Court of Appeals, State of Michigan

ORDER

People of MI v Daryl Edward Smith

Docket No. 305437

LC No. 10-027124-FH

Kathleen Jansen
Presiding Judge

Pat M. Donofrio

Deborah A. Servitto
Judges

The Court orders that the motion to remand pursuant to MCR 7.211(C)(1) is GRANTED and the matter is remanded to the trial court so that the trial court shall conduct an evidentiary hearing on defendant-appellant's claim that he was prejudiced by his shackling at trial and that his trial counsel was ineffective for not objecting, which may encompass the use of questionnaires to the jurors and testimony from the jurors, if such testimony is necessary to expand upon the responses to the questionnaires. The trial court shall rule on defendant-appellant's motion for a new trial based on his shackling and ineffective assistance of his counsel. Proceedings on remand are limited to the issues as raised in the motion to remand.

Defendant-appellant is to file with this Court a copy of any motion and any supporting brief filed in the trial court within 14 days of the Clerk's certification of this order. The trial court is to hear and decide the matter within 56 days of the Clerk's certification of this order. Defendant-appellant must also file with the Clerk of this Court copies of all orders entered on remand within 14 days after entry.

The trial court is to make findings of fact and a determination on the record. The trial court is to cause a transcript of any hearing on remand to be prepared and filed within 21 days after completion of the proceedings.

Defendant-appellant may file a supplemental brief pertaining to the issues raised on remand within 21 days after entry of the trial court's order deciding the matter or 21 days after the transcript of the hearing on remand is filed, whichever is later. Plaintiff-appellee may file a supplemental brief in response.

This Court retains jurisdiction in the cause, and the time for proceeding with the appeal in this Court begins upon issuance of an order in the trial court that finally disposes of the remand proceedings. Nevertheless, the time for proceeding with the appeal begins 14 days from the date of certification of this order if remand pleadings are not filed in the trial court within the 14-day period.

COURT OF APPEALS OF THE STATE OF MICHIGAN
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A true copy entered and certified by Larry S. Royster, Chief Clerk, on

AUG 06 2012
Date

Chief Clerk