

# Order

Michigan Supreme Court  
Lansing, Michigan

May 24, 2019

Bridget M. McCormack,  
Chief Justice

158716

David F. Viviano,  
Chief Justice Pro Tem

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

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 158716  
COA: 334205  
Wayne CC: 16-003006-FH

GARY GILMORE,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the September 25, 2018 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1).

The appellant shall file a supplemental brief within 42 days of the date of this order addressing: (1) whether the defendant waived the question of his entitlement to an evidentiary hearing regarding the amount of restitution, compare *People v Gahan*, 456 Mich 264, 276 (1997), overruled in part by *People v McKinley*, 496 Mich 410, 413 (2014) (stating that the failure to affirmatively request an evidentiary hearing regarding restitution is a waiver of a defendant's due process claim on appeal) with *People v Carter*, 462 Mich 206, 215 (2006) (defining waiver as "the intentional relinquishment or abandonment of a known right" and distinguishing waiver from forfeiture, which has been defined as "the failure to make the timely assertion of a right."); and if not, (2) whether the Wayne Circuit Court erred in denying the defendant such a hearing. See *McKinley*, 496 Mich 410. In addition to the brief, the appellant shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellant's brief. The appellee shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellant. A reply, if any, must be filed by the appellant within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.



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.

May 24, 2019

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk