State Appellate Defender Office

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Restoration of appellate rights pursuant to MCR 6.428

If you were convicted **at trial**, whether a jury trial or a bench trial, the Michigan constitution gives you the right to appeal your conviction to the Michigan Court of Appeals.

After imposing sentence, the circuit court is required to tell you that you have a right to appeal and a 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 use 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 42-day deadline (from sentencing) for filing the form and how to file the form after you leave the courtroom, if that's what you choose. You can mail your completed form to the trial court or to the Michigan Assigned Appellate Counsel System (MAACS).

The timely filing of your properly completed and signed form is what triggers the trial court to file a "claim of appeal" and order of appointment on your behalf. 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 attorney be appointed for you.

The filing of the claim of appeal secures your appeal of right, also referred to as an "appeal by right." This means that the Michigan Court of Appeals must accept a brief on appeal filed on your behalf and issue an opinion deciding each issue raised in that brief, explaining its reasoning.

If something goes wrong in this process that is not your fault, and if, as a result, a claim of appeal is not filed or your claim of appeal is dismissed from the Court of Appeals, then MCR 6.428 and/or constitutional principles can require the courts to reinstate your claim of appeal.

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 42-day deadline. (Michigan has a "prisoner mailbox rule," MCR 1.112, so save your prison/jail mail receipts!); and
- your paperwork may have been received by the court, but it might not have been processed, or it might have been processed incorrectly.

If you think you requested appointed appellate counsel within the 42-day deadline, preserving your right to appeal, but counsel was not appointed, you can ask the court to reinstate your right to appellate review. To help you, 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 appointed counsel.

If you missed the 42-day filing deadline, however, and you cannot show that it was for a reason outside your control, then you are *still entitled to seek leave to appeal*, if you turned in your properly completed and signed request for appellate counsel form *within 6 months of sentencing*. An application for leave to appeal asks the Court of Appeals to give you permission to appeal and is the filing that plea-convicted people must use, because there is no "right to appeal" after a guilty or no contest plea.

And if something went wrong with this non-claim, application process that was not your fault – if you think that you submitted your form after the 42-day deadline but before the 6-month deadline – MCR 6.428 and/or constitutional principles can make the courts provide you with a new opportunity at that non-claim, application process. The chart below explains these deadlines, and the possible steps.

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.

Summary of deadlines – Convicted at trial

Form received by the trial court or MAACS within 42 days of sentencing?	Form received by the trial court or MAACS after 42 days of sentencing but within 6 months?	Form received by the trial court or MAACS more than 6 months after sentencing?
Right to appeal if you were convicted at trial. Court must appoint counsel if you are indigent.	If you were not at fault for late filing, file motion to restore your rights. If late filing is your fault, you can still seek leave to appeal. Court must appoint counsel if you are indigent.	If you were not at fault for late filing, file motion to restore your rights.

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. _____

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, §§ 17, 20 and US Const, Ams VI, 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. Individuals convicted at trial have a right to appellate review of their convictions and sentences and, if indigent, to the appointment of appellate counsel for this process. See Const 1963, Art I, § 20; MCR 6.425(F)(1)(a)-(b); MCR 7.203(A).

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 filing deadline or committed other error(s) that caused the Court of Appeals to dismiss my appeal.

☐ 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 ___ (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 appeal or 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 the restoration of my appellate rights pursuant to MCR 6.428 and/or MI Const, 1963, art 1, section 20 and US Const, Amendment XIV. I was denied the right to 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. See MCR 6.428.

The circumstances that wrongfully denied me the right to appeal, which were outside my control, are set forth in my accompanying Motion for Restoration of Appellate Rights. See Motion.

MCR 6.428 states, in relevant part:

> 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. (Emphasis added.)

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 the defendant's attorney for conviction and sentencing, the US 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, 569-570 (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.

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 this 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 ___ (2025) (Docket Nos. 166627 and 166628); *Byars*, 346 Mich App at 554 (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 the motion. *Webster, supra; Byars, supra.*

Because I lost my rights due to reasons beyond my control, as set forth in my accompanying Motion, this Court should issue an order restarting the time in which to file an appeal or request appellate counsel.

Summary and Request for Relief

For these reasons, I ask the Court to 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 the pleadings 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. _____

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___