

Court of Appeals, State of Michigan

ORDER

People of MI v James Junior Miller

Docket No. 320496

LC No. 13-000321-FH

Stephen L. Borrello
Presiding Judge

Peter D. O'Connell

Amy Ronayne Krause
Judges

The Court orders that the motion to remand is GRANTED and the case is REMANDED to the trial court to allow defendant to bring a motion for appropriate relief as to the issue raised in the motion to remand.

Defendant shall initiate the proceedings on remand within 14 days of the date of this order. The Court retains jurisdiction and the time for proceeding with the appeal in this Court shall begin to run upon issuance of an order in the trial court that disposes of the remand proceedings. Defendant shall file with this Court a copy of any motion and supporting brief filed in the trial court within 14 days after the date of this order. Defendant shall also file with the Clerk of this Court copies of all orders entered on remand within 14 days after entry. The trial court shall hear and decide the matter within 56 days of the date of this order. The trial court shall make a determination on the record. The trial court shall cause a transcript of any hearing on remand to be prepared and filed within 21 days after completion of the proceedings.

The time for proceedings with the appeal shall begin to run 14 days after the date of this order if a motion to initiate the proceedings on remand is not filed in the trial court within that 14-day period.

Ronayne Krause, J., would deny the motion to remand. There is no reason to believe that *People v Cunningham*, ___ Mich ___; ___ NW2d ___ (Docket No. 147437, decided June 18, 2014), is to be applied retroactively. If a holding regarding whether a juvenile is required to spend the rest of his or her life in prison is not to be applied retroactively, see *People v Carp*, ___ Mich ___; ___ NW2d (Docket Nos. 146478, 146819, and 147428, decided July 8, 2014), then a holding about the amount of court costs

that a defendant may have to pay or not pay would certainly not be applied retroactively. While clearly the retroactivity in the present case is distinguishable from *Carp* in that the sentences in those cases had become final on direct review, I do not believe this Court in the exercise of its discretion should grant motions to remand regarding whether the imposition of court costs complies with *Cunningham* under the state of the case law that presently exists and in the view of the burden on our judicial system in attempting to reopen the matter of court costs in a large number of cases.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

SEP 24 2014

Date


Chief Clerk