Court of Appeals, State of Michigan

ORDER

People of MI v Darius L. Kincannon

Docket No. 291489

LC No. 08-008764-FH

Stephen L. Borrello
Presiding Judge

Donald S. Owens

Alton T. Davis
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.* In all other respects, the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

We do not retain jurisdiction.

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

MAY 1 2 2009

Date

Sandra Schultz Mengel

Chief Clerk