



Marilena David
Director

3031 W. Grand Blvd., Ste. 450, Detroit, MI 48202
(Phone) 313.256.9833 (Client calls) 313.256.9822
(Fax) 313.263.0042 www.sado.org

Restoration of appellate rights pursuant to MCR 6.428

If you were convicted **by plea**, whether a guilty plea or a no contest plea, you are entitled to seek appellate review by filing an application for leave to appeal in the Court of Appeals.¹ And before filing an application for leave to appeal you can, and sometimes must, first file post-conviction motions in the circuit court, such as a motion for plea withdrawal or to correct an invalid sentence. MCR 6.310(D) and MCR 6.429(C).

After imposing sentence, the circuit court is required to tell you that you are entitled to file an application for leave to appeal and of your right to have appellate counsel appointed to represent you if you are “indigent” – meaning that you cannot afford an attorney. The court must also give you a form to request appellate counsel.

The court must give you the opportunity to fill out, sign, and submit the form in the courtroom, at sentencing. MCR 6.425(F)(3). The court is also required to tell you about the deadline for filing the form and how to file the form after you leave the courtroom, if that’s what you choose. If you submit the completed form within six months of being sentenced, and if you are indigent, state and federal law require that counsel be appointed to represent you in your appeal.

Note that it is not enough to have initialed the top part of the form that simply acknowledges that you were advised of your appellate rights. You must have signed your name in the part of the form that states you are requesting an appellate

¹ People convicted at a trial have a “right” to appeal, which means the Court of Appeals must hear and decide their appeal on the merits. In 1995, our state constitution was changed to remove the right to appeal for people convicted by plea. Instead, people convicted by plea may only seek appellate review by application, meaning they may ask the Court of Appeals for permission or leave to appeal. If you were convicted for an offense that occurred before 1995, however, there is a right to appeal even for those convictions. If that is your situation, you should also consult our self-help motions for trial cases/claims of appeal.

attorney be appointed for you.

The timely filing of your properly completed and signed request for the appointment of appellate counsel is what triggers the trial court to enter order of appointment on your behalf. After a lawyer is appointed, they must work with you to decide whether to file a post-conviction motion in the circuit court or to proceed directly with filing an application for leave appeal in the Court of Appeals.

There are several “jurisdictional” filing deadlines in plea appeals. Jurisdictional deadlines cannot be extended by stipulation or by the granting of a motion to extend. If a jurisdictional filing deadline is missed, your post-conviction motion and/or application for leave to appeal will not be accepted for filing or will be dismissed.

If something goes wrong in this process that is not your fault, interfering with the appointment of counsel or resulting in your attorney’s filings on your behalf being rejected or dismissed, then MCR 6.428 and/or constitutional principles may require a court to reinstate your right to seek appellate review. In the context of a plea appeal, this means re-starting the filing deadline clock for filing an appropriate post-conviction motion in the trial court and/or an application for leave to appeal in the Court of Appeals.

Examples of what can go wrong through no fault of your own include, but are not limited to:

- the request for counsel form may not have been given to you at the sentencing hearing;
- you may have completed and signed the form and given it to your trial lawyer with instructions to file it, and the lawyer may have forgotten to file it;
- you may have completed the form and timely mailed it from a prison or jail, but it might not have gotten to the right court/department to be processed, or it might have been received after the deadline. (Michigan has a “prisoner mailbox rule,” MCR 1.112, so save your prison/jail mail receipts!);
- your paperwork may have been received by the court, but it might not have been processed, or it might have been processed incorrectly;

- the court may have appointed an appellate attorney for you, but that attorney may have missed a jurisdictional filing deadline; and
- the court may have appointed an appellate attorney for you but that attorney might have withdrawn without substitute counsel being appointed for you by the circuit court and without that attorney having filed a special motion to withdraw for lack of meritorious issues in the Court of Appeals, as required by MCR 7.211(C)(5)(b).

In each of these situations, you can ask that a court reinstate your right to appellate review. To help you do that, SADO's Criminal Defense Resource Center has created the attached fill-in-the-blank motion. This model motion addresses the recent amendment to the court rule, effective September 1, 2025, which for the first time imposes some time limitations on the filing of motions to restore appellate rights. This amendment is addressed in numbered paragraphs 10-12 in the model motion. We have also included (1) a brief in support, and (2) the Request for Counsel form. You should fill out and sign both the motion and the form; the motion, brief, and form should be filed together in the trial court and served on the prosecutor. If the trial court grants your motion, your request will be processed, and you will be able to proceed with your appeal, with counsel.

When filling out the blank areas in the motion, be as specific as possible about the error(s) that were committed – by your trial attorney, the court, the Department of Corrections, the jail staff, or anyone else – that prevented you from timely filing your request for the appointment of appellate counsel or otherwise caused you to be denied the appointment of appointed appellate counsel. Be sure to complete every blank.

When filling out the request for counsel form, it is not enough to initial the part of the form that acknowledges that you were advised of your appellate rights and opportunities; you must sign also your name in the part of the form that states you are requesting an appellate attorney be appointed for you.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF _____

People of the State of Michigan,

Plaintiff,

Circuit Court No. _____

vs

Hon. _____

_____,

Defendant-Appellant.
_____ /

Motion for Restoration of Appellate Rights

I, _____, move this Honorable Court to restore my appellate rights pursuant to MCR 6.428 and/or Const 1963, art 1, § 20 and US Const, Am XIV, and state the following in support:

1. On _____, 20___, I was convicted of the following offenses:

_____.

2. On _____, 20___, the court gave me the following sentence:

_____.

3. While people convicted by plea for offenses that occurred after 1995 do not have an appeal of right, they have the right to seek appellate review by way of post-conviction motions in the circuit court and/or an application for leave to appeal filed in the Court of Appeals and, if indigent, to the appointment of appellate counsel for this process. See MCR 6.425(F)(2); MCR 7.205; MCR 6.310(D); MCR

6.429(C); MCR 7.211(C)(5)(b); see also *Halbert v Michigan*, 545 US 605 (2005).

4. I was denied this right to seek appellate review or the appointment of appellate counsel due to errors by my attorney or the court, or other factors outside my control, such that this Court must issue an order restarting the time in which to file an appeal or request counsel. MCR 6.428.

5. The following circumstances, beyond my control, wrongfully denied me the right to seek appellate review (check at least one, and all that apply):

I did not receive a Notice of Appellate Rights and Request for the Appointment of Appellate Counsel form at sentencing.

The judge or my attorney gave me confusing advice about what I needed to do to appeal or get an appellate attorney appointed, or I could not read or understand the form. I have the following educational, learning or intellectual disabilities: _____

_____.

I signed the request for appellate counsel form in court at sentencing, intending to request counsel for an appeal, and I gave the form to the court staff in the courtroom, but I have not heard anything since about my appeal or appellate counsel.

I signed the request for appellate counsel form and gave it to my attorney at sentencing to file for me, but I have not heard anything

since about my appeal or appellate counsel.

I signed the request for appellate counsel form and mailed it to the circuit court or the Michigan Assigned Appellate Counsel System (MAACS) through the prison or jail mail system. I placed the form in the mail on this date: _____ . I have not heard anything since about my appeal or appellate counsel. To show proof of mailing, I have attached:

A mail receipt from my prison or jail facility.

My sworn statement about mailing.

See MCR 1.112 (“...a pleading or other document must be deemed timely filed if it was deposited in the institution’s outgoing mail on or before the filing deadline. Proof of timely filing may include a receipt of mailing, a sworn statement setting forth the date of deposit and that postage has been prepaid, or other evidence (such as a postmark or date stamp) showing that the document was timely deposited and that postage was prepaid.”).

This Court received my request for appellate counsel but denied my request based on mistakenly finding that I was not indigent.

This Court appointed an appellate attorney for me, but that attorney missed a jurisdictional filing deadline, or committed other error(s) that caused this Court to be unable to decide a motion pursuant to MCR 6.310 (plea withdrawal) or MCR 6.429 (to correct

invalid sentence) or caused Court of Appeals to dismiss my application for leave to appeal as untimely filed.

Other. Describe any circumstances that were beyond your control and that you believe entitle you to the restoration of your appellate rights (use additional sheets of paper as necessary): _____

_____.

6. MCR 6.428 states, in relevant part (emphasis added):

A defendant may file a motion to restore appellate rights as provided in this rule. If the defendant, *whether convicted by plea or at trial*, was denied the right to appellate review or the appointment of appellate counsel *due to errors by the defendant's prior attorney or the court, or other factors outside the defendant's control*, the trial court shall issue an order restarting the time in which to file an appeal or request counsel.

7. The state and federal constitutions also provide protection. *Roe v Flores-Ortega*, 528 US 470 (2000); *People v McKay*, 504 Mich 898 (2019); *People v Sanchez*, 505 Mich 1079 (2020); US Const, Ams VI, XIV; Const 1963, art 1 §§ 17, 20.

8. In regard to defendant's attorney at conviction and sentencing, the United State Supreme Court has held that "[c]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think

either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” *Roe*, 528 US at 480.

9. But MCR 6.428 does not require that the constitutional ineffective assistance of counsel standard be met for a defendant to be entitled to relief. The Court of Appeals has defined error by counsel under MCR 6.428 to mean “an ignorant or imprudent deviation from a code of behavior or . . . an act that through mistake, ignorance, deficiency, or accident, departed from or failed to achieve what should have been done resulting in the denial of the defendant’s right to appellate review.” *People v Byars*, 346 Mich App 554, 569-70 (2023). This is a less burdensome standard than that for ineffective assistance of counsel. *Id.*

10. MCR 6.428 was amended, effective September 1, 2025, to provide that such motions must be filed within a “reasonable” time, setting forth presumptions regarding reasonableness and providing other guidance as to the new reasonable time provision. I have either met the new reasonable time requirement or this Court should waive that new requirement as it would be unfair to apply it to me as I was sentenced or denied counsel so long before it was adopted or my post-conviction motion and/or application for leave to appeal was dismissed.

11. The court rule’s presumptions and guidance as to “a reasonable time” is as follows:

- a. A motion filed within 2 years after the trial court entered the final

- judgment or order that the defendant sought to appeal or a motion filed within 1 year after the date on which the defendant's claim of appeal was dismissed is presumed reasonable. MCR 6.428(A).
- b. A motion filed within 2 years of the date an order denying appointment of counsel was entered is presumed reasonable. MCR 6.428(B).
 - c. In determining a "reasonable time" under this rule, the court must consider whether factors existed outside the defendant's control that contributed to the delay in filing a motion under the rule. MCR 6.428(E).

12. Where application of this new amendment as to "a reasonable time" would be unfair, however, this Court need not apply it. A new amendment to or version of a court rule need not be applied where it would work an injustice, such as where a party acts, or fails to act, in reliance on the prior version, and the party's action or inaction has consequences under the new version that were not present under the prior version. See *Webster v Osguthorpe*, ___ Mich ___ (May 27, 2025) (Docket Nos. 166627 and 166628), slip op at 6-7; *Byars*, 346 Mich App at 565-66 (regarding a prior amendment to MCR 6.428). Out of fundamental fairness, this Court should not deny any defendant relief because of the time frame requirement in the new amendment until at least one to two years after the amendment has gone into effect depending on the basis of their motion to restore appellate rights.

13. Because I lost my rights due to reasons beyond my control, this Court

should issue an order restarting the time in which to file an appropriate post-conviction motion, pursuant to MCR 6.310 and MCR 6.429, and/or application for leave to appeal, pursuant to MCR 7.205, or in which to request appellate counsel.

14. With this motion, I have included a completed Request for Counsel Form.

For these reasons, I respectfully request the Court grant this motion, order the restoration of my appellate rights, and appoint an appellate attorney to represent me. If this Court is not convinced that I am entitled to relief on this motion alone, it should grant me an evidentiary hearing and appoint counsel to represent me in connection with this motion. See *People v Ginther*, 390 Mich 436 (1973).

Respectfully submitted,

(signature)
Name (print): _____
MDOC #: _____
Address: _____

Dated: _____, 20____

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF _____

People of the State of Michigan,

Plaintiff,

vs

_____,

Defendant-Appellant.
_____ /

Circuit Court No. _____

Hon. _____

**Brief in Support
of
Motion for Restoration of Appellate Rights**

I am entitled to restoration of my appellate rights pursuant to MCR 6.428 and/or Const 1963, art 1, § 20 and US Const, Am XIV. While people convicted by plea for offenses that occurred after 1995 do not have an appeal of right, they have the right to seek appellate review by way of post-conviction motions in the circuit court and/or an application for leave to appeal filed in the Court of Appeals and, if indigent, to the appointment of appellate counsel for this process. See MCR 6.425(F)(2); MCR 7.205; MCR 6.310(D); MCR 6.429(C); MCR 7.211(C)(5)(b); see also *Halbert v Michigan*, 545 US 605 (2005).

I was denied this right to seek appellate review or the appointment of appellate counsel due to errors by my attorney or the court, or other factors outside my control, such that this Court must issue an order restarting the time in which to file an appeal or request counsel. MCR 6.428. The circumstances, beyond my

control, that wrongfully denied me the right to seek appellate review are set forth in my accompanying Motion for Restoration of Appellate Rights. See Motion.

MCR 6.428 states, in relevant part (emphasis added):

A defendant may file a motion to restore appellate rights as provided in this rule. If the defendant, *whether convicted by plea or at trial*, was denied the right to appellate review or the appointment of appellate counsel *due to errors by the defendant's prior attorney or the court, or other factors outside the defendant's control*, the trial court shall issue an order restarting the time in which to file an appeal or request counsel.

The state and federal constitutions also provide protection. *Roe v Flores-Ortega*, 528 US 470 (2000); *People v McKay*, 504 Mich 898 (2019); *People v Sanchez*, 505 Mich 1079 (2020); US Const, Ams VI, XIV; Const 1963, art 1 §§ 17, 20.

In regard to defendant's attorney at conviction and sentencing, the United State Supreme Court has held that "[c]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." *Roe*, 528 US at 480.

But MCR 6.428 does not require that the constitutional ineffective assistance of counsel standard be met for a defendant to be entitled to relief. The Court of Appeals has defined error by counsel under MCR 6.428 to mean "an ignorant or imprudent deviation from a code of behavior or . . . an act that through mistake, ignorance, deficiency, or accident, departed from or failed to achieve what should have been done resulting in the denial of the defendant's right to appellate review."

People v Byars, 346 Mich App 554, 569-70 (2023). This is a less burdensome standard than that for ineffective assistance of counsel. *Id.*

MCR 6.428 was amended, effective September 1, 2025, to provide that such motions must be filed within a “reasonable” time, setting forth presumptions regarding reasonableness and providing other guidance as to the new reasonable time provision. I have either met the new reasonable time requirement or this Court should waive that new requirement as it would be unfair to apply it to me as I was sentenced or denied counsel so long before it was adopted or my post-conviction motion and/or application for leave to appeal was dismissed.

The court rule’s presumptions and guidance as to “a reasonable time” is as follows:

- A motion filed within 2 years after the trial court entered the final judgment or order that the defendant sought to appeal or a motion filed within 1 year after the date on which the defendant’s claim of appeal was dismissed is presumed reasonable. MCR 6.428(A).
- A motion filed within 2 years of the date an order denying appointment of counsel was entered is presumed reasonable. MCR 6.428(B).

In determining a “reasonable time” under this rule, the court must consider whether factors existed outside the defendant’s control that contributed to the delay in filing a motion under the rule. MCR 6.428(E).

Where application of this new amendment as to “a reasonable time” would be unfair, however, this Court need not apply it. A new amendment to or version of a court rule need not be applied where it would work an injustice, such as where a party acts, or fails to act, in reliance on the prior version, and the party's action or inaction has consequences under the new version that were not present under the prior version. See *Webster v Osguthorpe*, ___ Mich ___ (May 27, 2025) (Docket Nos. 166627 and 166628), slip op at 6-7; *People v Byars*, 346 Mich App at 565-66 (regarding a prior amendment to MCR 6.428). Out of fundamental fairness, this Court should not deny any defendant relief because of the time frame requirement in the new amendment until at least one to two years after the amendment has gone into effect depending on the basis of their motion to restore appellate rights.

Because I lost my rights due to reasons beyond my control, this Court should issue an order restarting the time in which to file an appropriate post-conviction motion, pursuant to MCR 6.310 and MCR 6.429, and/or application for leave to appeal, pursuant to MCR 7.205, or in which to request appellate counsel.

Summary and Request for Relief

For these reasons, I respectfully request the Court grant this motion, order the restoration of my appellate rights, and appoint an appellate attorney to represent me. If this Court is not convinced that I am entitled to relief on this motion and brief alone, it should grant me an evidentiary hearing and appoint counsel to represent me in connection with this motion. See *People v Ginther*, 390 Mich 436 (1973).

Respectfully submitted,

(signature)
Name (print): _____
MDOC #: _____
Address: _____

Dated: _____, 20____

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF _____

People of the State of Michigan,

Plaintiff,

Circuit Court No. _____

vs

Hon. _____

_____,

Defendant-Appellant.

_____/

Certificate of Service

I, _____, certify and affirm that on _____, 20____, I served a copy of the Motion for Restoration of Appellate Rights, Brief in Support, attachments (if any), and certificate of service by US mail, first-class postage prepaid, to the following person at the following address:

_____ County Prosecutor

Address: _____

(signature)

Name (print): _____

MDOC #: _____

Address: _____

Dated: _____, 20____

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	NOTICE OF RIGHT TO APPELLATE REVIEW AND REQUEST FOR APPOINTMENT OF ATTORNEY	CASE NO. and JUDGE
--	--	---------------------------

Court address **Court telephone no.**

The People of the State of Michigan	v	Defendant's/Juvenile's name, address, and telephone no.
-------------------------------------	---	---

Note to court: This form must be given to the defendant/juvenile at sentencing. A separate form must be provided for each case. Additionally, when this request is filed with the court, the court must serve MAACS with a copy of the written order denying or appointing counsel. MCR 6.425(G)(1)(g).

1. You are entitled to appellate review of your conviction and sentence. This is done by filing a claim of appeal by right, or when you are not entitled to file a claim of appeal by right, an application for leave to appeal. If you pled guilty or nolo contendere, an appeal must be done by filing an application for leave to appeal.
2. If you cannot afford to hire an attorney to represent you on appeal and you request an attorney, an attorney may be appointed for you.
3. You may request an attorney by completing the request for appointment of attorney section below and returning this form to the trial court or the Michigan Assigned Counsel System (MAACS) at the address listed below. If you were convicted by trial and wish to preserve your automatic right to appeal, the form must be received within 42 days after sentencing. If you were convicted by plea or do not submit this form within 42 days after sentencing, you may still file an application for leave to appeal if the form is received within 6 months after sentencing.

Receipt of Notice

Date

Defendant's/Juvenile's initials

REQUEST FOR APPOINTMENT OF ATTORNEY

Instructions to defendant/juvenile: To request an attorney to represent you on appeal, the completed and signed form should be received by the trial court or MAACS within the timeline outlined above. Keep a copy for yourself. **To submit the form to MAACS, please send the form to: Michigan Appellate Assigned Counsel System, 212 E César E. Chávez Ave, Lansing, MI 48906.**

I request appointment of an attorney to represent me on appeal. I provide the following financial information for the court to determine whether I am indigent.

Date _____	Signature of defendant/juvenile _____
Residence <input type="checkbox"/> Rent <input type="checkbox"/> Own <input type="checkbox"/> Room/Board <input type="checkbox"/> Live with relative(s) <input type="checkbox"/> Prison _____ Number	Marital Status <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Separated <input type="checkbox"/> Dependents: _____ Number
Employer name and address <input type="checkbox"/> NONE	Length of employment Average pay <input type="checkbox"/> weekly <input type="checkbox"/> monthly <input type="checkbox"/> every two weeks Gross: \$ _____ Net: \$ _____
Other income State monthly amount and source. E.g., MDHHS, VA, rent, pensions, spouse, unemployment. <input type="checkbox"/> NONE	
Assets State value of car, home, bank accounts, inmate accounts (attach a certified account statement), etc. <input type="checkbox"/> NONE	
Obligations/Debts Itemize monthly rent, installment payments, mortgage payments, child support, etc. <input type="checkbox"/> NONE	