

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
September 20, 2011

v

JOHN PAUL WEIDNER,

Defendant-Appellant.

No. 298435
Osceola Circuit Court
LC No. 09-004265-FC

Before: MURPHY, C.J., and FITZGERALD and TALBOT, JJ.

PER CURIAM.

Defendant was charged with two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a) (sexual penetration with a person under the age of 13), and one count of second-degree criminal sexual conduct, MCL 750.520c(1)(b) (sexual contact with person 13 to 16 years of age and actor is related to the victim). Defendant pleaded *nolo contendere* to one count of first-degree criminal sexual conduct and was sentenced to a prison term of 12 to 30 years. On January 20, 2011, this Court granted defendant delayed leave to appeal from the trial court's order denying his untimely request for appointed appellate counsel.¹ We affirm.

Defendant's sentencing occurred on June 4, 2010. Defendant was represented by counsel, and an interpreter was provided at defendant's request due to his hearing impairment. The record reflects that defendant was given notice of his appeal rights at sentencing and that defendant acknowledged that he understood those rights. The notice clearly states that "I must return the completed Request for Appointment of Attorney to the court within 42 days if I want an attorney appointed for my appeal." The notice requires defendant to sign the document in 2 places and to provide information regarding his marital status, debts, and assets.

On January 14, 2010, the trial court received from defendant a request for appointment of appellate counsel that was dated July 20, 2009. In an order dated January 19, 2010, the trial court denied the request for appointment of appellate counsel on the ground that the request was untimely under MCL 6.425(G)(1)(c). The court noted that the request was dated more than 42

¹ *People v Weidner*, unpublished order of the Court of Appeals, entered January 20, 2011 (Docket No. 298435).

days from the original sentencing date and, more notably, that the request was not received by the court until approximately six months after the 42 day period provided in MCR 6.425(G)(1)(c) expired.

Defendant's sole argument on appeal is that the trial court's denial of his request for appointment of appellate counsel infringed on his constitutional rights. See *Halbert v Michigan*, 545 US 605; 125 S Ct 2582; 162 L Ed 2d 552 (2005).² This Court reviews a trial court's decision on a request for appointed appellate counsel for an abuse of discretion. See *People v Cottrell*, 201 Mich App 256, 259; 506 NW2d 12 (1993). However, constitutional questions are reviewed de novo. *People v McRunels*, 237 Mich App 168, 171; 603 NW2d 95 (1999).

Where a defendant pleads guilty or *nolo contendere*, the defendant must request appointed counsel within 42 days of sentencing, and if a defendant fails to make his request within that time, his request may be deemed untimely. See MCR 6.425(G)(1)(c). Our Supreme Court has held that in a "case involving a conviction following a guilty plea, the denial of appointed appellate counsel on the basis of the defendant's failure to comply with the 42 day deadline for requesting counsel in MCR 6.425(G)(1)(c) does not violate *Halbert*." *People v McCoy*, 483 Mich 898, 898; 761 NW2d 100 (2009).

Despite the fact that MCR 6.425(G)(1)(c) contains no language suggesting liberality in excusing a tardy request for appellate counsel,³ defendant now attempts to explain for the first time on appeal the lateness of his request for appellate counsel by asserting that he is hearing impaired, that he was transferred to a different correctional facility on June 26, 2009, and did not receive his personal property until 24 hours after he arrived at the correctional facility on June 26, and "the nature of the United States Postal Service."⁴ As previously noted, the record reveals that defendant received the notice of appeal rights at sentencing on June 4, 2010. Although defendant cites his hearing impairment, his transfer to a different correctional facility, and the postal service as intervening causes for his untimely filing of his request for appellate counsel, interestingly defendant does not allege explain how any of these factors actually impacted his ability to timely file the request. Nothing in the record supports a finding that any of these factors actually contributed to the six-month delay in filing the request.

Accordingly, we conclude that defendant was not denied his constitutional right to the appointment of appellate counsel by the trial court's denial of defendant's untimely request for

² In *Halbert*, the United States Supreme Court held that indigent defendants have a constitutional right to appointed counsel to assist them in the first-tier appellate review of their guilty plea convictions.

³ Cf. MCR 6.435(G)(1)(b), which applies to request for appointed appellate counsel by defendants convicted following a trial.

⁴ These factual assertions were not raised before the trial court, excepting in an informal letter requesting reconsideration of the order denying defendant's request for appellate counsel for the purpose of "see[ing] whether or not I was accurately sentenced, and the 12 years to 30 year I was sentenced to is within my correct sentencing guidelines."⁴

the appointment of appellate counsel and that the trial court did not err in denying defendant's request for appointed appellate counsel on the ground that defendant failed to comply with the requirements of MCR 6.425(G)(1)(c).

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot