

Order

Michigan Supreme Court
Lansing, Michigan

May 20, 2015

Robert P. Young, Jr.,
Chief Justice

150623

Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 150623
COA: 315982
Oakland CC: 1989-090203-FC

GILBERT LEE POOLE, JR.,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the September 2, 2014 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals for the reason that no provision set forth in MCL 770.16 prohibits the issuance of an order granting DNA testing of previously tested biological material. To the contrary, see MCL 770.16(4)(b)(ii). See also *People v Hernandez-Orta*, 480 Mich 1101 (2008). Furthermore, the law of the case doctrine does not apply because prior orders denying leave to appeal were not rulings on the merits of the issues presented. See *Grievance Administrator v Lopatin*, 462 Mich 235, 260 (2000). We REMAND this case to the Court of Appeals for consideration of the issues raised by the defendant but not addressed by that court during its initial review of this case.

We do not retain jurisdiction.



s0513

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 20, 2015

Clerk