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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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HALBERT *v.* MICHIGAN

CERTIORARI TO THE COURT OF APPEALS OF MICHIGAN

No. 03–10198. Argued April 25, 2005—Decided June 23, 2005

In *Douglas v. California*, 372 U. S. 353, this Court held that, in criminal proceedings, a State must provide counsel for an indigent defendant in a first appeal as of right. Two considerations were key: (1) An appeal “of right” yields an adjudication on the “merits,” *id.*, at 357, and (2) first-tier review differs from subsequent appellate stages “at which the claims have once been presented by a lawyer and passed upon by an appellate court,” *id.*, at 356. Later, in *Ross v. Moffitt*, 417 U. S. 600, the Court held that a State need not appoint counsel to aid a poor person seeking to pursue a second-tier discretionary appeal to the State’s highest court, or, thereafter, certiorari review in this Court. *Id.*, at 610–612, 615–618. The *Douglas* rationale does not extend to second-tier discretionary review, the Court explained, because, at that stage, error correction is not the reviewing court’s prime function. *Id.*, at 615. Principal criteria for state high court review, *Ross* noted, include whether the issues presented are of significant public interest, whether the cause involves legal principles of major significance to the State’s jurisprudence, and whether the decision below is in probable conflict with the high court’s precedent. *Ibid.* Further, a defendant who has received counsel’s aid in a first-tier appeal as of right would be armed with a transcript or other record of trial proceedings, a brief in the appeals court setting forth his claims, and, often, that court’s opinion disposing of the case. *Ibid.*

Michigan has a two-tier appellate system. The State Supreme Court hears appeals by leave only. The intermediate Court of Appeals adjudicates appeals as of right from criminal convictions, except that a defendant convicted on a guilty or *nolo contendere* plea who seeks intermediate appellate court review must apply for leave to appeal. Under Michigan law, most indigent defendants convicted on a plea must proceed *pro se* in seeking leave to appeal to the inter-

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mediate court. In *People v. Bulger*, the Michigan Supreme Court held that the Fourteenth Amendment's Equal Protection and Due Process Clauses do not secure a right to appointed counsel for plea-convicted defendants seeking review in the intermediate appellate court for these reasons: Such review is discretionary; plea proceedings are shorter, simpler, and more routine than trials; and a defendant entering a plea accedes to the State's fundamental interest in finality.

Petitioner Halbert pleaded *nolo contendere* to two counts of criminal sexual conduct. During Halbert's plea colloquy, the trial court advised him of instances in which it "must" or "may" appoint appellate counsel, but failed to tell him that it could not appoint counsel in any other circumstances, including Halbert's own case. The day after his sentence was imposed, Halbert moved to withdraw his plea. Denying the motion, the trial court stated that Halbert's proper remedy was to appeal to the State Court of Appeals. Twice thereafter, Halbert asked the trial court to appoint counsel to help him prepare an application for leave to appeal to the intermediate court, stating that his sentence had been misscored, that he needed counsel to preserve the issue before undertaking an appeal, that he had learning disabilities and was mentally impaired, and that he had been obliged to rely on fellow inmates in preparing his *pro se* filings. The court denied Halbert's motion, citing *Bulger*. Halbert then filed a *pro se* application for leave to appeal, asserting sentencing error and ineffective assistance of counsel and seeking, *inter alia*, remand for appointment of appellate counsel. The Court of Appeals denied leave "for lack of merit in the grounds presented." The Michigan Supreme Court declined review.

Held: The Due Process and Equal Protection Clauses require the appointment of counsel for defendants, convicted on their pleas, who seek access to first-tier review in the Michigan Court of Appeals. Pp. 9–17.

Two aspects of the Michigan Court of Appeals' process following plea-based convictions compel the conclusion that *Douglas*, not *Ross*, controls here. First, in ruling on an application for leave to appeal, that court looks to the merits of the appellant's claims. Second, indigent defendants pursuing first-tier review in the Court of Appeals are generally ill equipped to represent themselves. A defendant who pleads guilty or *nolo contendere* in a Michigan court, although he relinquishes access to an appeal as of right, is entitled to apply for leave to appeal, and that entitlement is officially conveyed to him. Of critical importance, the intermediate appellate court, unlike the Michigan Supreme Court, sits as an error-correction instance. A court Rule provides that the intermediate court may respond to a leave application in a number of ways: It may grant or deny the ap-

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plication, enter a final decision, grant other relief, request additional material from the record, or require a certified concise statement of proceedings and facts from the lower court. The court's response to the leave application by any of these alternatives—including denial of leave—necessarily entails some evaluation of the merits of the applicant's claims. Pp. 9–10.

This Court rejects Michigan's argument that *Ross* is dispositive here because review in the intermediate appellate court following a plea-based conviction is discretionary, given the necessity of filing an application for leave to appeal. The *Ross* Court recognized that leave-granting determinations by a State's highest court turn on considerations other than a lower court's commission of error, *e.g.*, the involvement of a matter of "significant public interest." 417 U. S., at 615. Michigan's Supreme Court, like the highest courts of other States, sits not to correct errors in individual cases, but to decide matters of larger public import. By contrast, the intermediate court, as an error-correction instance, is guided in responding to leave to appeal applications by the merits of the particular defendant's claims, not by the general importance of the questions presented. Pp. 10–11.

Whether formally categorized as the decision of an appeal or the disposal of a leave application, the intermediate appellate court's ruling on a plea-convicted defendant's claims provides the first, and likely the only, direct review the defendant's conviction and sentence will receive. Parties like Halbert, however, are disarmed in their endeavor to gain first-tier review. *Ross* emphasized that a defendant seeking State Supreme Court review following a first-tier appeal as of right earlier had the assistance of appellate counsel, who will have reviewed the trial court record, researched the legal issues, and prepared a brief reflecting that review and research. *Ibid.* Such a defendant may also be armed with an opinion of the intermediate appellate court addressing the issues counsel raised. Without such guides keyed to a court of review, a *pro se* applicant's entitlement to seek leave to appeal to Michigan's intermediate court may be more formal than real. Cf. *Swenson v. Bosler*, 386 U. S. 258 (*per curiam*). Persons in Halbert's situation, many of whom have little education, learning disabilities, and mental impairments, are particularly handicapped as self-representatives. See *Kowalski v. Tesmer*, 543 U. S. ___, ___ (GINSBURG, J., dissenting). Further, appeals by defendants convicted on their pleas may be "no less complex than other appeals." *Id.*, at ___. Michigan's complex procedures for seeking leave to appeal after sentencing on a plea, moreover, may intimidate the uncounseled. See *id.*, at ___ – ___. The State does have a legitimate interest in reducing its judiciary's workload, but providing indi-

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gents with appellate counsel will yield applications easier to comprehend. Michigan's Court of Appeals would still have recourse to summary denials of leave applications in cases not warranting further review. And when a defendant's case presents no genuinely arguable issue, appointed counsel may so inform the court. Pp. 11–16.

The Court disagrees with Michigan's contention that, even if Halbert had a constitutionally guaranteed right to appointed counsel for first-level appellate review, he waived that right by entering a *nolo contendere* plea. At the time he entered his plea, Halbert had no recognized right to appointed appellate counsel he could elect to forgo. Moreover, the trial court did not tell Halbert, simply and directly, that in his case, there would be no access to appointed counsel. Cf. *Iowa v. Tovar*, 541 U. S. 77, 81. Pp. 16–17.

Vacated and remanded.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, KENNEDY, SOUTER, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined, and in which REHNQUIST, C. J., joined as to all but Part III–B–3.