Court of Appeals, State of Michigan

ORDER

People of MI v Dylan Tremen Travis

Docket No. 289428

LC No. 08-411185-FH

William C. Whitbeck
Presiding Judge

Peter D. O'Connell

Stephen L. Borrello
Judges

In lieu of granting the delayed application for leave to appeal, pursuant to MCR 7.205(D)(2), the Court VACATES that portion of the sentence that ordered defendant to pay attorney fees, and REMANDS this case to the trial court. The trial court erred in ordering defendant to pay attorney fees without first assessing defendant's ability to pay. *People v Dunbar*, 264 Mich App 240, 252-256; 690 NW2d 476 (2004). On remand, the trial court shall address defendant's current and future financial circumstances and foreseeable ability to reimburse the county for attorney fees before determining whether defendant 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.*

We do not retain jurisdiction.

Borrello, J., would deny defendant's application for leave and, pursuant to the language stated in *Dunbar*, would not remand for a hearing until such time as the trial court seeks collection of fees and costs from defendant.

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

JAN 20 2009
Date

Sandra Schultz Mengel
Chief Clerk