

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELLIOTT DALE REED,

Defendant-Appellant.

UNPUBLISHED

June 3, 2008

No. 278188

Wayne Circuit Court

LC No. 06-009828-01

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to five years' probation for the felon in possession of a firearm conviction, and two years' imprisonment for the felony-firearm conviction. He appeals as of right. We affirm defendant's convictions and sentences, but vacate the portions of the judgment of sentence and order of probation that require defendant to pay \$600 in attorney fees and remand this case for reconsideration. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant challenges only the sentencing court's order that he pay \$600 in court costs and \$600 in attorney fees. The judgment of sentence includes these amounts, as does the order of probation. The court ordered payment of these costs without noting whether it had considered defendant's ability to pay.

Defendant did not raise this issue below. His failure to timely challenge the amount of costs waives his right to challenge the assessment on appeal. *People v Music*, 428 Mich 356, 363; 408 NW2d 795 (1987).

With respect to the assessment of attorney fees, this Court reviews the issue for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *People v Dunbar*, 264 Mich App 240, 251; 690 NW2d 476 (2004). In *Dunbar*, this Court held that before attorney fees may be imposed against a criminal defendant, a trial court must "provide some indication of consideration [of the defendant's financial situation], such as noting that it reviewed the financial and employment sections of the defendant's presentence investigation report or, even more generally, a statement that considered the defendant's ability to pay." *Id.* at 254-255.

Because the record does not indicate that the trial court considered defendant's financial circumstances before ordering reimbursement of attorney fees, we remand for reconsideration of this issue in light of defendant's current and future financial circumstances. *Id.* at 255; *People v Arnone*, 478 Mich 908; 732 NW2d 537 (2007).

We affirm defendant's convictions, but vacate the portion of the judgment of sentence and order of probation requiring defendant to reimburse the county \$600 for legal fees and remand for reconsideration in light of defendant's present and future ability to pay. We do not retain jurisdiction.

/s/ Alton T. Davis
/s/ Christopher M. Murray
/s/ Jane M. Beckering