

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAKESHA LORVELLE MIMS,

Defendant-Appellant.

UNPUBLISHED

June 12, 2008

No. 276601

Saginaw Circuit Court

LC No. 05-026338-FC

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

MEMORANDUM.

After defendant pleaded guilty of second-degree murder, MCL 750.317, the trial court sentenced her to 18 to 50 years in prison. Defendant, appearing in propria persona, appeals by delayed leave granted a trial court order denying her petition for court-appointed appellate counsel. We reverse and remand for the appointment of appellate counsel and further proceedings.

At the time of defendant’s plea, she responded affirmatively when asked if she was giving up the right to appointed appellate counsel. In *Halbert v Michigan*, 545 US 605; 125 S Ct 2582, 1286; 162 L Ed 2d 552 (2005), decided approximately nine months before defendant tendered her plea, the United States Supreme Court held that the Due Process and Equal Protection Clauses require the appointment of counsel for defendants who enter guilty pleas when they seek access to first-tier review in this Court. In denying defendant’s request for appointed appellate counsel, the trial court concluded that defendant had knowingly and voluntarily waived this right, and that in *People v James*, 272 Mich App 182; 725 NW2d 71 (2006), this Court recognized the potential validity of such waivers if made after issuance of the *Halbert* decision.

Pursuant to MCL 770.3a, which was repealed by 2006 PA 655 after the United States Supreme Court’s decision in *Halbert*, and after defendant’s plea in this case, indigent defendants who pleaded guilty, with few exceptions, had no entitlement to the appointment of appellate counsel. Thus, despite *Halbert*, a Michigan statute still stated that indigent defendants for the most part had no right to appointed appellate counsel to challenge guilty pleas, at least until the repeal of MCL 770.3a became effective on January 9, 2007. Consequently, notwithstanding that the pronouncement in *Halbert* afforded defendant the right to appointed appellate counsel, defendant’s presumptive knowledge of that right would at best have been ambiguous when she

entered her plea in March 2006. If defendant could not have clearly understood that she had the right to appointed appellate counsel, she obviously could not have executed a knowing and intelligent waiver of this right.

The trial court seems to have misread this Court's decision in *James*, in which we held in relevant part as follows:

[D]efendant did not waive his right to the appointment at the time of entering his guilty plea on the basis of the circuit court's mere advisement that waiver would occur, MCL 770.3a(4). [*James, supra* at 198].

Because in this case defendant also purported to waive her right to appointed counsel only pursuant to MCL 770.3a(4), which required that defendants receive such notice, we likewise conclude that defendant did not waive her right pursuant to the advice under former MCL 770.3a(4).

Reversed and remanded for the appointment of appellate counsel, and for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher