

Court of Appeals, State of Michigan

ORDER

People of MI v Steven Nelson Call

Docket No. 301854

LC No. 06-010494-FC

Amy Ronayne Krause
Presiding Judge

Donald S. Owens

Michael J. Kelly
Judges

The Court orders pursuant to MCR 7.205(D)(2) that in lieu of granting the application for leave to appeal, the trial court's December 15, 2010 order denying defendant's motion for relief from judgment is VACATED. The trial court erred in applying the law of the case doctrine. Our Supreme Court's denial of defendant's application for leave to appeal, without comment on the merits, is not a substantive disposition that invokes the law of the case. *Grievance Administrator v Lopatin*, 462 Mich 235, 259-260; 612 NW2d 120 (2000); *People v Willis*, 182 Mich App 706, 708; 452 NW2d 888 (1990).

This matter is REMANDED to the trial court for consideration of defendant's motion for relief from judgment under MCR 6.500 *et seq.*, with the exception of the issue pertaining to the testimony of the domestic violence expert. That issue was decided against defendant in a prior appeal to this Court, *People v Call*, unpublished opinion per curiam of the Court of Appeals, issued August 19, 2008 (Docket No. 278809), and defendant does not allege "that a retroactive change in the law has undermined the prior decision." *People v McSwain*, 259 Mich App 654, 679; 676 NW2d 236 (2003), lv den 471 Mich 877 (2004); MCR 6.508(D)(2) (the court may not grant relief to the defendant if the motion alleges grounds for relief which were decided against the defendant in a prior appeal . . . unless the defendant establishes that a retroactive change in the law has undermined the prior decision). Defendant is entitled to consideration of the remaining issues under MCR 6.508(D)(3).

We retain no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

AUG 10 2011

Date


Chief Clerk