

Court of Appeals, State of Michigan

ORDER

State Treasurer v Larry R Brown

Docket No. 332179

LC No. 11-002073-CZ

Joel P. Hoekstra
Presiding Judge

David H. Sawyer

Douglas B. Shapiro
Judges

Pursuant to MCR 7.205(E)(2), in lieu of granting the application for leave to appeal, the Court VACATES the circuit court's December 16, 2015 order denying defendant's motion for relief from judgment brought under MCR 2.612(C). Defendant presented new evidence that was not available to him at the time of the stipulated order from which he sought relief, and that could not have been discovered with due diligence within a year after entry of the stipulated order. MCR 2.612(C)(1)(b) and (C)(2). Furthermore, that evidence, in particular the MDOC 2010 Statistical Report, provides strong support for the proposition that at the time of the stipulated order, there was a mistake as to the cost of his care, as contemplated by the State Correctional Facility Reimbursement Act ("SCFRA"), MCL 800.410 *et seq.* The fact that defendant stipulated to the amount of the cost of his care is not dispositive because under MCL 800.404(4), he cannot stipulate to the state taking more than is allowed under MCL 800.401a(b), whether expressed in terms of an amount or in terms of a percentage of defendant's pension benefit.

The Court REMANDS for a hearing at which the state shall establish on the record the cost of defendant's care as contemplated by MCL 800.404(4) and MCL 800.401a(b). The state should explain why or why not the "appropriated per diem for prisoner care and custody" in its own statistical reports is the proper measure. The actual amount being deducted from defendant's pension must also be established on the record and then compared to the amount established as the proper cost of care. The circuit court shall then enter an order for future reimbursement, and if appropriate, credit for past overpayment shall be ordered. We direct the circuit court to appoint counsel for defendant for the purposes identified in this order. We do not retain jurisdiction.



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

JUN 24 2016

Date


Chief Clerk