

Court of Appeals, State of Michigan

ORDER

People of MI v Richard James Soldan

Stephen L. Borrello
Presiding Judge

Docket No. 343858

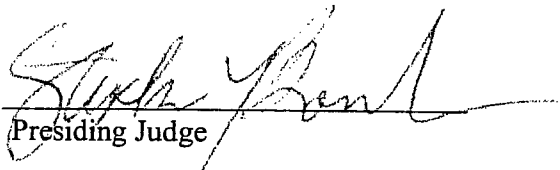
Peter D. O'Connell

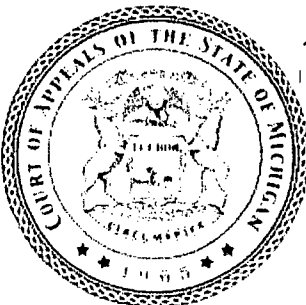
LC Nos. 11-020115-FH; 11-020116-FH

Michael J. Kelly
Judges

The Court orders that the motion to waive fees is GRANTED for this case only.

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


Presiding Judge



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

OCT 30 2018

Date


Chief Clerk

4-19-12

STATE OF MICHIGAN
IN THE 44th JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF LIVINGSTON

PEOPLE OF THE STATE OF MICHIGAN,

PLAINTIFFS,

File No: 11-20116-FH

v


RICHARD JAMES SOLDAN,

Honorable Michael P. Hatty (P-30990)

DEFENDANT.

David S. Morse (P-33093)
Livingston County Prosecuting Attorney
Attorney for Plaintiffs
210 South Highlander Way
Howell, Michigan 48843
Telephone: (517) 546-1850

John W. Ujlaky (P-27660)
Attorney for Defendant
Suite 304
3721 West Michigan Avenue
Lansing, Michigan 48917
Telephone: (517) 323-1939
Facsimile: (517) 323-0904


TRUE COPY
MARGARET M. DUNLEAVY
LIVINGSTON COUNTY CLERK

ORDER VACATING APPOINTMENT OF APPELLATE COUNSEL

At a session of said Court held
in a Circuit Courtroom in the City of Howell,
County of Livingston, State of Michigan
On the 19 day of April, 2012

Present: Honorable Michael P. Hatty, Circuit Judge

Upon the filing and reading of the Court Appointed Appellate Counsel for the Defendant's Motion to Vacate the Order of Appointment, per MCR 6.505, and after a hearing on the record in open Court on April 19, 2012, and the Court being fully informed in the premises, and for all of the reasons set forth on the record, which are incorporated by reference herein:

IT IS HEREBY ORDERED AND ADJUDGED that the said Motion to Vacate the Order of Appointment, which had been entered on January 17, 2012, is and the same shall be granted;

IT IS FURTHER ORDERED AND ADJUDGED that the said Order entered January 17, 2012, appointing John W. Ujlaky as Defendant's Appellate Counsel is and the same shall be vacated;

IT IS FURTHER ORDERED AND ADJUDGED that said John W. Ujlaky is and shall be discharged from the representation of the Defendant in the above entitled matter; and

IT IS FURTHER ORDERED AND ADJUDGED that said John W. Ujlaky shall not have any further duty, responsibility, or obligation to either this Honorable Court, the Defendant, or any one else for representation of this Defendant in this matter.

MICHAEL P. HATTY P-30990

Honorable Michael P. Hatty (P-30990)
Circuit Judge

Countersigned:



Livingston County Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

PEOPLE OF THE STATE OF MICHIGAN,

v.

Case No. 11-20115-FH
11-20116-FH
Hon. Michael P. Hatty

RICHARD JAMES SOLDAN.

FILED
LIVINGSTON COUNTY CLERK
2018 MAY -4 AM 8:43

ORDER

At a session of the 44th Circuit Court,
held in the City of Howell, Livingston County,
on the 3 day of May, 2018.

THIS MATTER COMES before the Court on the Defendant's "Motion for Reconsideration/Second Chance Per MCR 2.119(F)." Defendant asks the Court to reconsider its latest Order and appoint Defendant an appellate attorney.

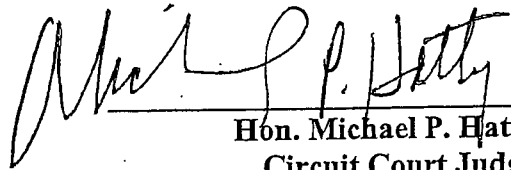
On March 27, 2018, this Court denied Defendant's request to appoint appellate counsel for purposes of filing a Motion for Relief From Judgment. There, the Court concluded that its Order of September 6, 2013, allowing withdrawal of appointed appellate counsel and denying the appointment of successor counsel, was not entered in error. The Court further concluded that Defendant was not entitled to an attorney at public expense to file a motion for relief from judgment. *People v Walters*, 463 Mich 717, 720- 721; 624 NW2d 922 (2001).

Defendant argues that the there is no evidence to support the Court's decision not to appoint a successor counsel, and argues that he was denied an opportunity to be heard. Defendant relies on *In re Withdrawal of Attorney*, 231 Mich. App. 504, 508, 586 N.W.2d 764, 766 (1998) and MCR 2.119(A)(2) to argue that the issue was required to be briefed.

Prior appointed Counsel John Ujlaky filed a Motion for Entry of Order Vacating Appointment of Appellate Counsel on March 21, 2012. Mr. Ujlaky included references to legal authority in his Motion. Attachments to Mr. Ujlaky's motion supported his belief that the appeal should not be pursued. At the hearing on the Motion, the Court cited the relevant legal authority governing the issue, noting in particular that the Motion should only be granted if no non-frivolous issues exists, and "that appears to be the case here." Thus, the Court made the requisite findings in compliance with *Halbert v. Michigan*, 545 U.S. 605, 125 S.Ct. 2582, 162 L.Ed.2d 552 (2005). See *People v. Evans*, 497 Mich. 1008, 862 N.W.2d 197 (2015). By Order dated April 19, 2012 the Court granted Mr. Ujlaky's motion to vacate appointment of appellate counsel. Further, the Court's September 6, 2013 Order arose from Defendant's motion to appoint counsel, not prior counsel's motion to vacate appointment.

The Court finds that its prior Order was not entered in error. Accordingly, Defendant's Motion is DENIED.

IT IS SO ORDERED.


Hon. Michael P. Hatty
Circuit Court Judge

3-21-18

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

PEOPLE OF THE STATE OF MICHIGAN,

v.

Case No. 11-20115-FH
11-20116-FH
Hon. Michael P. Hatty

RICHARD JAMES SOLDAN.
_____ /

ORDER

At a session of the 44th Circuit Court,
held in the City of Howell, Livingston County,
on the ____ day of March, 2018.

THIS MATTER COMES before the Court on the Defendant's Motion for Appointment of Appellate Counsel. Defendant argues that in file 11-20115-FH, he was never appointed appellate counsel and that in file 11-20116-FH, appellate counsel withdrew but failed to comply with *Anders*, and that successor counsel was never appointed.

On September 6, 2013, this Court issued an Order allowing withdrawal of appointed counsel in file 11-20116-FH, and denying the appointment of appellate counsel in file 11-20115-FH. The Court found that termination of appellate counsel was permitted under *In Re Withdrawal*, 231 Mich App 504, 508 (1998), and found that as to file 11-20115-FH, Defendant's request was made well after the 42 days provided by MCR 6.425(G)(1)(c). Subsequently, on March 21, 2014, the Court of Appeals denied Defendant's delayed application for leave to appeal.¹ On July 29, 2014 the Michigan Supreme Court denied Defendant's application for leave

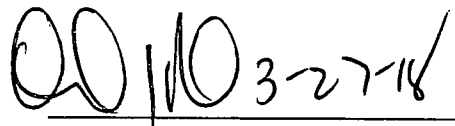
¹ *People v. Soldan*, unpublished Order of the Court of Appeals, issued March 21, 2014 (Docket No. 318315).

to appeal.² Both levels of appeal sought review of files 11-20115-FH and 11-20116-FH. Accordingly, Defendant has failed to show that the Court's September 6, 2013 Order was issued in error.

Further, Defendant is not entitled to an attorney at public expense to file a motion for relief from judgment. *People v Walters*, 463 Mich 717, 720- 721; 624 NW2d 922 (2001).

Accordingly, Defendant's Motion is DENIED.

IT IS SO ORDERED.


Hon. Michael P. Hatty
Circuit Court Judge

² *People v. Soldan*, 496 Mich. 867, 849 N.W.2d 369 (2014)

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

PEOPLE OF THE STATE OF MICHIGAN,

v.

Case No. 11-20115-FH &
11-20116-FH
Hon. Michael P. Hatty

RICHARD JAMES SOLDAN.

ORDER

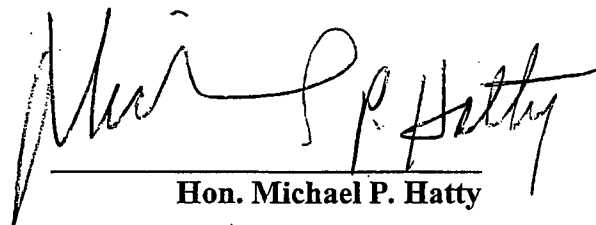
At a session of the 44th Circuit Court,
held in the City of Howell, Livingston County,
on the 5 day of September, 2013.

LIVINGSTON COUNTY CLERK
2013 SEP -5 AM 10:58

THIS MATTER COMES before the Court on the Defendant's Motion for Appointment of Appellate Counsel. After reviewing the Court files and records as well as the Defendant's current motion and exhibits, the Court DENIES the Defendant's motion. In particular, in relation to this Court's order appointing appellate counsel dated November 11, 2011, in case number 11-20116-FH, the appointment of Attorney John Ujlaky was terminated on April 19, 2012, after notice to the Defendant. The Court terminated Mr. Ujlaky's appointment on the basis that only frivolous issues could be identified and that the Defendant would not consent to abandon the pursuit of appellate relief. Such a termination is permitted under *In Re Withdrawal*, 231 Mich App 504, 508 (1998). Additionally, in regards to case number 11-20115-FH, although the Defendant acknowledged receipt of his "Notice of Appeal Rights" on October 13, 2011, the record indicates that the Defendant never requested an appointment of attorney. Moreover, the duplicate request attached to the Defendant's motion, which the Defendant purportedly filed with this Court, indicates that he made the request on January 17, 2012, well

after the 42 days provided by MCR 6.425(G)(1)(c). Consequently, the Defendant is not entitled to appointment of counsel at this time.

IT IS SO ORDERED.



Hon. Michael P. Hatty

Order

Michigan Supreme Court
Lansing, Michigan

April 30, 2019

Bridget M. McCormac
Chief Justice

158863

David F. Vivian
Chief Justice Pro Tempore

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanaugh
Justice

v

SC: 158863
COA: 343858
Livingston CC: 11-020115-FH;
11-020116-FH

RICHARD JAMES SOLDAN,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the October 30, 2018 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



d0422

I, Larry S. Royster, 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.

April 30, 2019

Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**