Court of Appeals, State of Michigan

ORDER

People v Donald Gavin

Docket No. 278268

LC No. 2006-004308 FC

Deborah A. Servitto
Presiding Judge

Henry William Saad

Pat M. Donofrio
Judges

In lieu of granting the motion for partial peremptory reversal of the part of that judgment of conviction and sentence requiring the defendant to pay attorney fees, pursuant to MCR 7.216(7) and (9), the Court VACATES that portion of the sentence that ordered the defendant to pay attorney fees, and we REMAND this case to the trial court. The trial court erred in ordering defendant to pay attorney fees without first assessing his ability to pay. *People v Dunbar*, 264 Mich App 240, 252-256; 690 NW2d 476 (2004). On remand, the court shall address defendant's current and future financial circumstances and foreseeable ability to reimburse the county for attorney fees before determining whether he should pay those fees. At the trial court's discretion, the decision may be made based on the record without the need for a formal evidentiary hearing. *Id.*

The Court recognizes that defendant has filed an appeal of right that addresses the issue that is the subject of this order, as well as other claims of error. We do not retain jurisdiction on the attorney fee issue that is the basis of this order.

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

MAR 0 4 2008
Date

Sandra Schultz Mengel
Chief Clerk