Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V MARLON SCARBER

Docket No. 379714

LC No. 06-003811-02-FC

Adrienne N. Young
Presiding Judge

Michelle M. Rick

Matthew S. Ackerman
Judges

The motion for reconsideration is DENIED. Accepting appellant's account of the relevant timeline, dismissal is nevertheless required on jurisdictional grounds. Under the court rules and administrative orders currently in effect, there is no basis for treating appellant's delayed application for leave to appeal as if it had been filed on the date that it was furnished to prison staff for e-filing, as opposed to the date it was actually submitted to this Court electronically. See MCR 1.109(G)(5)(b) ("A document submitted electronically is deemed filed with the court when the transmission to the electronic-filing system is completed and the required filing fees have been paid or waived. . . . Regardless of the date a filing is accepted by the clerk of the court, the date of filing is the date submitted."); MCR 1.112 (setting forth the so-called "prison mailbox" that applies to certain prisoner filings submitted via "mail"). Again accepting appellant's account of the relevant timeline, this case presents an illustrative fact pattern in support of amending the "prison mailbox" rule in MCR 1.112 to encompass pleadings submitted to prison staff for e-filing. Further, this order does not foreclose any relief that could be afforded to appellant by the trial court. More to the point, the substance of appellant's motion, if deemed credible by a trial court, seems to present "factors outside the defendant's control" that support restoring appellant's rights to appeal under MCR 6.428.

Adrienne N. Young
Presiding Judge

Ackerman, J. (*concurring in the judgment*): I concur in the decision to deny appellant's motion for reconsideration. These facts demonstrate that waiting until the last day of a six-month filing period leaves no margin for ordinary human or institutional error. I therefore do not believe this case demonstrates any defect in MCR 1.112, even though the jurisdictional result here is harsh. Nor would I

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

May 1, 2026
Date

Jerome W. Zimmer Jr.
Chief Clerk

offer guidance regarding possible relief under MCR 6.428. Any such relief is not before this Court and would turn on factual and credibility determinations for the trial court in the first instance.