

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY LAVELL BRACKETT,

Defendant-Appellant.

UNPUBLISHED
February 17, 2004

No. 243955
Jackson Circuit Court
LC No. 02-003152-FH

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Defendant claimed an appeal as of right from his plea-based conviction for failure to pay child support. MCL 750.165. Although defendant's failure to pay support began in 1992, this action was not criminalized until the statute was amended by 1999 PA 152, effective November 3, 1999. Because defendant did not commit this crime prior to December 27, 1994, he could only appeal his conviction by leave. *People v Kaczmarek*, 464 Mich 478; 628 NW2d 484 (2001). Because the time has passed for defendant to file a delayed application for leave to appeal, MCR 7.205(F)(3), we use our authority under MCR 7.216(A)(7) to treat the improperly filed claim of appeal as an application for leave to appeal. *People v Harlan*, 258 Mich App 137; 669 NW2d 872 (2003).

Defendant asserts that his two to four-year sentence is based on erroneous information and is disproportionate. While defendant states that the sentencing guidelines are not applicable due to the date of the offense, if the offense was not committed until after November 1999, the legislative guidelines apply. MCL 769.34(2). Because the statutory amendment was not considered in determining the date of the offense, the trial court erred in failing to apply the legislative guidelines.

Reversed and remanded for resentencing. We do not retain jurisdiction.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens