

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM FITZGERALD JAMES,

Defendant-Appellant.

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FOR PUBLICATION

August 29, 2006

9:10 a.m.

No. 266521

Kent Circuit Court

LC No. 04-002925-FC

Official Reported Version

Before: Zahra, P.J., and Neff and Owens, JJ.

ZAHRA, P.J. (*concurring*).

I agree with the majority that defendant is entitled to the appointment of appellate counsel to seek leave to appeal his conviction to this Court, regardless of whether he purported to waive his right to counsel before entering his guilty plea. Simply stated, defendant's constitutional rights were violated when MCL 770.3a compelled him to forgo appointment of appellate counsel in order to enter his guilty plea. I write separately to make clear that defendant here timely filed an application for leave to appeal in this Court. Accordingly, not only is the majority opinion moot, as it concedes, but wholly unnecessary because preserved appellate claims do not evade judicial review. See *Federated Publications, Inc v City of Lansing*, 467 Mich 98, 112-113; 649 NW2d 383 (2002). Further, although I concur with the majority opinion that appellate counsel should be appointed for defendant, I would not reverse the trial court's order denying defendant appellate counsel; rather, I would simply affirm the trial court's subsequent order granting defendant appellate counsel.

/s/ Brian K. Zahra