

Order

Michigan Supreme Court
Lansing, Michigan

November 30, 2022

Elizabeth T. Clement,
Chief Justice

164604

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 164604
COA: 354888
Ingham CC: 19-000119-FC

DOUGLAS LEE HECKAMAN,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the May 19, 2022 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE Part III(A) of the judgment of the Court of Appeals 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, he *would have been acquitted*. 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 set forth in Part III(A) under this standard. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining question presented should be reviewed by this Court.



s1121

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.

November 30, 2022

Clerk