# Court of Appeals, State of Michigan

## ORDER

People of MI v David Allen Mitchell

Docket No. 278596

LC No. 06-005683-01

Deborah A. Servitto
Presiding Judge

Kathleen Jansen

E. Thomas Fitzgerald
Judges

---

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2) the Court REMANDS this case to the Wayne Circuit Court for resentencing. The circuit court erroneously scored 25 points under PRV1 based on defendant's prior conviction for attempted first-degree child abuse. Attempted first-degree child abuse is a class "E" felony under the guidelines and so cannot support the 25-point score under PRV1. MCL 777.19(3)(a); MCL 777.51(1)(c), (2)(a). The circuit court also erred by scoring 10 points under PRV7 based on a concurrent conviction for felony firearm, which is specifically exempt from consideration under PRV7. MCL 777.57(2)(b). The corrected PRV total should have been 27 points rather than 62, for a PRV level "D" and a resulting guidelines range of 5 to 23 months. The circuit court must resentence defendant using this corrected guidelines range. The circuit court further erred by ordering defendant to pay $600 in court costs and $400 in legal fees without first assessing his ability to pay those costs. *People v Dunbar*, 264 Mich App 240; 690 NW2d 476 (2004). On remand, the circuit court shall address defendant's current and future financial circumstances and foreseeable ability to reimburse the county for court costs and legal fees before determining whether he should pay those costs and fees.

The motion to remand is DENIED as moot.

The Court retains no further jurisdiction.

COURT OF APPEALS OF THE STATE OF MICHIGAN 1965

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 17 2007

Date

Sandra Schultz Mengel

Chief Clerk