Court of Appeals, State of Michigan

ORDER

People of MI v Brian Keith Lindsey

Docket No. 286756

LC No. 07-004054-FH

Jane E. Markey
Presiding Judge

Michael R. Smolenski

Jane M. Beckering
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.*

We do not retain jurisdiction.

Beckering, J., would not vacate and remand pursuant to Dunbar.

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

AUG 25 2008
Date

Sandra Schultz Mengel
Chief Clerk