

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL THOMAS BEARD,

Defendant-Appellant.

UNPUBLISHED
February 24, 2009

No. 283143
Hillsdale Circuit Court
LC No. 07-311275-FH

Before: Whitbeck, P.J., and O’Connell and Owens, JJ.

MEMORANDUM.

Defendant pleaded guilty of operating a motor vehicle while intoxicated, third offense, MCL 257.625(9)(c), and was sentenced to 23 to 60 months’ imprisonment. He appeals by delayed leave granted from the circuit court order denying as untimely his request for the appointment of appellate counsel to challenge his plea-based conviction. We affirm, but remand for correction of defendant’s judgment of sentence.

Defendant’s argument that the trial court erred in denying his request for the appointment of appellate counsel presents a constitutional issue, which we review de novo. *People v McRunels*, 237 Mich App 168, 171; 603 NW2d 95 (1999). After defendant was sentenced on May 14, 2007, the trial court advised him that he could request the appointment of counsel to file an application for leave to appeal by completing the appropriate documents and returning them to the court within 42 days. He signed and dated the completed request portion of the form on August 17, 2007, and returned it to the trial court, which denied the request and a second request as untimely. See MCR 6.425(G)(1)(c). Defendant relies on *Halbert v Michigan*, 545 US 605, 610; 125 S Ct 2582; 162 L Ed 2d 552 (2005), in support of his argument that he was entitled to the appointment of counsel, but *Halbert* does not state or imply that procedural limits on the exercise of constitutional rights are unenforceable. Unlike both *Halbert* and *People v James*, 272 Mich App 182, 195-198; 725 NW2d 71 (2006), at the time defendant entered his plea, the right to appointment of counsel had been recognized by both federal and state courts. Defendant properly was advised of that right, and how and when to exercise it. Because he failed to request counsel within the prescribed 42-day period, the trial court was not required to appoint counsel. MCR 6.425(G)(1)(c).

We note that although the judgment of sentence correctly indicates that defendant was convicted of operating a vehicle while intoxicated, third offense, it erroneously identifies the relevant statutory citation as MCL 257.625(6)(d). That citation corresponds to a prior version of

the statute that did not exist at the time of defendant's offense in December 2006. Consequently, we remand for the ministerial purpose of correcting the judgment of sentence to reflect defendant's conviction pursuant to MCL 257.625(1) and (9)(c). MCR 6.435(A); MCR 7.216(A)(7).

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Donald S. Owens