

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHON RAPHEL TAYLOR, a/k/a ERIC
FREEMAN,

Defendant-Appellant.

UNPUBLISHED

October 25, 2002

No. 240290

St. Clair Circuit Court

LC No. 01-001355-FH

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

MEMORANDUM.

Defendant appeals by leave granted the trial court's postconviction order denying his motion for production of transcripts at public expense. We reverse and remand for entry of an order granting the motion. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted by a jury of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv).¹ The trial court determined that defendant was indigent, appointed counsel to represent him, and ordered the production of trial and sentencing transcripts.

A person who is not related to defendant retained counsel to represent defendant on appeal. Retained counsel moved for an order of substitution of counsel and for production of transcripts at public expense. The motion was supported by defendant's affidavit of indigency. At a hearing the trial court seemed to conclude that defendant had not approved the substitution of attorneys and that he might no longer be indigent. The trial court indicated that it needed more information, but did not specify what additional information it deemed necessary. The trial court entered an order for substitution of counsel, but denied the motion for production of transcripts at public expense.

An indigent defendant who wishes to pursue an appeal of right is entitled to production of transcripts at public expense. MCR 6.433(A). We review a trial court's decision to grant a defendant's motion for production of transcripts at public expense for an abuse of discretion.

¹ Defendant claimed an appeal from his conviction. That appeal is pending before this Court (Docket No. 238753).

Const 1963, art 1, § 20; *People v Cross*, 30 Mich App 326, 336; 186 NW2d 398 (1971), aff'd 386 Mich 237; 191 NW2d 321 (1971).

We reverse the trial court's order denying defendant's motion for production of transcripts at public expense, and remand for entry of an order granting the motion. Indigency is determined on a case-by-case basis, and must be determined by consideration of the defendant's financial ability, not that of his family and friends. MCR 6.005(B); *People v Arquette*, 202 Mich App 227, 230; 507 NW2d 824 (1993). The trial court had sufficient information before it to grant defendant's motion. Counsel was retained by a person not related to defendant. That fact had no bearing on defendant's indigent status. *Id.* Defendant's motion was accompanied by an affidavit of indigency. The trial court erred when it denied defendant's motion for production of transcripts at public expense. *Cross, supra; Arquette, supra*, 230-231.

Reversed and remanded for entry of an order granting defendant's motion for production of transcripts at public expense. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra