

Order

Michigan Supreme Court
Lansing, Michigan

December 23, 2019

Bridget M. McCormack,
Chief Justice

158681 & (19)

David F. Viviano,
Chief Justice Pro Tem

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 158681
COA: 343166
Wayne CC: 04-003608-FC

GREGORY LEE BERRY,
Defendant-Appellant.

By order of June 12, 2019, the prosecuting attorney was directed to answer the application for leave to appeal the September 20, 2018 order of the Court of Appeals. On order of the Court, the answer having been received, the application and the motion to remand are again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting the application for leave to appeal, we VACATE the April 4, 2017 opinion of the Wayne Circuit Court denying the defendant's motion for relief from judgment, and we REMAND this case to the Wayne Circuit Court for reconsideration of the defendant's motion under MCR 6.508(D) in light of *People v Johnson*, 502 Mich 541 (2018). On remand, the trial court shall determine whether the new evidence is credible and whether the impact of the new evidence, in conjunction with the evidence that would be presented on retrial, would make a different result probable on retrial. *Id.* at 566-567. In all other respects, leave to appeal is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D).

We do not retain jurisdiction.



s1216

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.

December 23, 2019

Handwritten signature of Larry S. Royster in black ink.

Clerk