

Motion to Withdraw Plea After Sentence Checklist

- Determine whether the defendant has filed the motion to withdraw the plea within the time for filing an application for leave to appeal under [MCR 7.205\(A\)\(2\)\(a\)](#) and [MCR 7.205\(A\)\(2\)\(b\)\(i\)-\(iii\)](#). [MCR 6.310\(C\)\(1\)](#).
- [MCR 7.205\(A\)\(2\)](#) requires the motion to be filed within the later of:
 - 6 months after entry of the judgment or order, [MCR 7.205\(A\)\(2\)\(a\)](#); or
 - 42 days after:
 - an order regarding appellate counsel if the defendant requested counsel within 6 months after entry of the judgment or order to be appealed;
 - the filing of transcripts ordered under [MCR 6.425\(G\)\(1\)\(f\)](#) if the defendant requested counsel within 6 months after entry of the judgment or order to be appealed; or
 - the filing of transcripts ordered under [MCR 6.433](#) if the defendant requested the transcripts within 6 months after entry of the judgment or order to be appealed, [MCR 7.205\(A\)\(2\)\(b\)\(i\)-\(iii\)](#).¹
- If the motion is not filed within the time for filing an application for leave to appeal under [MCR 7.205\(A\)\(2\)\(a\)](#) or [MCR 7.205\(A\)\(2\)\(b\)\(i\)-\(iii\)](#), advise the defendant that he/she may seek relief only in accordance with the motion for

¹A defendant relying on [MCR 7.205\(A\)\(2\)\(b\)](#) must explain, with supporting documentation, how the application meets the requirements. [MCR 7.205\(A\)\(2\)](#).

relief from judgment procedure set out in [MCR 6.500](#) *et seq.* [MCR 6.310\(C\)\(2\)](#).

- A filing by an unrepresented incarcerated individual “must be deemed timely filed if it was deposited in the institution’s outgoing mail on or before the filing deadline.” [MCR 1.112](#). “Proof of timely filing may include a receipt of mailing, a sworn statement setting forth the date of deposit and that postage has been prepaid, or other evidence (such as a postmark or date stamp) showing that the document was timely deposited and that postage was prepaid.” *Id.*
- Determine whether there was an error in the plea proceeding that would entitle the defendant to have the plea set aside. [MCR 6.310\(C\)\(3\)](#).
 - If so, give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. [MCR 6.310\(C\)\(3\)](#).
 - Indicate that if the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals. [MCR 6.310\(C\)\(3\)](#).