

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL PATRICK HEBETS,

Defendant-Appellant.

UNPUBLISHED

March 26, 2009

No. 283503

Wayne Circuit Court

LC No. 01-003404

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the trial court's order denying defendant's request for appointment of counsel. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On August 14, 2001, defendant pled no contest to three counts of criminal sexual conduct in the first degree, MCL 750.520b, and to one count of criminal sexual conduct in the second degree, MCL 750.520c. On September 14, 2001, he was sentenced to concurrent terms of eight to 20 years in prison. This Court denied defendant's delayed application for leave to appeal, and our Supreme Court also denied leave.

On February 25, 2006, after the United States Supreme Court decided *Halbert v Michigan*, 545 US 605; 125 S Ct 2582; 162 L Ed 2d 552 (2005), defendant filed a motion for appointed counsel, seeking counsel both to pursue an application for leave to appeal, and to aid him in a motion for relief from judgment. The trial court appointed counsel for both actions, but then rescinded its order appointing defendant appellate counsel, and limited counsel to assisting defendant in a motion for relief from judgment. Following a subsequent motion, the trial court found that defendant was not entitled to appointed counsel pursuant to *Halbert*, both on the ground that *Halbert* should not apply retroactively, and because defendant failed to file his initial request for appointment of counsel within 42 days of sentencing as required by the court rules. We subsequently granted defendant's delayed application for leave to appeal.

Defendant maintains that he was entitled to the appointment of counsel pursuant to *Halbert*. The question of retroactive application is one that we review de novo. *People v Maxson*, 482 Mich 385, 388; ___ NW2d ___ (2008).

Recently, our Supreme Court held that under federal and state law, *Halbert* should not be applied retroactively to cases in which a defendant's conviction has become final. *Maxson*, *supra* at 388-389. Because in this case defendant's 2001 conviction became final long before *Halbert* was decided, our Michigan Supreme Court's analysis in *Maxson* compels our conclusion that neither federal nor state law requires retrospective application of *Halbert*. The trial court did not err when it decided not to apply *Halbert* retroactively.

Defendant also argues that the trial court erred in finding that he was not entitled to appointment of appellate counsel under *Halbert* because defendant did not request appellate counsel within 42 days after sentencing. See MCR 6.425(F)(2)(c) and (G)(1)(c). Defendant maintains that *Halbert* does not state that its protections are afforded only to those defendants who requested an attorney within the 42-day window and that, in fact, most defendants to whom *Halbert* applies never requested appellate counsel because they were told they were not entitled to appointed counsel. Defendant also argues that his appeal was timely under MCR 7.205(F)(4)(a). However, because defendant is not entitled to the retroactive application of *Halbert*, this argument is moot.

Affirmed.

/s/ Michael J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Alton T. Davis