals No.

Lower Ct. No. 13-247924-FH  
Hon. Leo Bowman

---

Oakland County Prosecuting Attorney  
Attorneys for Plaintiff  
Appellate Division  
1200 N. Telegraph Rd.  
Pontiac, MI 48341  
248-858-0656

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Tracie R. Gittleman (P45176)  
Court Appointed Appellate Defense Atty  
31731 Northwestern Hwy, Ste. 101E  
Farmington Hills, MI 48334  
248-354-6615

---

**PROOF OF SERVICE**

STATE OF MICHIGAN     )  
                                  )ss:  
COUNTY OF OAKLAND    )

I, Tracie R. Gittleman, hereby declare that on Wednesday, October 8, 2014, I served a copy of Defendant-Appellant's Application for Leave to Appeal with attachments, and this Proof of Service upon:

Oakland County Prosecuting Attorney  
Attorney for Plaintiff  
1200 North Telegraph Road  
Pontiac, MI 48341

by placing a copy of same into an envelope correctly and plainly addressed with proper postage prepaid and placing said envelopes into a United States mail receptacle. I declare that the above statement is true under penalty of perjury.



---

Tracie R. Gittleman

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

Court of Appeals:

vs

Lower Ct. No. 13-247924-FH  
Hon. Leo Bowman

TIMOTHY WADE HORTON,

Defendant-Appellant.

---

Oakland County Prosecuting Attorney  
Attorneys for Plaintiff  
Appellate Division  
1200 N. Telegraph Rd.  
Pontiac, MI 48341  
248-858-0656

Tracie R. Gittleman (P45176)  
Court Appntd Appellate Defense Atty  
31731 Northwestern Hwy. Ste. 101E  
Farmington Hills, MI 48334  
248-354-6615

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**DEFENDANT-APPELLANT'S MOTION TO REMAND  
TO REQUEST GINTHER HEARING REGARDING  
INEFFECTIVE ASSISTANCE OF COUNSEL AND MAKE A  
MOTION TO DISMISS FOR VIOLATION OF SPEEDY TRIAL**

NOW COMES, Defendant-Appellant, Timothy Wade Horton, by and through his attorney, Tracie R. Gittleman, and states as follows:

1. Defendant was charged with Horton pled guilty on March 7, 2014 to Breaking and Entering, MCL 750. See plea transcript.
2. Defendant made motion to withdraw his plea prior to sentencing on April 8, 2014 that was denied by the trial court. See sentencing transcript.
3. Mr. Horton was sentenced on April 8, 2014 to 47 months with a maximum of 15 years for MCL 750. . See Sentencing Transcript.

4. Based on the brief in support, a *Ginther* hearing is required to determine the issues regarding ineffective assistance of counsel.

9. Pursuant to MCR 7.211(C), defendant-appellant requests a remand for the trial court to hold a *Ginther* hearing and permit defendant to file and have the trial court hear his motion to dismiss for violation of speedy trial.

WHEREFORE, defendant-appellant requests a remand to the trial court.

**BRIEF IN SUPPORT**

**STATEMENT OF FACTS**

Defendant Horton pled no contest on March 7, 2014 to Breaking and Entering with intent to commit the crime of Larceny, MCL 750.110, habitual second. See plea transcript. A plea agreement was entered into by the defendant in which defendant pled no contest to one count of breaking and entering and the habitual four would be amended to habitual second. See attached March 7, 2014 order of the trial court attached herein and plea transcript, p. 5. Further, the prosecutor filed twice and dismissed without prejudice twice before filing the present case, all of which arose from the same incident on May 21, 2012. The prior case numbers were 13-242967-FH and 13-246601-FH. See attached register of actions of all case numbers which indicate the same date of offense was May 21, 2012. Also see the plea and sentencing transcripts in which the prosecutor and trial court document the two prior filing and dismissals of the same breaking and entering charge arising out of the same incident. The defendant was incarcerated since the arrest arising out of the first charge of breaking and entering in case number 12-242967-FH. The defendant remained incarcerated through the dismissal of the first case, the filing and dismissal of the second case and through the sentencing in the present case.

All three cases arose out of the same incident of a B&E on May 21, 2012 to the same victim. Plea transcript, p. 9-10. Thus, part of the plea deal included the trial court promising to give jail credit from the first filing of 13-242967-FH through the sentencing of the present case. See plea transcript, p. 9-13, 17. The defendant's attorney informed the defendant he would receive at least 553 days jail credit. Plea transcript, p. 6-7.

At the sentencing, defendant moved to withdraw his plea stating it was not freely, knowingly and voluntarily made which was denied by the trial court. Sentencing transcript, p. 3-6. The trial court sentenced defendant to 47 months to 15 years with jail credit of 585 days. Sentencing transcript, p.10.

From the Judgment of Conviction order, defendant files this Application for Leave to Appeal and has filed a Motion to Remand to the trial court contemporaneously with this Application.

DEFENDANT'S TRIAL COUNSEL WAS INEFFECTIVE FOR (1) FAILURE TO MAKE A MOTION TO DISMISS FOR VIOLATION OF A SPEEDY TRIAL; AND (2) FAILURE TO INFORM DEFENDANT IF HE PLED NO CONTEST UNCONDITIONALLY WITHOUT RESERVING THE RIGHT TO APPEAL ISSUES INVOLVING SPEEDY TRIAL VIOLATIONS BY THE TRIAL COURT, IT CONSTITUTES A PLEA WAIVER OF THESE ISSUES, AND THUS THE PLEA WAS NOT KNOWING, INTELLIGENT AND VOLUNTARY VIOLATING MCR 6.310, AND, THUS IT WAS ERROR TO DENY DEFENDANT'S MOTION TO WITHDRAW HIS PLEA PRIOR TO SENTENCING.

Guilty pleas may be found to be involuntary or unknowing on the basis of ineffective assistance of counsel where the defense counsel has failed to discuss possible defenses to the charges to which the defendant is pleading guilty. People v. Thew, 201 Mich App 78; 506 NW2d 547 (1993). Likewise, in this, where defense counsel failed to inform the defendant regarding the plea waiver doctrine that if he pleads guilty

unconditionally, he will lose his right to appeal by application by leave the 180 day rule, MCL 750.131, MCR 6.004 and constitutional speedy trial violations.

A defendant who pleads to a charge by an unconditional guilty plea waives his right to challenge a denial of his/her motion to dismiss based on 180 day rule or speedy trial violations under the plea waiver doctrine. *People v Lown*, 488 Mich 242, 267-268; 794 NW2d 9 (2011). See also, *People v Irwin*, 192 Mich App 216, 218; 480 NW2d 611 (1991).

In this case, defendant's attorney should have informed defendant to preserve the right to file an application for leave to appeal any speed trial violation, that the only way to preserve these issues is to plead to a conditional plea permitting defendant to file an application for leave to appeal where the plea waiver doctrine would not apply to speedy trial violations. Defendant could have made the choice to go forward with a trial or attempt to negotiate a conditional plea to preserve these issues for appeal. Attached is defendant's Affidavit indicating he was never informed by his trial counsel if he pled guilty unconditionally without preserving his right to preserve the speedy trial violation issue, he would lose the right to appeal such issues based on the plea waiver doctrine. Defendant's affidavit further states if he could not achieve a conditional plea deal, then he would have gone to trial to preserve these issues. See attached affidavit.

In *People v Bordash*, 208 Mich App 1, 3; 527 NW2d 187 (1994), the appeals court stated: "It seems obvious to us that her attorney failed to advise her of the legal effect of the 180 day rule violation in this case. We cannot conceive that, otherwise, she would have pleaded guilty to the charges against her. We do not believe that counsel's error was trivial."

The *People v Bordash, infra* at 208 Mich App 1, 3-4: the court further noted:

We acknowledge that, in numerous other instances, waiver of a supplemental claim of ineffective assistance is proper when a defendant waives an underlying issue by an unconditional guilty plea. A defendant and defense counsel are not permitted to harbor error and create an appellate parachute. But no such advantage accrues to a defendant if his attorney refrains from advising that the 180 day rule has been violated.

Where the alleged deficient actions of defense counsel relate to issues that are waived by a valid unconditional guilty plea, the claim of ineffective assistance of counsel relating to those actions is also waived. *People v Vonins (After Remand)*, 203 Mich App 173, 175; 511 NW2d 706 (1993). However, defendant states this is unfair as it relates to losing the right to have to possibly have an appeals court hear an argument with regard to the denial of a motion for violation of 180 day rule or speedy trial because as the *People v Bordash, infra*. court held, it is such an important issue with regard to defendant's rights to be informed of unconditional versus conditional pleas.

To establish ineffective assistance of counsel, a defendant must show that first counsel's performance fell below an objective standard of reasonableness; and second, the defendant must show that, but for counsel's deficient performance, a different result would have been reasonably probable. *People v. Armstrong*, 490 Mich 281; 806 NW2d 281 (2011). "Trial counsel is responsible for preparing, investigating and presenting all substantial defenses." *People v. Chappo*, 284 Mich App 360, 371; 770 NW2d 68 (2009). To establish ineffective assistance in the context of guilty pleas, courts must determine whether the defendant tendered a plea voluntarily and understandingly. *People v. Thew*, 201 Mich App 78, 89; 506 NW2d 547 (1993).

Defendant's plea was not voluntary and understanding at the time of taking his plea. Defendant's attorney was ineffective for failing to file or make a motion to dismiss based on speedy trial violations. Trial counsel is responsible for preparing and presenting all substantial defenses. One defense was filing a motion to dismiss based on violation of a speedy trial.

Four factors to be balanced when determining whether a defendant's constitutional right to a speedy trial has been violated are: the "length of delay, the reason for the delay, the defendant's assertion of his right and prejudice to the defendant." *People v Collins*, 388 Mich 680, 687-688; 202 NW2d 769 (1972), quoting *Barker v Wingo*, 407 U.S. 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972).

Where there has been ineffective assistance of counsel, the plea withdraw motion should be granted.

Defendant also claims speedy trial violations. Defendant's counsel was ineffective for failure to file a motion to dismiss based on speedy trial violations.

A defendant's right to a speedy trial is guaranteed by the United States and Michigan Constitutions. U.S. Const. Amend, VI; Const. 1963, art 1, sec. 20. The federal and state constitutions and Michigan statutory law guarantee defendants a speedy trial without reference to a fixed number of days. The right to a speedy trial is codified at MCL 768.1, which provides that persons charged with a crime are entitled to and shall have a speedy trial and that the case be brought to a final determination without delay except as may be necessary to secure the accused a fair and impartial trial. *People v Rivera*, 301 Mich App 188; 835 NW2d 464 (2013).

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When the delay is more than 18 months, prejudice is presumed, and the prosecution must show no injury occurred. *People v Rivera*, 301 Mich App 188, 193; 835 NW2d 464 (2013).

When the delay is less than 18 months, the defendant must prove that he suffered prejudice. The time for judging whether the right to a speedy trial has been violated runs from the date of the defendant's arrest. *Id.*

In this case, the defendant was arrested on August 31, 2012, see the presentence report in this case, p. 2, and arraigned on September 19, 2012 in the first case involving this crime, case number 12-242967-FH, which was subsequently dismissed on July 16, 2013, rewritten and refiled on July 1, 2013 and again dismissed on September 23, 2013 and then again refiled and rewritten on or about October 17, 2013. All three cases involved the same incident of a breaking and entering incident arising on the same day. They are the same case which was discussed and admitted by both the trial court and prosecutor in the plea and sentencing transcript. See also the presentence report documenting the arrest of August 31, 2012. February 31, 2014 is 18 months from the arrest date. March 7, 2014 was the trial date that did not go because defendant pled no contest. Thus, the arrest date to the trial date was more than 18 months. Based on the law, it was presumed defendant was prejudiced and the prosecution had to show no injury

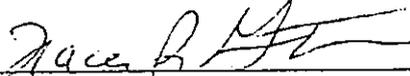
occurred to the defendant. However, in this case, defendant's trial counsel failed to make the dismissal motion and failed to inform defendant regarding conditional and unconditional pleas of no contest and the plea waiver of an unconditional plea of no contest waiving the right to the ineffective assistance of counsel claim.

Defendant suffered injury by fading of memories, lack of witnesses and spoliation of evidence. The length of delay occurred because of the prosecutor and their failure to file proper motions timely. The prosecution should not be permitted to write complaints and warrants numerous times and dismiss them at their whim due to failure to file the appropriate motions or documents or failure to have evidence lined up for a trial.

Further, defendant's speedy trial rights were violated due to the length of time between the investigation, issuance of complaint and warrant and trial.

For the reasons above, defendant-appellant requests to remand to the trial court for a *Ginther* hearing and to make a motion to dismiss based on violation of speedy trial.

Respectfully submitted,



By: Tracie R. Gittleman  
31731 Northwestern Hwy.  
Ste. 101E  
Farmington Hills, MI 48334  
(248) 354-6615

Dated: October 8, 2014

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

Court of Appeals:

vs

Lower Ct. No. 13-247924-FH  
Hon. Leo Bowman

TIMOTHY WADE HORTON,

Defendant-Appellant.

---

Oakland County Prosecuting Attorney  
Attorneys for Plaintiff  
Appellate Division  
1200 N. Telegraph Rd.  
Pontiac, MI 48341  
248-858-0656

Tracie R. Gittleman (P45176)  
Court Apppted Appellate Defense Atty  
31731 Northwestern Hwy, Ste. 101E  
Farmington Hills, MI 48334  
248-354-6615

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**CERTIFICATE OF SERVICE**

STATE OF MICHIGAN    )  
                                  )ss.  
COUNTY OF OAKLAND )

Tracie R. Gittleman, being first duly sworn, deposes and says that on October 8, 2014, she filed with this Court the following:

**DEFENDANT-APPELLANT'S MOTION FOR TO REMAND FOR NEW TRIAL**

And she mailed one (1) copy of same to:  
Oakland County Prosecutor  
1200 North Telegraph Rd.  
Pontiac, MI 48341



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Tracie R. Gittleman

Court of Appeals, State of Michigan

ORDER

People of MI v Timothy Wade Horton

Docket No. 324071

LC No. 2013-247924-FH

Mark T. Boonstra  
Presiding Judge

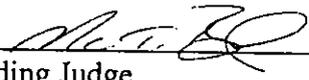
Joel P. Hoekstra

Douglas B. Shapiro  
Judges

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The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

The Court further orders that the motion to remand is DENIED.

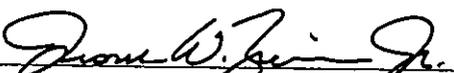
  
\_\_\_\_\_  
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 19 2014

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Chief Clerk

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. 324071  
(From Court of Appeals decision.)

Timothy Wade Horton  
(Print the name you were convicted under on this line.)

Trial Court No. 2013-247924-FH  
(See Court of Appeals brief or Presentence Investigation Report.)

Defendant-Appellant.

AFFIDAVIT OF INDIGENCY

1. My name is Timothy Wade Horton. I am in prison at G. Robert Cotton in  
(Type or print your name here.) (Name of prison)  
Jackson Michigan. My prison number is 245679. My income and assets are:  
(City where prison is located.) (Your prison number.) (Check the ones that apply to you.)

- My only source of income is from my prison job.
- I have no income.
- I have no assets.
- 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.

1-8-15  
(Date)

Timothy Wade Horton  
(Sign your name here.)  
Timothy Wade Horton  
(Print your name here.)

PROOF OF SERVICE

On 1-8-15, 20015, 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
- (Delayed) 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: OAKLAND County Prosecutor, 1200 TELEGRAPH, at  
(Name of county where you were sentenced.) (Address)  
PONTIAC, MI \_\_\_\_\_  
(City) (Zip Code)

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

1-8-15  
(Date)

Timothy W. Horton  
(Sign your name here.)  
Timothy W. Horton  
(Print your name here.)

1-8-15  
BRENT M. ROHRIG  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF CALHOUN  
MY COMMISSION EXPIRES May 24, 2019  
ACTING IN COUNTY OF JACKSON

COVER LETTER

(Put Today's Date)

Clerk  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

RE: People v Timothy Wade Horton (Print or type the name you were convicted under here.)

Supreme Court No. \_\_\_\_\_  
Court of Appeals No. 324071  
Trial Court No. 2013-247924-FH

(Leave blank - the Clerk will assign a number for you.)  
(Get this number from the Court of Appeals decision.)  
(Get this number from Court of Appeals brief or Presentence Investigation Report.)

Dear Clerk:

Enclosed please find the original of the pleadings checked below. (Put a check mark by the items you are sending.) I am indigent and can not provide seven copies. Please file them.

- Affidavit of Indigency/Proof of Service
- (Delayed) Pro Per Application for Leave to Appeal
- Court of Appeals Decision (You must enclose a copy of the Court of Appeals decision.)
- Court of Appeals Brief (This is not necessary, but it is a good idea.)
- Supplemental Court of Appeals Brief (This is not necessary, but it is a good idea.)
- Other Motion to Reman Regarding ineffective assistance of counsel to Dismiss for violation of Speedy trial

Thank you.

Sincerely,

Timothy Wade Horton  
(Sign your name here.)

Timothy Wade Horton  
(Print or type your name here.)

245179  
(Print or type your prisoner number here.)

Garrett Cotton Correctional Facility  
(Print or type your address here.)

3510 N. Elm Street Jackson, MI  
(Print or type your City, State, and Zip Code here.)  
49201-8877

Copy sent to: Oakland County Prosecutor  
(Fill in the county where you were convicted.)



INSTRUCTIONS

1. You will need 2 copies and the original of this letter and the pleadings listed above.
2. Mail the original of this letter and all the pleadings listed above to the Supreme Court Court Clerk.
3. Mail 1 copy of letter and pleadings to the prosecutor in the county where you were convicted.
4. Keep 1 copy of letter and pleadings for your file.