

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERON LEE RAPLEY,

Defendant-Appellant.

UNPUBLISHED

November 13, 2008

No. 280952

Wayne Circuit Court

LC No. 07-006770-01

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

PER CURIAM.

Defendant was convicted by a jury of carjacking, MCL 750.529a, felon in possession of a firearm, MCL 750.224f, third-degree failure to stop, MCL 257602a(3), receiving and concealing a stolen motor vehicle, MCL 750.535(7), carrying a concealed weapon, MCL 750.227, possession of a firearm during the commission of a felony, MCL 750.227b, and attempted disarming of a police officer, MCL 750.479b. Defendant appeals that portion of the judgment of sentence requiring him to pay court-appointed counsel fees of \$400. We affirm defendant's convictions and sentences, but vacate that portion of the judgment of sentence requiring defendant to repay counsel fees, and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that the trial court erred when it ordered him to pay \$400 in attorney fees without inquiring into his ability to pay. Defendant maintains that, pursuant to *People v Dunbar*, 264 Mich App 240; 690 NW2d 476 (2004), the trial court was required to at least indicate that it had considered his financial circumstances before assessing attorney fees. Defendant failed to raise this issue below; thus, we review this unpreserved error for plain error affecting defendant's substantial rights. *Id.* at 251.

When requiring a defendant to repay the cost of his court-appointed attorney, a sentencing court needs to provide some indication that it considered the defendant's ability to pay, "such as noting that it reviewed the financial and employment sections of the defendant's presentence investigation report," or even by simply stating that it considered the defendant's financial status. *Id.* at 254-255. Furthermore, "[t]he amount ordered to be reimbursed for court-appointed attorney fees should bear a relation to the defendant's *foreseeable* ability to pay." *Id.* at 255 (emphasis in original). The purpose of requiring the court to consider the defendant's ability to pay is to ensure that "repayment is not required as long as [the defendant] remains indigent." *Id.* at 256, quoting *Alexander v Johnson*, 742 F 2d 117, 124 (CA 4, 1984).

Recently, this Court affirmed the *Dunbar* holding in light of the language of MCL 769.1k, which became effective on January 1, 2006, and which provides in pertinent part that a trial court may impose “the expenses of providing legal assistance to the defendant” at the time of sentencing. In response to a remand from our Supreme Court, this Court specifically found that “[t]his statute does not eliminate the requirement, set forth in *Dunbar, supra*, that the trial court consider a defendant’s ability to pay prior to ordering reimbursement of appointed counsel costs.” *People v Trapp*, ___ Mich App ___; ___ NW 2d ___ (2008), citing *People v Arnone*, 478 Mich 908; 732 NW2d 537 (2007).

In this case, the trial court ordered defendant to repay court-appointed attorney fees without discussing defendant’s ability to pay. Thus, the trial court clearly erred. *Id.* See also *Arnone, supra*; *People v DeJesus*, 477 Mich 996; 725 NW2d 669 (2007).

We affirm defendant’s convictions and prison sentences, but vacate that portion of the judgment of sentence requiring defendant to repay his court-appointed attorney fees, and remand with instructions that the trial court consider the attorney fees in light of defendant’s ability to pay. An evidentiary hearing is not required on remand. The sentencing court can instead rely on updated financial information provided by the probation department. *Trapp, supra*; *Dunbar, supra* at 255 n 14. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis