

Order

Michigan Supreme Court
Lansing, Michigan

September 21, 2022

Bridget M. McCormack,
Chief Justice

163945

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 163945
COA: 352309
Genesee CC: 19-044543-FC

MARK EDWARD LEE, SR.,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the November 18, 2021 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE that part of the judgment of the Court of Appeals concluding that no prejudice resulted from trial counsel's deficient performance in failing to object when the defendant's son impermissibly opined on the defendant's credibility, and we REMAND this case to that court for reconsideration of that ineffective assistance of counsel claim. Although the Court of Appeals cited the correct standard for assessing prejudice under *Strickland v Washington*, 466 US 668 (1984), it failed to apply that standard. The defendant was not required to show that, but for counsel's deficient performance, there was insufficient evidence to sustain his convictions. Rather, prejudice is established where a defendant shows that "but for counsel's deficient performance, there is a reasonable probability that the outcome would have been different." *People v Trakhtenberg*, 493 Mich 38, 51 (2012) (emphasis added). On remand, the Court of Appeals shall resolve the defendant's claim of ineffective assistance of counsel under this standard. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.



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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.

September 21, 2022

Clerk