

SUPREME COURT OF MICHIGAN

People of the State of Michigan v. Kenneth Jay Houlihan

474 Mich. 958 (2005) (Mich. 2005) · No. 128340 · Decided December 16, 2005

SUMMARY

The Michigan Supreme Court ordered the application for leave to appeal held in abeyance pending the Sixth Circuit's decision in *Simmons v. Metrish*, which concerned the retroactivity of *Halbert v. Michigan*. The case addresses whether indigent defendants who pleaded guilty are entitled to appointed appellate counsel and whether *Halbert* applies retroactively to collateral proceedings. Separate opinions disagreed on whether counsel should be appointed immediately and whether *Halbert* constituted a new rule under *Teague v. Lane*.

CASE DETAILS

COURT	Supreme Court of Michigan
WRITING FOR THE COURT	Marilyn J. Kelly; Michael F. Cavanagh; Stephen J. Markman; Maura D. Corrigan; Robert P. Young, Jr.
JURISDICTION	Michigan
DECIDED	December 16, 2005
DOCKET	128340
DISPOSITION	other
PROCEDURAL POSTURE	Defendant sought leave to appeal the Court of Appeals' denial of a delayed application for leave to appeal from the denial of his motion for relief from judgment. The Michigan Supreme Court held the application in abeyance pending a decision by the United States Court of Appeals for the Sixth Circuit in <i>Simmons v. Metrish</i> concerning the retroactive application of <i>Halbert v. Michigan</i> .
STANDARD OF REVIEW	De novo review applies to the legal question whether a constitutional decision applies retroactively.
PRECEDENTIAL VALUE	Published
PARTIES	Kenneth Jay Houlihan v. People of the State of Michigan

TOPICS

- state post-conviction relief
- right to counsel
- appellate procedure
- fourteenth amendment
- criminal procedure

PRACTICE AREAS

criminal procedure

appellate procedure

post-conviction relief

constitutional law

QUESTIONS PRESENTED

1. Whether *Halbert v. Michigan* applies retroactively to a motion for relief from judgment in a case involving a plea-based conviction that became final before *Halbert* was decided.
2. Whether defendant's application for leave to appeal should be held in abeyance pending the Sixth Circuit's decision in *Simmons v. Metrish*.

HOLDINGS

1. The application for leave to appeal was held in abeyance pending the decision of the United States Court of Appeals for the Sixth Circuit in *Simmons v. Metrish*.

KEY QUOTATIONS

"Given these circumstances, we ORDER that the application be held in ABEYANCE pending the decision in that case." (at 731)

"However, in Halbert, the United States Supreme Court held, in a six to three decision, that the "due process" and "equal protection" clauses of the Fourteenth Amendment to the United States Constitution require that counsel be appointed for defendants who have pleaded guilty and who seek to appeal their convictions to the Michigan Court of Appeals." (at 734)

FACTUAL BACKGROUND

In 2001, Kenneth Jay Houlihan pleaded guilty to first-degree criminal sexual conduct and child sexually abusive activity. He received prison sentences of 20 to 40 years for the first conviction and 13 years, 4 months to 20 years for the second. The trial court denied his request for appointed appellate counsel, and his direct-review proceedings concluded before the United States Supreme Court decided *Halbert v. Michigan*.

PROCEDURAL HISTORY

In 2001, defendant pleaded guilty to first-degree criminal sexual conduct and child sexually abusive activity and was sentenced to prison. The trial court denied his request for appointed appellate counsel under M.C.L. § 770.3a. The Court of Appeals denied his application for leave to appeal, and the Michigan Supreme Court denied leave in 2003. Defendant later filed a motion for relief from judgment, which the trial court denied; the Court of Appeals denied a delayed application for leave to appeal, and defendant sought further review in the Michigan Supreme Court. After oral argument, the Supreme Court held the application in abeyance pending the Sixth Circuit's decision in *Simmons*.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The application for leave to appeal was to remain in abeyance pending the Sixth Circuit's decision in *Simmons v. Metrish*.

CASES CITED

- *Simmons v. Metrish*, No. 03-2609
- *Halbert v. Michigan*, 545 U.S. ___, 125 S. Ct. 2582, 162 L. Ed. 2d 552 (2005)
- *Abela v. General Motors Corp.*, 469 Mich. 603, 607, 677 N.W.2d 325 (2004)
- *People v. Sexton*, 458 Mich. 43, 52, 580 N.W.2d 404 (1998)
- *Hyde v. University of Michigan Board of Regents*, 426 Mich. 223, 240, 393 N.W.2d 847 (1986)
- *People v. Doyle*, 451 Mich. 93, 104, 545 N.W.2d 627 (1996)
- *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989)
- *Graham v. Collins*, 506 U.S. 461, 467, 478, 113 S. Ct. 892, 122 L. Ed. 2d 260 (1993)
- *Beard v. Banks*, 542 U.S. 406, 411-417, 124 S. Ct. 2504, 159 L. Ed. 2d 494 (2004)
- *Douglas v. California*, 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed. 2d 811 (1963)
- *Ross v. Moffitt*, 417 U.S. 600, 94 S. Ct. 2437, 41 L. Ed. 2d 341 (1974)
- *People v. Bulger*, 462 Mich. 495, 614 N.W.2d 103 (2000)
- *People v. Harris*, 470 Mich. 882, 681 N.W.2d 653 (2004)
- *Penry v. Lynaugh*, 492 U.S. 302, 314, 109 S. Ct. 2934, 106 L. Ed. 2d 256 (1989)
- *O'Dell v. Netherland*, 521 U.S. 151, 156-158, 117 S. Ct. 1969, 138 L. Ed. 2d 351 (1997)
- *Goeke v. Branch*, 514 U.S. 115, 115 S. Ct. 1275, 131 L. Ed. 2d 152 (1995)
- *McKane v. Durston*, 153 U.S. 684, 687, 14 S. Ct. 913, 38 L. Ed. 867 (1894)
- *Gideon v. Wainwright*, *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963)
- *Alabama v. Shelton*, 535 U.S. 654, 665, 122 S. Ct. 1764, 152 L. Ed. 2d 888 (2002)
- *Kowalski v. Tesmer*, 543 U.S. 125, 125 S. Ct. 564, 160 L. Ed. 2d 519 (2004)
- *Griffin v. Illinois*, 351 U.S. 12, 19, 76 S. Ct. 585, 100 L. Ed. 891 (1956)

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