

**IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS  
(SERVITTO, P.J. AND SAAD AND DONOFRIO, JJ.)**

**PEOPLE OF THE STATE OF MICHIGAN**

Plaintiff-Appellee

-vs-

**HARVEY EUGENE JACKSON**

Defendant-Appellant.

\_\_\_\_\_ /

**MACOMB COUNTY PROSECUTOR**

Attorney for Plaintiff-Appellee

\_\_\_\_\_ /

**STATE APPELLATE DEFENDER OFFICE**

Attorney for Defendant-Appellant

\_\_\_\_\_ /

**Supreme Court No. 135888**

**Court of Appeals No. 282579**

**Lower Court No. 2006-004473-FH**

**BRIEF ON APPEAL - APPELLANT**

**STATE APPELLATE DEFENDER  
OFFICE**

**BY: VALERIE NEWMAN (P47291)**

**Assistant Defender**

**Emily McCoy, Research Assistant**

State Appellate Defender Office

Suite 3300 Penobscot

645 Griswold

Detroit, MI 48226

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES ..... i**

**STATEMENT OF JURISDICTION..... ii**

**STATEMENT OF QUESTIONS PRESENTED ..... iii**

**STATEMENT OF FACTS.....1**

**I. THE COURT OF APPEALS CORRECTLY DECIDED IN *PEOPLE V DUNBAR* THAT DUE PROCESS PROTECTIONS APPLY TO TRIAL COURTS’ ASSESSMENTS OF ATTORNEY FEES.....3**

**II. THE TRIAL COURTS MUST CONSIDER A CONVICTED DEFENDANT’S ABILITY TO PAY TOWARD THE COST OF ATTORNEY FEES PRIOR TO IMPOSING ANY ORDER.....6**

**III. WHETHER TO IMPOSE ATTORNEY FEES IS APPROPRIATELY ADDRESSED AT SENTENCING GIVEN THE SUPREME COURT’S PRONOUNCEMENT IN *FULLER* THAT ONLY THOSE WHO ACTUALLY BECOME CAPABLE OF REPAYING THE STATE WILL EVER BE OBLIGED TO DO SO AND THAT THOSE FOR WHOM REPAYMENT WOULD WORK ‘MANIFEST HARDSHIP’ ARE FOREVER EXEMPT FROM ANY OBLIGATION TO PAY. ....12**

**IV. THE STANDARDS FOR DETERMINING WHEN THE COURT MAY IMPOSE AN ATTORNEY FEE ASSESSMENT ON A CONVICTED DEFENDANT MUST COMPORT WITH DUE PROCESS CONSIDERATIONS AS SET FORTH IN THE *DUNBAR* DECISION. ....15**

**V. IMPOSING A 20% LATE FEE PURSUANT TO MCL 600.4803(1) CONSTITUTES AN IMPERMISSIBLE MEANS OF ENFORCEMENT THAT EXPOSES CRIMINAL DEFENDANTS WHO HAVE HAD THE ASSISTANCE OF APPOINTED COUNSEL TO MORE SEVERE COLLECTION PRACTICES THAN ORDINARY CIVIL DEBTORS. ....21**

**CONCLUSION .....23**

## TABLE OF AUTHORITIES

### CASES

<i>Alexander v Johnson</i> , 742 F2d 117 (CA4, 1984) .....	passim
<i>Armstrong v Manzo</i> , 380 US 545; 85 S Ct 1187; 14 L Ed 2d 62 (1965).....	16
<i>Bearden v Georgia</i> , 461 US 660; 103 S Ct 2064; 76 L Ed 2d 221 (1983).....	5
<i>Fuller v Oregon</i> , 417 US 40; 94 S Ct 2116; 40 L Ed 2d 642 (1974) .....	passim
<i>Gideon v Wainwright</i> , 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963).....	15
<i>Jensen v Menominee Circuit Judge</i> , 382 Mich 535; 170 NW2d 836 (1969) .....	15
<i>Matthews v Eldridge</i> , 424 US 319; 96 S Ct 893; 47 L Ed 2d 18 (1976) .....	6
<i>Olson v James</i> , 603 F2d 150 (10th Cir. 1979).....	passim
<i>People v Dunbar</i> , 264 Mich App 240; 690 NW2d 476 (2004) .....	3
<i>People v Guajardo</i> , 213 Mich App 198; 539 NW2d 570 (1995).....	13
<i>People v LaPine</i> , 63 Mich App 554; 234 NW2d 700 (1975).....	13
<i>United States v Seminole</i> , 882 F2d 441 (CA 9, 1989) .....	9

### CONSTITUTIONS, STATUTES, COURT RULES

MCL 769.1k .....	16
MCR 6.005(C) .....	16
MCR 6.005(B) .....	15
US Const amend VI .....	15
Const 1963, art 1, § 20.....	15

### MISCELLANEOUS

ADKT No. 411 .....	18
--------------------	----

## **STATEMENT OF JURISDICTION**

This Court has jurisdiction over this case by virtue of its January 28, 2009 Order granting leave to appeal.

## **STATEMENT OF QUESTIONS PRESENTED**

- I. DID THE COURT OF APPEALS CORRECTLY DECIDE IN *PEOPLE V DUNBAR* THAT DUE PROCESS PROTECTIONS APPLY TO TRIAL COURTS' ASSESSMENTS OF ATTORNEY FEES?

Court of Appeals answers, "Yes".

Defendant-Appellant answers, "Yes".

- II. MUST THE TRIAL COURTS CONSIDER A CONVICTED DEFENDANT'S ABILITY TO PAY TOWARD THE COST OF ATTORNEY FEES PRIOR TO IMPOSING ANY ORDER?

Court of Appeals answers, "Yes".

Defendant-Appellant answers, "Yes".

- III. IS THE ATTORNEY FEE ISSUE APPROPRIATELY ADDRESSED AT SENTENCING GIVEN THE SUPREME COURT'S PRONOUNCEMENT IN *FULLER* THAT ONLY THOSE WHO ACTUALLY BECOME CAPABLE OF REPAYING THE STATE WILL EVER BE OBLIGED TO DO SO AND THAT THOSE FOR WHOM REPAYMENT WOULD WORK 'MANIFEST HARDSHIP' ARE FOREVER EXEMPT FROM ANY OBLIGATION TO PAY?

Court of Appeals answers, "Yes".

Defendant-Appellant answers, "Yes".

- IV. MUST THE STANDARDS FOR DETERMINING WHEN THE COURT MAY IMPOSE AN ATTORNEY FEE ASSESSMENT ON A CONVICTED DEFENDANT COMPORT WITH DUE PROCESS CONSIDERATIONS AS SET FORTH IN THE *DUNBAR* DECISION?

Court of Appeals answers, "Yes".

Defendant-Appellant answers, "Yes".

V. DOES IMPOSING A 20% LATE FEE PURSUANT TO MCL 600.4803(1) CONSTITUTE AN IMPERMISSIBLE MEANS OF ENFORCEMENT THAT EXPOSES CRIMINAL DEFENDANTS WHO HAVE HAD THE ASSISTANCE OF APPOINTED COUNSEL TO MORE SEVERE COLLECTION PRACTICES THAN ORDINARY CIVIL DEBTORS?

Court of Appeals made no answer.

Defendant-Appellant answers, "Yes".

## STATEMENT OF FACTS

On December 14, 2006 Judge Miller of the Macomb County Circuit Court sentenced Mr. Jackson, pursuant to a plea agreement, to multiple terms of imprisonment, with the highest term being 8 to 15 years. Sentence Transcript (ST) 17; 9a, Judgment of Sentence; 11a. Judge Miller ordered Mr. Jackson, who had court appointed counsel, 7a, 8a to “pay your attorney fees.” *Id.*

After the court clerk told the Judge that there was a recommended amount, the Court stated:

Oh. Got recommendation on that – in the amount of seven hundred and twenty-five dollars for Mr. Ciske’s services. Would you agree with that, sir?

ST, 18; 10a

Neither Mr. Jackson nor his counsel responded to the Court’s question. *Id.*

Following sentencing, the Court entered an Order to Remit Prisoner Funds for Fines, Costs and Assessments for the Department of Corrections to withdraw funds from Mr. Jackson’s prison account until his attorney fees and other assessments, not including restitution, were paid in full. 12a.

Mr. Jackson requested the appointment of appellate counsel. The form he signed showed no present employer, no assets of any kind and liabilities for “fines and lawyer fees.” This form, which is a Macomb County form, states, in relevant part:

“I agree to reimburse the County of Macomb all monies expended on my behalf for attorney and defense costs in this matter, and, if I am unable to repay those attorney fees and defense costs in full, I will enter into a reimbursement payment plan at a rate in accordance with my ability to pay. I understand that MCL 600.4801 and MCL 600.4803 provide for imposition of a 20% late fee for any amounts due and owing if not paid within 56 days of the due date. The total amount is due upon approval of payment to my attorney by the Judicial Aide.”

13a.

On July 2, 2007 appellate counsel moved to correct an invalid sentence. (Motion Transcript (MT). As part of that motion counsel addressed the Court on the attorney fee assessment. MT, 8; 14a. Counsel brought to the Court's attention that at the time of sentencing, according to the presentence report, Mr. Jackson "was making roughly \$200 a month doing handyman jobs." MT, 9; 15a Counsel went on to point out that Mr. Jackson was now serving an eight (8) year minimum term of imprisonment. *Id.*

The Court ruled as follows:

"Yes. Attorney fees absent a presentation made at sentencing to waive the fee because of indigency, I don't believe that was done. So we'll have to deny that motion as well."

MT, 10; 16a; 17a (Circuit Court Disposition).

The Court of Appeals denied Mr. Jackson's Application for Leave to Appeal from the Circuit Court's post conviction rulings. 18a.

Mr. Jackson now files this Brief in response to this Court's Order, 19a, granting leave on the issue of ordering defendants with court appointed counsel to pay attorney fees.

**I. THE COURT OF APPEALS CORRECTLY DECIDED IN PEOPLE V DUNBAR THAT DUE PROCESS PROTECTIONS APPLY TO TRIAL COURTS' ASSESSMENTS OF ATTORNEY FEES.**

**Issue Preservation:**

Issue preservation is not applicable to this question although appellate counsel did file a timely post conviction motion challenging the imposition of attorney fees. 16a, 17a.

**Standard of Review:**

This case presents a question of law and is therefore reviewed de novo. See, generally, *People v Hardiman*, 466 Mich 417, 646 NW2d 158 (2002)(discussing the continuing validity of *People v Atley* (citations omitted))

**Legal Discussion:**

*People v Dunbar*, 264 Mich App 240, 690 NW2d 476 (2004), was correctly decided under United States Supreme Court precedent. *Dunbar* properly held that a sentencing judge is required to consider a defendant's "foreseeable ability to pay" before determining how much, if any, of the costs of his defense he will be required to repay. *Id.* at 254-55.

As *Dunbar* recognized, the Supreme Court has distinguished between attorney fee repayment programs that satisfy constitutional requirements and those that do not. See *Dunbar*, 264 Mich App at 252-53 (comparing *James v Strange*, 407 US 128; 92 S Ct 2027; 32 L Ed 2d 600 (1972) with *Fuller v Oregon*, 417 US 40; 94 S Ct 2116; 40 L Ed 2d 642 (1974)).

In *James v Strange*, the Supreme Court analyzed a Kansas recoupment statute where the state was permitted to use civil proceedings to recover the cost of an appointed attorney from the defendant. The Kansas statute allowed the state to recoup the costs of the defense from a defendant under the terms of the Kansas Code of Civil Procedure. *Id.* at 131. A defendant was, however, not "accorded any of the exemptions provided by that code for other judgment debtors

except the homestead exemption.” *Id.* Thus, while other debtors under the Kansas code qualified for a variety of exemptions, such as “restrictions on the amount of disposable earnings subject to garnishment, protection of the debtor from wage garnishment at times of severe personal or family sickness,” a defendant required to pay back the costs of his or her defense was not permitted any of these exemptions. *Id.* at 135.

*James* ultimately held that the attorney fee recoupment statute violated Equal Protection because it subjected people required to pay back defense costs to “such discriminatory conditions of repayment.” *Id.* at 140. The court explained that “[t]o impose these harsh conditions on a class of debtors who were provided counsel as required by the Constitution is to practice . . . a discrimination which the Equal Protection Clause proscribes.” *Id.* at 140-41. Because it decided the case on Equal Protection grounds, the Court did not reach the question of whether the statute impermissibly burdened the right to counsel:

“Kansas has enacted laws both to provide and compensate from public funds counsel for the indigent. There is certainly no denial of the right to counsel in the strictest sense. Whether the statutory obligations for repayment impermissibly deter the exercise of this right is a question we need not reach . . . .”

*Id.*

In contrast to *James*, the Supreme Court upheld - against Equal Protection and Right to Counsel challenges - an Oregon recoupment statute which provided that repayment of defense costs may be required as part of a sentence. *Fuller v Oregon*, 417 US 40, 51-54; 94 S Ct 2116; 40 L Ed 2d 642 (1974). In so doing, the Court examined the procedural safeguards the Oregon statute required before repayment may be ordered. In upholding the statute against an argument that the requirement of repayment would “chill” the right to counsel, the court noted, “[t]he Oregon statute is carefully designed to insure that only those who actually become capable of

repaying the State will ever be obliged to do so. Those . . . for whom repayment would work ‘manifest hardship’ are forever exempt from any obligation to pay.” *Id.* at 53 (footnote omitted).

Finally, in the third case relied upon by the *Dunbar* court, the United States Supreme Court held that a sentencing court may not revoke a defendant’s probation for failure to pay fines or restitution unless it can be shown that the defendant has the ability to pay. *Bearden v Georgia*, 461 US 660, 103 S Ct 2064, 76 L Ed 2d 221 (1983)

The *Dunbar* court correctly relied upon a Fourth Circuit decision, *Alexander v Johnson*, 742 F2d 117 (CA4, 1984), which interpreted *James, Fuller, and Bearden* to require that Michigan’s attorney fee repayment programs have several features to pass constitutional muster, including that “the entity deciding whether to require repayment must take cognizance of the individual’s resources, the demands on his own and family’s finances, and the hardships he or his family will endure if repayment is required. The purpose of this inquiry is to assure repayment is not required as long as he remains indigent.” *Dunbar, supra* at 253, (quoting *Alexander v Johnson, supra* at 124). This is similar to the language in *Fuller* which notes that the wording of the statute at issue “makes it clear that a determination that an indigent ‘will be able’ to make subsequent repayment *is a condition necessary for the initial imposition* of the obligation to make repayment.” 417 US at 53 n12 (emphasis added).

This Court should affirm *Dunbar’s* foundational holding that recoupment for attorney fees is subject to constitutional scrutiny and implement a court rule to facilitate statewide standards and compliance.

## II. THE TRIAL COURTS MUST CONSIDER A CONVICTED DEFENDANT'S ABILITY TO PAY TOWARD THE COST OF ATTORNEY FEES PRIOR TO IMPOSING ANY ORDER.

### **Issue Preservation:**

Issue preservation is not applicable to this question although appellate counsel did file a timely post conviction motion challenging the imposition of attorney fees. 16a, 17a.

### **Standard of Review:**

This case presents a question of law and is therefore reviewed de novo. See, generally, *People v Hardiman*, 466 Mich 417, 646 NW2d 158(2002)(discussing the continuing validity of *People v Atley* (citations omitted))

### **Legal Discussion**

In *People v Dunbar*, 264 Mich App 240, 690 NW2d 476 (2004) the Court of Appeals engaged in a thorough analysis of the trial court's sentencing procedure with respect to the imposition of attorney fees to determine if it comported with due process. The Court concluded that due process required the trial court to consider the defendant's financial circumstances. The Court stated: "It is important to recognize that the purpose of the court considering a defendant's financial situation is to ensure that 'repayment is not required as long as he remains indigent'" *Dunbar* at 256, quoting *Alexander v Johnson*, 742 F2d 117, 124 (CA 4, 1984).

Any court order requiring an indigent defendant to pay for his court appointed counsel must comply with due process. At the very least, due process requires the court (1) to offer to hold a hearing before it deprives the indigent defendant of a property interest and (2) to give the defendant notice of the proceeding. *Matthews v Eldridge*, 424 US 319, 333, 96 S Ct 893, 47 L Ed 2d 18 (1976).

As a practical matter, all courts consider a defendant's ability to pay prior to imposing attorney fees. As happened in this case, all Circuit Courts have a screening process to determine whether the Court will appoint counsel. In this case, the Macomb County Circuit Court uses their own form to determine eligibility for court appointed counsel. On that form, Mr. Jackson indicated that he had no assets, no liabilities and earned \$100/week. 7a. The Court therefore appointed him counsel. 8a.

Following conviction, the probation department prepared a presentence report<sup>1</sup>, as is done in every felony case. As part of that report the Agent inquired into Mr. Jackson's employment history, assets and obligations. Thus, the Judge at sentencing had the benefit of both the pre-screening financial information and the post conviction financial information.

In *Fuller v Oregon*, 417 US 40, 44; 94 S Ct 2116; 40 L Ed 2d 642 (1974), the Court stated:

“First, a requirement of repayment may be imposed only upon a convicted defendant . . . . Second, a court may not order a convicted person to pay these expenses unless he “is or will be able to pay them.” The sentencing court must “take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose. As the Oregon court put the matter in this case, ***no requirement to repay may be imposed if it appears at the time of sentencing that “there is no likelihood that a defendant’s indigency will end . . . .”*** Third, a convicted person under an obligation to repay “may at any time petition the court which sentenced him for remission of the payment of costs or of any unpaid portion thereof.” The court is empowered to remit if payment “will impose manifest hardship on the defendant or his immediate family. . . .”

*Fuller v Oregon*, 417 US 40, 44; 94 S Ct 2116; 40 L Ed 2d 642 (1974)(emphasis added) (internal citations to Oregon statutes omitted).

The *Fuller* Court noted that the statute was “quite clearly directed” at people who are unable to afford an attorney at the time of criminal proceedings, but who “subsequently gain the

---

<sup>1</sup> The presentence report is submitted under separate cover since it is a confidential document.

ability to pay the expenses of legal representation.” *Id.* at 46. In upholding the statute against an argument that the requirement of repayment would “chill” the right to counsel, the court noted, “[t]he Oregon statute is carefully designed to insure that only those who actually become capable of repaying the State will ever be obliged to do so. Those . . . for whom repayment would work ‘manifest hardship’ are forever exempt from any obligation to pay.” *Id.* at 53 (footnote omitted). Additionally, Defendants with no likelihood of having the means to repay *are not put under even a conditional obligation to do so*, and those upon whom a conditional obligation is imposed are not subjected to collection procedures until their indigency has ended and no “manifest hardship” will result. *Id.* at 46 (emphasis added). Lastly, in addressing the right to counsel claim, the Court noted the narrow design of the Oregon statute:

“Oregon’s legislation is tailored to impose an obligation only upon those with a foreseeable ability to meet it, and to enforce that obligation against those who actually become able to meet it without hardship.” *Id.* at 54 (emphasis added). This language suggests that were Oregon’s statute not so closely tailored to a defendant’s ability to pay, it might impose an impermissible burden on the constitutional right to counsel.”

*Id.*

The First Circuit has similarly noted the implication from *James* and *Fuller* that “a court *should not order* a convicted person to pay [attorney reimbursement] expenses unless he is able to pay them or will be able to pay them in the future considering his financial resources and the nature of the burden that payment will impose. If a person is unlikely to be able to pay, no requirement to pay is to be imposed.” *Olson v James*, 603 F.2d 150, 155 (10th Cir. 1979) (emphasis added).

What *Fuller* and *Olson* recognize is that the determination of whether a defendant has or will have the ability to pay costs of his court-appointed attorney must be made prior to even the imposition of the “conditional obligation.” *See Fuller*, 417 US at 54.

In interpreting the federal statute that provides for the appointment of counsel for indigent federal defendants,<sup>2</sup> federal courts of appeals have consistently found that a trial court must examine a defendant's continued ability to pay before ordering reimbursement for appointed counsel. *See United States v Seminole*, 882 F.2d 441, 443 (CA 9, 1989) (holding that “[i]f the ‘fine’ was actually an order for reimbursement of fees paid to [defendant’s] court appointed counsel, the district court erred by not making the requisite finding that ‘funds are available for payment’ of the fees.”); *United States v Mitchell*, 893 F.2d 935, 936 (CA 8, 1990) (finding trial court’s failure to make an informed decision whether defendant was able to pay restitution was an abuse of discretion); *United States v Jimenez*, 600 F.2d 1172, 1174 (CA 5 1979) (trial court must make a finding that the defendant is currently able to repay fees).<sup>3</sup>

In addition, the courts of many other states that have examined the issue have found that before the government can order an indigent defendant to reimburse or contribute to the costs of his appointed counsel—whether the costs are part of his sentence or not—the court imposing the

---

<sup>2</sup> 18 USC 3006A.

<sup>3</sup> *See also United States v Connolly (In re Boston Herald)*, 321 F.3d 174, 178-79 (CA 1, 2003); *United States v Lorenzini*, 71 F.3d 1489, 1494 (CA 9, 1995); *United States v Graham*, 72 F.3d 352, 359 (CA 3, 1995); *Hanson v Passer*, 13 F.3d 275, 278 (CA 8, 1994); *United States v Angulo*, 864 F.2d 504, 509 (CA 7, 1988); *Alexander v Johnson*, 742 F.2d 117, 123-24 (CA 4, 1984); *Olson v James*, 603 F.2d 150, 152-55 (CA 10, 1979).

cost must first determine the indigent defendant's ability to pay.<sup>4</sup> Many states also have enacted statutes to provide for specific procedures that will comply with the requirements of due process when determining whether an indigent defendant should contribute to the cost of his appointed counsel. *See, e.g.*, Cal Penal Code §987.8(b) (Supp 2004) (providing that whenever a defendant is provided with court-appointed counsel, at the end of the criminal proceedings in the trial court, "the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof").<sup>5</sup>

Therefore, as indicated by the United States Supreme Court, the constitutional right to counsel means that before a court may order an indigent to contribute to the costs of his defense, he must be afforded due process. Due process at least requires that an indigent defendant must have received notice that the matter may be raised by the trial court, and he must be given a hearing in which the tribunal must determine the defendant's ability to pay. *See Fuller v Oregon*,

---

<sup>4</sup> *See Warren v City of Enterprise*, 641 So 2d 1312, 1315 (Ala Cr App, 1994); *State v Albert*, 899 P2d 103, 106-13 (Alas, 1995); *Espinoza v Superior Court*, 166 Ariz 557, 560-61, 804 P2d 90, 93-94 (1991); *Cal Teachers Ass'n v California*, 20 Cal 4th 327, 352, 975 P2d 622 (1999); *In re Estate of Benney*, 790 P2d 319, 326 (Colo, 1990); *Potter v State*, 547 A2d 595, 600 (Del, 1988); *People v Cozad*, 158 Ill App 3d 664, 670, 511 NE2d 211 (Ill App 4 Dist, 1987); *Everroad v State*, 730 NE2d 222, 226-27 (Ind Ct App, 2000); *State v Haines*, 360 NW2d 791, 797 (Iowa, 1985); *Walker v State*, 26 Kan App 2d 410, 410-12, 988 P2d 283 (1999); *Donovan v Commonwealth*, 60 SW3d 581, 584-85 (Ky App, 2001); *Haynes v State*, 26 Md App 43, 51, 337 A2d 130 (1975); *State v Tennin*, 674 NW2d 403, 407-08 (Minn, 2004); *State v Wood*, 245 Neb 63, 511 NW2d 90 (1994); *Taylor v State*, 111 Nev 1253, 903 P2d 805 (1995), *overruled on other grounds*, *Gama v State*, 112 Nev 833, 920 P2d 1010 (1996); *Opinion of the Justices*, 121 NH 531, 539; 431 A2d 144 (1981); *M v S*, 169 NJ Super 209, 218, 404 A2d 653 (1979); *State v Webb*, 591 SE2d 505, 513-14 (NC, 2004); *Matter of Adoption of K A S*, 499 NW2d 558, 565 (ND, 1993); *State v Crenshaw*, 145 Ohio App 3d 86, 90, 761 NE2d 1121 (Ohio App 8 Dist, 2001); *Williams v State*, 711 P2d 116, 118 (Okla Cr, 1985); *Johns v Johnson*, 165 Or App 561, 563-64, 996 P2d 1013 (2000); *Commonwealth v Opara*, 240 Pa Super 511, 513-27, 362 A2d 305 (1976); *State v Haught*, 179 W Va 557, 562, 371 SE2d 54 (1988); *White Eagle v State*, 280 NW2d 659, 661 (SD, 1979); *Busby v State*, 984 SW2d 627, 632 (Tex Crim App, 1998); *Ohree v Commonwealth*, 26 Va App 299, 308-09, 494 SE2d 484 (1998); *State v Morgan*, 173 Vt 533, 536, 789 A2d 928 (2001); *State v Blank*, 131 Wash 2d 230, 239, 930 P2d 1213 (1997); *State v Grant*, 168 Wis 2d 682, 684-685, 484 NW2d 370 (Wis App 1992); *Keller v State*, 771 P2d 379, 387-88 (Wy 1989).

*supra*. Thus, *Dunbar* correctly held that the court must “provide some indication of consideration, 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 it considered the defendant’s ability to pay,” *prior to* imposing a requirement of attorney fee repayment. 264 Mich App at 254-55. *Dunbar*’s requirement that a court consider a defendant’s “foreseeable ability to pay” before ordering attorney fee repayment is therefore appropriate under controlling United States Supreme Court precedent.

*Dunbar*, however, did not go far enough and failed to make clear what considerations are critical to the determination of ability to pay. The issue of criteria will be addressed in Issue IV, *Infra*.

---

<sup>5</sup> *See also* Ala Code § 15-12-25 (Supp 2003); Ariz Rev Stat § 9-499.09 (Supp 2003); Colo Rev Stat § 21-2-106 (2003); Fla Stat Ann § 938.03 (West Supp 2004); Ga Code Ann § 17-12-10 (Supp 2003); Idaho Code § 19-854 (Supp 2003); 725 Ill Comp Stat 5/113-3.1 (2002); Ind Code § 35-38-1-18 (1998); Kan Stat Ann § 22-4513 (Supp 2002); La Rev Stat Ann 15:148 (Supp 2004); Neb Rev Stat § 29-3908 (Supp 2002); NC Gen Stat § 7A-455.1 (2003); ND Cent Code, § 12.1-32-08 (Supp 2003).

**III. WHETHER TO IMPOSE ATTORNEY FEES IS APPROPRIATELY ADDRESSED AT SENTENCING GIVEN THE SUPREME COURT’S PRONOUNCEMENT IN *FULLER* THAT ONLY THOSE WHO ACTUALLY BECOME CAPABLE OF REPAYING THE STATE WILL EVER BE OBLIGED TO DO SO AND THAT THOSE FOR WHOM REPAYMENT WOULD WORK ‘MANIFEST HARDSHIP’ ARE FOREVER EXEMPT FROM ANY OBLIGATION TO PAY.**

**Issue Preservation:**

Issue preservation is not applicable to this question as the issue is whether Dunbar correctly held that a challenge to an order for repayment of attorney fees may be premature until collection efforts have begun.

**Standard of Review:**

This case presents a question of law and is therefore reviewed de novo. See, generally, *People v Hardiman*, 466 Mich 417, 646 NW2d 158(2002)(discussing the continuing validity of *People v Atley* (citations omitted))

**Legal Discussion:**

*In Fuller*, the Court examined the procedural safeguards the Oregon statute required before repayment may be ordered. *Fuller v Oregon*, 417 US 40, 51-54; 94 S Ct 2116; 40 L Ed 2d 642 (1974). In upholding the statute, the court noted, “[t]he Oregon statute is carefully designed to insure that only those who actually become capable of repaying the State will ever be obliged to do so. Those . . . for whom repayment would work ‘manifest hardship’ are forever exempt from any obligation to pay.” *Id.* at 53 (footnote omitted). The *Fuller* Court also noted that the wording of the statute at issue “makes it clear that a determination that an indigent ‘will be able’ to make subsequent repayment *is a condition necessary for the initial imposition* of the obligation to make repayment.” 417 US at 53 n12 (emphasis added).

In *People v Dunbar*, the Court stated: “[i]n most cases, challenges to the reimbursement order will be premature if the defendant has not been required to commence repayment.” 264 Mich App 240, 256, 690 NW2d 476 (2004). This statement was premised on the holdings from *People v Guajardo*, 213 Mich App 198, 539 NW2d 570 (1995) and *People v LaPine*, 63 Mich App 554, 234 NW2d 700 (1975).

Mr. Guajardo pled guilty to retail fraud for stealing approximately \$28,000.00 worth of jewelry. Mr. Guajardo agreed to pay restitution as part of the plea agreement and indicated on the record that he expected to be employed following his release from prison. The Court specifically found that “he may not be able to pay it” but found a challenge to the amount imposed premature, as did the Court of Appeals because repayment was scheduled to begin only after he was released from prison. At the time, the restitution statute took into consideration a defendant’s ability to pay. *Guajardo*, 213 Mich App at 199-201

Mr. LaPine appealed from his conviction and the trial court ordered him to reimburse the county for the costs of his transcripts at a rate of \$15/month starting one month after he began employment following his release on parole. The *LaPine* Court cited to *Fuller v Oregon* and made it clear that such an order was appropriate “so long as reimbursement fairly reflects the defendant’s ability to pay.” *LaPine*, 63 Mich App at 558.

The key difference in *LaPine* and *Guajardo* from Mr. Jackson’s case, and most felony cases, is that repayment was ordered only after each gentleman was released from prison. The Court ordered Mr. Jackson to begin payment immediately and transmitted such an Order to the Department of Corrections. 12a.

Perhaps more importantly, while the *LaPine* decision cited to *Fuller v Oregon*, it did so in one sentence with no analysis of the issue. The Court in *Fuller* was plain and unambiguous;

no repayment may be ordered unless there is a finding that the defendant will be able to pay without manifest hardship. This requirement of finding an ability to pay without manifest hardship has become a standard that the trial courts routinely ignore.

Dunbar's statement that a challenge to the imposition of attorney fees will be premature until collection efforts begin is a misstatement of United States Supreme Court precedent. The trial court must assess, on the record, the defendant's ability to pay. Before ordering any assessment of attorney fees, the court must find that the defendant has or will have the ability to pay without manifest hardship.

Further, making the financial assessment and determination of whether to order contribution toward the cost of court appointed counsel at the time of sentencing is practical and promotes judicial economy. The trial court at sentencing has at its fingertips all the information necessary to make the determination of the defendant's ability to pay. The trial court has the screening for counsel information, and the presentence report. Oftentimes probation agents make recommendations as to fines, fees and costs presumably based on the financial information the agent gathered in preparing the report.

Any challenge to the imposition of attorney fees is appropriately addressed at the time the court imposes those fees. Further, a challenge to those fees is appropriate any time there is a change in the defendant's financial circumstances such a job loss or other factors that would impact on his ability to pay court ordered attorney fees.

**IV. THE STANDARDS FOR DETERMINING WHEN THE COURT MAY IMPOSE AN ATTORNEY FEE ASSESSMENT ON A CONVICTED DEFENDANT MUST COMPORT WITH DUE PROCESS CONSIDERATIONS AS SET FORTH IN THE *DUNBAR* DECISION.**

**Issue Preservation:** Issue preservation is not applicable to this question.

**Standard of Review:** This case presents a question of law and is therefore reviewed de novo.

See, generally, *People v Hardiman*, 466 Mich 417, 646 NW2d 158 (2002)(discussing the continuing validity of *People v Atley* (citations omitted))

***Legal Discussion***

*The constitutional right to counsel*, US Const Am VI; Const 1963, art 1, § 20, guarantees that no one will be required to appear in a criminal proceeding without counsel due to indigency. *Gideon v Wainwright*, 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963). An indigent defendant has the right to appointed counsel at public expense. *Jensen v Menominee Circuit Judge*, 382 Mich 535, 170 NW2d 836 (1969); MCR 6.005(B), 6.610(D)(2).

The constitutional nature of the right to counsel is integral to a proper analysis of when a convicted defendant may impose attorney fees. When a defendant requests a lawyer and claims financial inability to retain one, the court must determine whether that person is indigent. Under MCR 6.005(B), the court looks to and is guided by the following factors:

- (1) present employment, earning capacity and living expenses;
- (2) outstanding debts and liabilities, secured and unsecured;
- (3) whether the defendant has qualified for and is receiving any form of public assistance;
- (4) availability and convertibility, without undue financial hardship to the defendant and the defendant's dependents, of any personal and real property owned; and

(5) any other circumstances that would impair the ability to pay a lawyer's fee as would ordinarily be required to retain competent counsel.

The ability to post bond for pretrial release does not make the defendant ineligible for appointment of a lawyer.

MCR 6.005(C) addresses partial indigency:

(C) Partial Indigency. If a defendant is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution.

The constitutional right to counsel also means that an indigent defendant may not be required to contribute as long as he remains indigent. Consequently, a post-trial order by a court that an indigent defendant must contribute to the cost of his court-appointed counsel is unconstitutional unless it complies with due process. *See Fuller v Oregon*, 417 US 40, 51-54; 94 S Ct 2116; 40 L Ed 2d 642 (1974). “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Armstrong v Manzo*, 380 US 545, 552, 85 S Ct 1187, 14 L Ed 2d 62 (1965)

The Legislature in 2006 enacted a provision allowing the trial courts to impose an assessment on a criminal defendant for “the expenses of providing legal assistance to the defendant.” MCL 769.1k.<sup>6</sup>

Thus, Michigan has statutory authority to impose an attorney fee assessment with no framework for how to constitutionally implement the statute. The logical framework for addressing a post conviction assessment of attorney fees is to look at the factors identified in the eligibility screening process.

To comport with constitutional Due Process requires the following five features of any program of contribution/reimbursement:

---

<sup>6</sup> This provision only applies following conviction. MCL 769.1k(1)

(1) First, under all circumstances the state must guarantee the indigent defendant's fundamental right to counsel without procedural obstacles designed to determine whether he is entitled to court-appointed representation.

(2) Second, if a state decides to seek repayment from a defendant it must provide him with adequate notice of the contemplated action and a meaningful opportunity to be heard.

(3) Third, when deciding whether to require repayment the court must take cognizance of the individual's resources, the other demands on his own and family's finances, and the hardships he or his family will endure if repayment is required. The purpose of this inquiry is to assure repayment is not required as long as he remains indigent.

(4) Fourth, the defendant who accepts court-appointed counsel cannot be exposed to more severe collection practices than the ordinary civil debtor.

(5) Fifth, the indigent defendant ordered to repay his attorney's fees as a condition of work-release, parole, or probation cannot be imprisoned for failing to extinguish his debt as long as his default is attributable to his poverty, not his obstinacy. *Alexander v Johnson*, 742 F2d 117, 123-124 (CA 4, 1984); *see also Olson v James*, 603 F2d 150, 153-155 (10th Cir. 1979).

In this case, as happens in many of the circuit courts in Michigan, Mr. Jackson, if he is able to read, arguably received notice that he would have to pay for his attorney fees when he signed the request for counsel form. Such notice, however, does not pass constitutional scrutiny.

In reality, the only real notice comes at the time of sentencing. Current practice is that the Judge imposes sentence and then lists off the fines, costs and fees assessment with no input from the defendant or defense counsel. In this case the Court did ask Mr. Jackson if he agreed with the \$725.00 assessment and he gave no answer. However, simply asking once the fee has been imposed if the defendant agrees with it, is unacceptable.

As seen by the present case, the current practice in Michigan, fails to comply with at least the second and third features required by the United States Supreme Court. It does not provide an indigent defendant with *adequate* notice or opportunity to be heard, nor does it require the trial judge to determine the indigent defendant's ability to pay by taking cognizance of the defendant's resources, and the hardships he or his family will endure if repayment or contribution is required.

The real answer to this issue, however, lies with better screening for eligibility for court appointed counsel. In January 2008, the Supreme Court of Nevada entered an Order adopting Commission findings about Nevada's public defense system. ADKT No. 411. As part of that Order the Court addressed the determination of indigency and set forth the following standard:

“A person will be deemed ‘indigent’ who is unable, without substantial hardship to himself or his dependents, to obtain competent, qualified legal counsel on his or her own. ‘Substantial hardship’ is presumptively determined to include all defendants who receive public assistance, such as Food Stamps, Temporary Assistance for Needy Families, Medicaid, Disability Insurance, reside in public housing, or earn less than 200 percent of the Federal Poverty Guideline. A defendant is presumed to have a substantial hardship if he or she is currently serving a sentence in a correctional institution or housed in a mental health facility.

Defendants not falling below the presumptive threshold will be subjected to a more rigorous screening process to determine if their particular circumstances, including seriousness of charges being faced, monthly expenses, and local private counsel rates, would result in a substantial hardship were they to seek to retain private counsel.”

Id. at 2-3.

If this Court were to adopt a similar standard, the repayment issue would resolve itself because there would be a much better record of the defendant's financial resources. If defendants requesting court appointed counsel are properly screened in the beginning, then the courts could easily discern those with disposable income that could go toward the cost of

appointed counsel and those, like Mr. Jackson, who have no disposable income and will likely never be able to pay any assessment without substantial hardship.

Michigan courts have lost sight of the Supreme Court's reasoning differentiating constitutional recoupment programs from unconstitutional recoupment programs. The courts have glossed over terms like "substantial hardship" and "foreseeable ability to pay" or have ignored their meaning. Finding someone able bodied, which perhaps the most common finding from trial courts, does not equate with ability to pay. Ability to physically work is not an ability to pay. Often people with mental health issues are physically able to work but no employer will hire them because of their mental health issues. People with drug and alcohol addictions are often physically able to work but cannot hold down a job due to their addictions.

This Court should not only adopt guidelines for determining eligibility for court appointed counsel, this Court should extend those guidelines to post conviction determinations of whether it is appropriate for the trial court to assess attorney fees. The constitutional guidelines are set forth above. At a minimum the assessment of fines, costs and fees should be made part of the sentencing process, not treated as an afterthought. The Court should inform the parties of any assessments it intends to impose and its reasoning prior to the determination of the sentence and give the defendant and his attorney an opportunity to respond.

This Court must give clear direction to the trial courts that "physically able to work" does not equate with "ability to pay". A meaningful decision can only be made after full consideration of a defendant's financial circumstances. There is a significant body of research on this issue and it makes no sense to spend money trying to obtain recoupment from people who will not ever be able to pay. People who have the ability to contribute toward the cost of their

court appointed counsel without substantial hardship should do so and those unable to do so can not be burdened with an assessment they will never be able to pay.

**V. IMPOSING A 20% LATE FEE PURSUANT TO MCL 600.4803(1) CONSTITUTES AN IMPERMISSIBLE MEANS OF ENFORCEMENT THAT EXPOSES CRIMINAL DEFENDANTS WHO HAVE HAD THE ASSISTANCE OF APPOINTED COUNSEL TO MORE SEVERE COLLECTION PRACTICES THAN ORDINARY CIVIL DEBTORS.**

**Issue Preservation:**

Issue preservation is not applicable to this question.

**Standard of Review:**

This case presents a question of law and is therefore reviewed de novo. See, generally, *People v Hardiman*, 466 Mich 417, 646 NW2d 158(2002)

**Legal Discussion:**

In *James v Strange*, the Supreme Court analyzed a Kansas recoupment statute where the state was permitted to use civil proceedings to recover the cost of an appointed attorney from the defendant. The Kansas statute allowed the state to recoup the costs of defense from the defendant under the terms of the Kansas Code of Civil Procedure. *Id.* at 131. A defendant was, however, not “accorded any of the exemptions provided by that code for other judgment debtors except the homestead exemption.” *Id.* Thus, while other debtors under the Kansas code qualified for a variety of exemptions, such as “restrictions on the amount of disposable earnings subject to garnishment, protection of the debtor from wage garnishment at times of severe personal or family sickness,” a defendant required to pay back the costs of his or her defense was not permitted any of these exemptions. *Id.* at 135.

*James* ultimately held that the attorney fee recoupment statute violated Equal Protection because it subjected people required to pay back defense costs to “such discriminatory conditions of repayment.” *Id.* at 140. The court explained that “[t]o impose these harsh conditions on a

class of debtors who were provided counsel as required by the Constitution is to practice . . . a discrimination which the Equal Protection Clause proscribes.” *Id.* at 140-41.

Counsel has not found any statute like MCL 600.4803 that allows for the imposition of a 20% late fee in the civil context. Under MCL 500.3142 and 500.3148 an insurance company that fails to pay a claim within 30 days pays a 12% assessment and attorney fees.

MCL 600.6013 ties the interest rate for civil judgments to the Department of Treasury T-Bill interest rate. In 1989 that would have been 10% and today it is 3.7%, compounded.

While the statute applies to all criminal defendants, it violates the constitution with respect to those qualifying for court appointed counsel. Imposing such a harsh penalty on a class of people who have already been determined by the court to not have the means to retain an attorney is an impermissible means of enforcement because it singles out criminal defendants for unequal treatment.

## **CONCLUSION**

Mr. Jackson asks that this Court find that the constitutional premise of *Dunbar* was correctly decided and that the trial courts must assess a defendant's ability to pay any court appointed attorney fees at the time of sentencing and state its findings on the record at sentencing so that the defendant and have constitutionally adequate notice and an opportunity to be heard prior to the imposition of any attorney fee assessment. Further, that this Court find MCL 600.4803 unconstitutional as a violation of equal protection in that it imparts a more severe collection sanction on indigent defendants than ordinary civil debtors.

Respectfully submitted,

**STATE APPELLATE DEFENDER OFFICE**

BY: \_\_\_\_\_  
**VALERIE R. NEWMAN (P47291)**  
**Assistant Defender**  
3300 Penobscot Building  
645 Griswold  
Detroit, Michigan 48226  
(313) 256-9833

Date: March 3, 2009

## TABLE OF CONTENTS

Trial Court Docket Entries.....	1a
Court of Appeals Docket Entries.....	5a
Request for Appointment of Counsel (Felony).....	7a
Order Appointing Counsel.....	8a
Sentencing Transcript.....	9a
Judgment of Sentence.....	11a
Order to Remit Prisoner Funds for Fines, Costs, and Assessments.....	12a
Request for Appointment of Appellate Counsel.....	13a
Motion Transcript July 2, 2007.....	14a
Hearing Disposition.....	17a
Court of Appeals Order.....	18a
Supreme Court Order.....	19a

2006-004473-FH PEOPLE vs. JACKSON, HARVEY E DGM

File Date 10/12/2006 Case Status Closed Case Status Date 10/12/2006

Party Information

Party Name	Party Alias(es)	Party Type	Attorney(s)	Attorney Phone
JACKSON, HARVEY E		DEFENDANT	CISKE, KURT J	8105712065
SENIOR CRIME UNIT		SPECIAL UNIT	PA/SENIOR CRIME UNIT	5864695350

Party Charge(s)

Case Party JACKSON, HARVEY E

Count	Code	Description	Disposition	Disposition Date
1	750.110A2	HOME INVASION - 1ST DEGREE		
2	750.88	ASSAULT W/INTENT TO ROB WHILE UNARMED		
3	750.360	LARCENY IN A BUILDING		
4	750.540	TELEPHONE - TAPPING/CUTTING LINES		

Financial Entries

Receipt #	Date	Received From	Amount Paid
245838	01/29/2009	STATE OF MICHIGAN	105,83
	<u>Payment</u>	<u>Fee</u>	
	Check	105,83	STATE MINIMUM COSTS 105,83
204052	08/04/2008	STATE OF MICHIGAN	104,97
	<u>Payment</u>	<u>Fee</u>	
	Check	104,97	VICTIM RESTITUTION 104,97
154152	01/10/2008	JACKSON, HARVEY EUGENE	110,51

<u>Payment</u>	<u>Fee</u>
Check 110,51	VICTIM RESTITUTION 110,51

**Docket Entries**

<b>Date</b>	<b>Text</b>
01/29/2009	PAYMENT RECEIVED
08/04/2008	PAYMENT RECEIVED
04/28/2008	RECEIPT RETURNED FRM MI SUPREME COURT
04/25/2008	CERT/MAIL RECEIPT RETURNED R/F IN FILE
04/23/2008	CERT/MAIL RECEIPT R/F IN FILE
04/23/2008	CIRCUIT COURT FILE SENT TO MICHIGAN SUPREME COURT CERT ONE VOLUME FILE AND DOCKET
03/28/2008	AMENDED JUDGEMENT OF SENTENCE MAILED TO MDOC
03/24/2008	COPY OF PLT-APPELLEES RESP TO APPLICATION FOR LEAVE TO APPEAL WITH COVER SHEET
03/12/2008	AMEND JUDGMENT OF SENTENCE SIGNED DGM 3-28-08
03/10/2008	PROOF OF SERVICE
03/10/2008	BRIEF IN SUPPORT OF RESPONSE TO MTN TO DEFER PAYMENT OF RESTITUTION
03/10/2008	RESPONSE TO MOTION TO DEFER PAYMENT OF RESTITUTION
03/10/2008	PROOF OF SERVICE
03/10/2008	BRIEF IN SUPPORT
03/10/2008	RESPONSE TO MOTION TO DEFER PAYMNT OF RESTITUTION
03/10/2008	HELD: PLACED ON RECORD, MTN TO DEFER PAYMT OF REST DENIED, SGD The following event: MISCELLANEOUS MOTION HEARING scheduled for 03/10/2008 at 8:30 am has been resulted as follows: Result: HELD: Judge: MILLER, DONALD G Location: COURTROOM D - 3RD FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:
02/27/2008	MISCELLANEOUS MOTION HEARING SCHEDULED Event: MISCELLANEOUS MOTION HEARING Date: 03/10/2008 Time: 8:30 am Judge: MILLER, DONALD G Location: COURTROOM D - 3RD FLOOR YANTUS Result: HELD:
02/25/2008	PROOF OF SERVICE
02/25/2008	NOTICE OF HEARING
02/25/2008	MOTION TO DEFER PAYMENT OF RESTITUTION WITH ATTACHMENT
02/25/2008	NOTICE OF HEARING
02/01/2008	COPY OF ORDER FROM COURT OF APPEALS RECEIVED/FILED
01/28/2008	JA-TRANSCRIPT FEE, 11 PAGES HEARING DATE, 7-2-07
01/11/2008	PAYMENT RECEIVED
12/26/2007	PLAINT-APPELLEE'S ANSWER TO APPLICATION FOR LEAVE TO APPEAL AND PROOF OF SERVICE FILED IN COURT OF APPEALS R/F IN FILE
09/07/2007	CERTIFICATE OF MAILING
09/06/2007	ORDER TO REMIT PRISONER FUNDS SGD - \$2322.50
08/29/2007	JA-DEFENDANT IS INCARCERATED, #186370, ERD 9/12/14, MAX 9/12/26
08/21/2007	AMENDED JUDGEMENT OF SENTENCE MAILED TO MDOC
08/20/2007	JUDGMENT OF SENTENCE SIGNED DGM R/F 08/21/2007
07/25/2007	NOTICE OF FILING OF TRANSCRIPT AND CERTIFICATE OF SERVICE
07/25/2007	TRANSCRIPT OF PROCEEDINGS BFR DGM DTD 07/02/2007 R/F IN FILE
07/24/2007	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL
07/17/2007	MEMO TO REBECCA RUSSELL FROM JUD AID DTD 7-16-07 R/F IN FILE
07/02/2007	HELD: PLACED ON RECORD, DEFTS MTN TO CORRECT SENTNC DENIED, SGD The following event: MISCELLANEOUS MOTION HEARING scheduled for 07/02/2007 at 8:30 am has been resulted as follows: Result: HELD: Judge: MILLER, DONALD G Location: COURTROOM D - 3RD FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:
06/14/2007	MISCELLANEOUS MOTION HEARING SCHEDULED Event: MISCELLANEOUS MOTION HEARING Date: 07/02/2007 Time: 8:30 am Judge: MILLER, DONALD G Location: COURTROOM D - 3RD FLOOR YANTUS Result: HELD:
06/12/2007	PROOF OF SERVICE
06/12/2007	BRIEF IN SUPPORT W/APPENDIX
06/12/2007	MOTION TO CORRECT INVALID SENTENCE

06/12/2007 NOTICE OF HEARING  
02/28/2007 JA-TRANSCRIPT FEE, 6 PAGES HEARING DATES OCT 23, 2006  
02/09/2007 TRANSCRIPT OF PLEA BFR DGM DTD 10/23/2006 R/F IN FILE  
02/09/2007 NOTICE OF FILING OF TRANSCRIPT AND AFFIDAVIT OF MAILING  
01/30/2007 DOCUMENT FILED: LTR FROM SADO DTD 01/10/07, R/F IN FILE. SENT DCKT, COMPLETE COPY ONE VOL FILE.  
01/29/2007 JA-TRANSCRIPT FEE, 30 PAGES HEARING DATE 11-6-06 AND 12-14-06  
01/26/2007 REPORTER'S NOTICE OF FILING TRANSCRIPT  
01/26/2007 TRANSCRIPT OF PLEA VOL 1 BEFORE DGM DTD 11-6-06 R/F IN FILE  
01/26/2007 TRANSCRIPT OF SENTENCE VOL 2 BEFORE DGM DTD 12-14-06 R/F IN FILE  
01/23/2007 CERTIFICATE OF MAILING  
01/17/2007 ORDER TO REMIT PRISONER FUNDS SGD (\$965.00)  
01/10/2007 DISPOSITION OF CRIMINAL CHARGES ENTERED  
01/08/2007 JA-DEFENDANT IS INCARCERATED MDOC# 186370 9/12/2014 - 9/12/2026  
01/04/2007 ORDER APPOINTING APPEAL COUNSEL SADO SGD BY APV R/F 1-8-07  
12/21/2006 JUDGMENT OF SENTENCE DELIVERED TO SHERIFF  
12/15/2006 JUDGMENT OF SENTENCE SIGNED (DGM R/F 12-21-06)  
12/14/2006 VICTIM RESTITUTION OWED: STATE FARM INSURANCE (CL#22M339961, V04718, AC:24)  
Receipt: 154152 Date: 01/10/2008 RV 7 Receipt: 204052 Date: 08/04/2008 RV 149  
12/14/2006 STATE MINIMUM COSTS ASSESSED Receipt: 245838 Date: 01/29/2009  
12/14/2006 CVRS FELONY \$60  
12/14/2006 NOTICE OF RIGHT TO TIMELY APPEAL  
12/14/2006 SENTENCE HELD, PLACED ON RECORD, PLEA ACC, SENTNC CT 1- MDOC 8 - 20 YRS, 92 DAYS CRED, REST \$1,357.50 AS A CONDITION OF PAROLE, \$60 SMA, \$60 CVRF, REPAY ATTY FEES \$725, CT 2- MDOC 8 - 15 YRS, 92 DAYS CRED, \$60 SMA; CT 4- MDOC 1 - 2 YRS, \$60 SMA, DISM CT 3 & HAB NTC, SGD The following event: CRIMINAL SENTENCING scheduled for 12/14/2006 at 9:00 am has been resulted as follows: Result: SENTENCE HELD Judge: MILLER, DONALD G Location: COURTROOM D - 3RD FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:  
12/11/2006 NO MONTHLY PAYMENT RECEIVED  
12/11/2006 NO MONTHLY PAYMENT RECEIVED  
11/16/2006 CERTIFICATE & RETURN ON DNA ORDER  
11/08/2006 JA- INITIAL DEFENSE COST Attorney: CISKE, KURT J. (25984) BILLED PRIOR TO SENT OF 12/14/06/  
11/06/2006 CRIMINAL SENTENCING SCHEDULED The following event: PRETRIAL CONFERENCE scheduled for 11/06/2006 at 1:30 pm has been rescheduled as follows: Event: CRIMINAL SENTENCING Date: 12/14/2006 Time: 9:00 am Judge: MILLER, DONALD G Location: COURTROOM D - 3RD FLOOR Result: SENTENCE HELD  
11/06/2006 DNA ORDER SGD MACOMB SHERIFF--DEF IN MCJ  
11/06/2006 ADVICE OF RIGHTS  
11/06/2006 PLEA - NOLO CONTENDERE, PLACED ON RECORD, DEF PLD NO CONTEST TO CTS 1,2&4, DISM CT 3 & HAB NTC AT SENT, PEO TO NOT OBJ TO LOW END OF GUIDELINES, PLEA U/A, RQST PSR, SENT 12-14-06 9AM, IN CUST, SGD The following event: PRETRIAL CONFERENCE scheduled for 11/06/2006 at 1:30 pm has been resulted as follows: Result: PLEA - NOLO CONTENDERE Judge: MILLER, DONALD G Location: COURTROOM D - 3RD FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:  
10/23/2006 ARRAIGNMENT WAIVED  
10/23/2006 PRETRIAL CONFERENCE SCHEDULED The following event: ARRAIGNMENT/CONFERENCE scheduled for 10/23/2006 at 1:30 pm has been rescheduled as follows: Event: PRETRIAL CONFERENCE Date: 11/06/2006 Time: 1:30 pm Judge: MILLER, DONALD G Location: COURTROOM D - 3RD FLOOR Result: PLEA - NOLO CONTENDERE  
10/23/2006 HELD: PLACED ON RECORD The following event: ARRAIGNMENT/CONFERENCE scheduled for 10/23/2006 at 1:30 pm has been resulted as follows: Result: HELD-CRIMINAL - DEFT STOOD MUTE, ADJOURNED P/T TO 11/6/06 @ 1:30 PM, DEFT MAY USE LAW LIB IF HE IS ELIGIBLE, IN JAIL - SGD Judge: MILLER, DONALD G Location: COURTROOM D - 3RD FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:  
10/20/2006 LIST OF KNOWN WITNESSES  
10/20/2006 HABITUAL OFFENDER INFORMATION FOURTH NOTICE  
10/20/2006 INFORMATION  
10/13/2006 ARRAIGNMENT/CONFERENCE SCHEDULED Event: ARRAIGNMENT/CONFERENCE Date: 10/23/2006 Time: 1:30 pm Judge: MILLER, DONALD G Location: COURTROOM D - 3RD FLOOR Result: HELD-CRIMINAL

10/12/2006 BOND NOT FURNISHED, SET AT: \$500,000 C/S ONLY  
10/12/2006 DISTRICT COURT BINDOVER

## MICHIGAN COURT OF APPEALS

COA Case Number: 282579

SCt Case Number: 135888

PEOPLE OF MI V HARVEY EUGENE JACKSON

1	PEOPLE OF MI	PL-AE	PRS	(35617) DIEGEL MARY JO 1 SOUTH MAIN 3 RD FLOOR MT CLEMENS MI 48043 586-469-5350
2	JACKSON HARVEY EUGENE	DF-AT	SAD	(39445) YANTUS ANNE 645 GRISWOLD 3300 PENOBSCOT BUILDING DETROIT MI 48226-4281 313-256-9833

Status: Case Concluded; File Open SCT Status: APPL

80

Case Flags: Guilty Plea; Proposal B Appeal

- 12/13/2007 1 **Delayed App for Leave - Criminal**  
Proof Of Service Date: 12/13/2007  
Register of Actions: Y  
Answer Due: 1/3/2008  
Fee Code: PI  
Attorney: 39445 - YANTUS ANNE
- 12/15/2006 2 **Order Appealed From**  
From: MACOMB COUNTY CIRCUIT COURT  
Case Number: 2006-004473-FH  
Trial Court Judge: 35064 MILLER DONALD G  
*Nature of Case:*  
Home Invasion 1st  
Criminal Miscellaneous 2 counts
- 12/13/2007 3 **Transcript Filed By Party**  
Date: 12/13/2007  
Filed By Attorney: 39445 - YANTUS ANNE  
Hearings:  
11/6/2006 PLEA
- 12/13/2007 4 **Transcript Filed By Party**  
Date: 12/13/2007  
Filed By Attorney: 39445 - YANTUS ANNE  
Hearings:  
12/14/2006 SENTENCE
- 12/13/2007 5 **Transcript Filed By Party**  
Date: 12/13/2007  
Filed By Attorney: 39445 - YANTUS ANNE  
Hearings:  
7/2/2007 MOT CORR INVALID SENTENCE
- 12/13/2007 6 **Presentence Investigation Report - Confidential**  
Date: 12/13/2007  
For Party: 2 JACKSON HARVEY EUGENE DF-AT  
Attorney: 39445 - YANTUS ANNE
- 12/21/2007 7 **Answer - Application**

- Proof Of Service Date: 12/21/2007  
Event No: 1 Delayed App for Leave - Criminal  
For Party: 1 PEOPLE OF MI PL-AE  
Filed By Attorney: 35617 - DIEGEL MARY JO
- 01/15/2008 8 Submitted On Motion Docket**  
Event: 1 Delayed App for Leave - Criminal  
District: T Item #: 15
- 01/30/2008 9 Order: Application - Deny - Delayed App for Leave**  
[Click here to view document in PDF format.](#)  
Event: 1 Delayed App for Leave - Criminal  
Panel: DAS,HWS,PMD
- 02/25/2008 10 SCt: Application for Leave to SCt**  
Supreme Court No. 135888  
Notice Date: 3/18/2008  
Fee: State Check No.:  
For Party: 2  
Attorney: 39445 - YANTUS ANNE
- 03/04/2008 11 Supreme Court - File Sent To**  
File Location: Z  
*Comments:* SC# 135888
- 03/04/2008 12 SCt: COA File - Received**
- 03/17/2008 13 SCt: Brief in Opposition to SCt Application**  
Filing Date: 3/17/2008  
For Party: 1 PEOPLE OF MI PL-AE  
Filed By Attorney:35617 - DIEGEL MARY JO  
*Comments:* by PROS
- 04/25/2008 14 SCt: Trial Court Record Received**  
1 files
- 01/28/2009 15 SCt Order: Grant Application**  
[Click here to view document in PDF format.](#)

---

Case Listing Complete

10/12/2006 08:34 5864455068

38 DISTRICT COURT

PAGE 05/06

STATE OF MICHIGAN COUNTY OF MACOMB CIRCUIT COURT	PETITION FOR APPOINTMENT OF COUNSEL (FELONY)	Dist. Ct. No: Cir. Court No: <u>06-5933</u> Judicial Aide Acct:
PEOPLE OF THE STATE OF MICHIGAN		<u>Harvey Jackson</u>

THIS SECTION TO BE COMPLETED BY COURT/JAL PERSONNEL

Alias(es) or AKA \_\_\_\_\_ Co-defendant(s) 10-25-59

Driver's license/ ID number \_\_\_\_\_ Social Security number -7506 Date of Birth \_\_\_\_\_

Charge(s) and statute number(s) 1 Home Invasion - 1st Degree 750.110A2 20 yrs

Bond information: 500,000.00 Amount Set CS Personal, cash, surety, 10% \_\_\_\_\_ Posted by \_\_\_\_\_

Exam: Date 10-11-06 at 8:00am Time Redmond Judge 9th District Court

REQUEST FOR INTERPRETER

Type of interpreter: ( ) American Sign Language (ASL) or ( ) Language - Language and Dialect \_\_\_\_\_

Date and Time of first appearance \_\_\_\_\_ Judge who will be conducting proceeding \_\_\_\_\_ Court \_\_\_\_\_

THIS SECTION TO BE COMPLETED BY OR FOR DEFENDANT

Address (Street) 16070 CARLISLE City DETROIT State MICH. Zip Code 48205

Your phone number 313 526-1107 Present employer SELF-EMPLOYED Employer's phone \_\_\_\_\_

Weekly take-home pay 100.00 Your Bank 0 Other income 0

Things you own and their value 0

Debts which you must pay (describe type of debt) \_\_\_\_\_

I request the appointment of assigned counsel for the defense of my pending criminal matter. I am indigent and have no means with which to secure counsel myself. I authorize the courts and the Judicial Aide Department to verify this information and obtain any other information regarding my financial condition and employment they desire in their sole discretion. I give the Judicial Aide and its agents permission to contact any credit reporting agency and review any credit report from any credit reporting agency. I agree to reimburse the County of Macomb all monies expended on my behalf for attorney and defense costs in this matter; and, if I am unable to repay those attorney fees and defense costs in full, I will enter into a reimbursement payment plan at a rate in accordance with my ability to pay. I understand that any bond posted in my name may be applied to victim restitution, court costs, attorney fees and defense costs, before the balance, if any, is returned. I understand that MCL 600.4801 and MCL 600.4803 provide for imposition of a 20% late fee for any amounts due and owing if not paid within 56 days of the due date.

VERIFICATION UNDER MCR 2.114: I declare that I have read and understand all statements written above and that all information provided is true to the best of my information, knowledge and belief.

X Harvey Jackson  
Signature of Defendant

10/02/06  
Date

10/12/2006 08:34 5864455060

38 DISTRICT COURT

PAGE 06/06

10/04/06 14:27 FAX 5864695430

JUD. AIDE CIR. CT.

EASTPOINTE

001

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

PEOPLE OF THE STATE OF MICHIGAN

CASE NO. 08-5833

vs.

JUDICIAL AIDE CASE NO. 2006-005719-CAP

HARVEY E JACKSON  
16020 CARLISLE

DETROIT, MI 48205

CHARGE: HOME INVASION - 1ST DEGREE

750.110A2

COURT: 38TH DISTRICT COURT (EASTPOINTE)

JUDGE: NORENE S REDMOND

EXAMINATION DATE

OCTOBER 11, 2006 at

8:00AM

ORDER APPOINTING COUNSEL

Defendant petitioned for appointment of counsel due to his indigence and agreed to reimburse Macomb County for his defense costs. Thus, the Court ORDERS that

GISKE, KURT J.  
51037 WASHINGTON

P25961

PHONE: (586)725-4856  
FAX: (586)725-1520  
VENDOR NO. V00909

NEW BALTIMORE, MI 48047

is appointed counsel for Defendant, with the obligations set forth in MCR 6.006(H).

The Court further ORDERS that Defendant reimburse the Macomb County for costs incurred in his/her defense.

The Court further ORDERS that the Prosecuting Attorney and defense counsel provide discovery in compliance with MCR 6.201.

DATE: 10/04/2006

ANTONIO P. VIVIANO, CHIEF JUDGE

Request received: OCTOBER 3, 2006  
Order issued: October 4, 2006

For information concerning payment call:  
(586) 469-6284 or (586) 469-6204

Mail all correspondence and payments to:  
Macomb County Judicial Aide  
40 N. Main  
Mount Clemens, MI 48043

1

2 terrified, thanks to you. It's a sad, sad legacy you've  
3 left to your community.

4 I've got no choice. I know I've got an  
5 agreement at this point. And you've probably depended  
6 on that low end of the guideline statement made by the  
7 prosecutor and I'll -- I'll honor that. But I want you  
8 to think about things. You're gonna probably be out  
9 again someday and don't -- first of all, you've got to  
10 give up these drugs. You've ruined your life. And  
11 secondly, you're at the point now where you're gonna be  
12 doing the rest of your life in prison if you don't  
13 straighten out. Think about things.

14 As to count one, three to 20 years Michigan  
15 Department of Corrections, credit for 92 days served,  
16 restitution of thirteen hundred and fifty-seven dollars  
17 and fifty cents to State Farm as a condition of parole,  
18 sixty dollar state cost, DNA testing, crime/victim's  
19 assessment of sixty, pay your attorney fees. As to  
20 count two, eight to 15 years Michigan Department of  
21 Correction, credit for 92 days served, again, sixty  
22 dollar state cost, pay your attorney fees. As to count  
23 four, one to two years Michigan Department of

24

25

1

2 Corrections, sixty dollar state cost, pay your attorney  
3 fees.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Corrections, sixty dollar state cost, pay your attorney fees.

If you choose to appeal your conviction/sentence, you may do so. If you need an attorney and can't afford one, the court will appoint one for you if you qualify. You must make that request within 42 days.

COURT CLERK: I think there's an attorney fee recommendation on there, seven twenty-five.

THE COURT: Oh. Got recommendation on that -- in the amount of seven hundred and twenty-five dollars for Mr. Ciske's services. Would you agree with that, sir?

MR. JACKSON: (No verbal response).

THE COURT: Okay.

MS. GOETZ: Your Honor, People move to dismiss count three and the habitual offense notice.

THE COURT: Motion's granted.

MR. CISKE: Thank you, your Honor.

THE COURT: Thank you.

(Proceedings concluded at about 10:37 a.m.)

STATE OF MICHIGAN 16TH JUDICIAL CIRCUIT MACOMB COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS	CASE NO. 2006-004473-FH
---	--	----------------------------

ORI MI -500015J Court address: Macomb County Circuit Court 40 N. Main, Mt. Clemens, MI 48043 Court telephone number 586-469-5208  
Police Report No. 50EPPD 06-8667

THE PEOPLE OF THE STATE OF MICHIGAN

Defendant's name, address, and telephone no.  
**HARVEY EUGENE JACKSON**

CTN 50-06006235-01	SID 0915251X	DOB 10/22/1959
-----------------------	-----------------	-------------------

Prosecuting attorney name **Toya Goetz** Bar no. **57177**

Defendant attorney name **KURT J. CISKE** Bar no. **P25984**

**THE COURT FINDS:**

1. The Defendant, was found guilty on 11/6/06 of the crime(s) as stated below:  
Date

Count	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC Code
	Plea	Court	Jury			
1	NC				HOME INVASION - 1ST DEGREE	750.110A2
2	NC				ASSAULT W/INTENT TO ROB WHILE UNARMED	750.88
3				NP	Larc in a bldg and Hab	
4	NC				TELEPHONE - TAPPING/CUTTING LINES	750.540

\*For Plea: insert "G" for guilty plea; "NC" for not contending; "MI" for guilty but mentally ill. \*For dismissal: insert "D" for dismissed by court or "NP" for dismissed by prosecution/plaintiff.

- 2. The conviction is reportable to the Secretary of State under MCL 257.625(20)(b). Defendant's driver license number: \_\_\_\_\_
- 3. HIV testing and sex offender registration is completed.
- 4. The defendant has been fingerprinted according to MCL 28.243.

**IT IS ORDERED**

- 5. Probation is revoked.
- 6. Participating in a special alternative incarceration unit is  prohibited.  permitted.
- 7. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM		DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Months	Days	Years	Months		Months	Days	
1	12/14/06		8		20		12/14/06		92	Dismiss Habb and Ct 3
2	12/14/06		8		15		12/14/06		92	DNA
4	12/14/06		1		2		12/14/06		92	

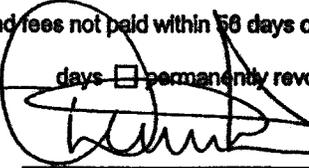
- 8. Sentence(s) to be served: concurrent  
 each other  case numbers \_\_\_\_\_

9. Defendant shall pay as follows: (specify fine and minimum state costs for each count; restitution; assessments for crime victim rights fund; reimbursement; attorney fees; and other costs. \$80.00 CVRS - \$180.00 State Mandatory Costs \$725.00 Initial Defense Costs \$1357.50 Restitution)

The due date for payment is \_\_\_\_\_. Fine, costs, and fees not paid within 58 days of the due date are subject to a 20% late penalty on the amount owed.

- 10. The concealed weapon board shall  suspend for \_\_\_\_\_ days  permanently revoke the concealed weapon license, permit number \_\_\_\_\_, issued by \_\_\_\_\_ County.

11. Court recommendation:  
December 15, 2006  
Date

  
\_\_\_\_\_  
Judge DONALD G MILLER Bar. no. P35064

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(6/05) (SEAL)

  
\_\_\_\_\_  
Deputy court clerk

Original - Court  
1st copy - Institution/Facility  
2nd copy - Prisoner

KF  
C

STATE OF MICHIGAN 16TH JUDICIAL CIRCUIT MACOMB COUNTY	ORDER TO REMIT PRISONER FUNDS FOR FINES, COSTS, AND ASSESSMENTS	CASE NO. <b>2006-004473-FH</b>
---	--	-----------------------------------

Court address: 40 N. Main, Mount Clemens, MI 48043

Court telephone number: (586) 469-5156

Institution name and address

TO:  
CHARLES EGELER REC & GUIDANCE CTR  
3855 COOPER ST  
JACKSON, MI 49201

THE PEOPLE OF  STATE OF MICHIGAN

\_\_\_\_\_

Defendant's name HARVEY EUGENE JACKSON	
Prisoner no. 186370	DOB 10/22/1959
SID 915251X	

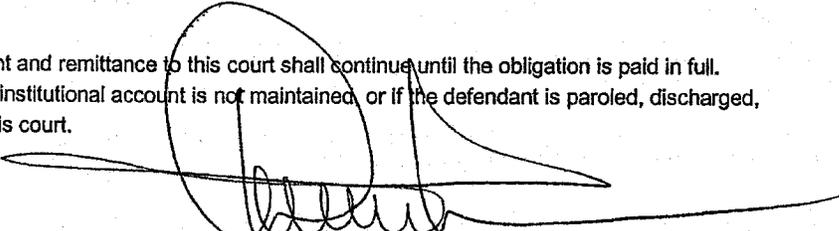
**THE COURT FINDS:**

- The defendant owes a balance of \$ 965.00, not including restitution which is collected by the Department of Corrections in accordance with MCL 791.220h, for the obligation ordered in the judgment of sentence or other order dated 12/15/2006 (copy of judgment of sentence or order attached).

**IT IS ORDERED:**

- For payment toward the obligation, the Department of Corrections shall collect 50% of all funds received by the defendant over \$50.00 each month.
- If the amount withheld at any one time is \$100.00 or less, the Department of Corrections shall continue collecting funds from the defendant's prisoner account until the sum of the amounts collected exceeds \$100.00, at which time the Department of Corrections shall remit that amount to this court to  the address above  the following address:
- Withdrawal from the defendant's prisoner account and remittance to this court shall continue until the obligation is paid in full. If the defendant transfers to a facility at which an institutional account is not maintained, or if the defendant is paroled, discharged, or dies, any withheld funds shall be remitted to this court.

1/17/07  
Date



\_\_\_\_\_  
DONALD G MILLER, Judge Bar no. P35064

**CERTIFICATE OF MAILING**

I certify that on this date I served copies of this order on the warden or supervisor of the facility where the prisoner is incarcerated and on the prisoner by ordinary mail at the above address.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

STATE OF MICHIGAN COUNTY OF MACOMB CIRCUIT COURT	<b>REQUEST FOR APPOINTMENT OF APPELLATE COUNSEL</b>	Circuit Court Case No. <i>06 4473 FH</i> Judicial Aide File No.
PEOPLE OF THE STATE OF MICHIGAN	v	<u>HARVEY E. JACKSON</u> Name

**THIS FORM MUST BE COMPLETED AND RETURNED TO JUDICIAL AIDE WITHIN 42 DAYS AFTER SENTENCING IF YOU WANT THE COURT TO APPOINT A LAWYER FOR YOUR APPEAL!**

**PLEASE PRINT ALL INFORMATION LEGIBLY, BE AS COMPLETE AS POSSIBLE**

16020 CARLISLE ST                      DETROIT                      MICH                      48205  
Address (Street)                      City                      State                      Zip code

364-72-4506                      313, 526-1107                      10, 22, 59                      \_\_\_\_\_  
Social security number                      Phone number                      Birth date                      Driver's License number

NONE                      \_\_\_\_\_  
Present employer                      Employer phone number

NONE                      \_\_\_\_\_                      \_\_\_\_\_                      \_\_\_\_\_  
Employer address                      City                      State                      Zip

\$ 0                      \$ 0                      \$ 0                      \$ 0  
Weekly earnings (After deductions)                      Money in bank (list bank)                      Other savings                      Monthly expenses

(1) \$ 0                      (2) \$ 0                      (3) \$ 0  
Things you own and their value

(1) \$ FINES AND                      (2) \$ LAWYER FEES                      (3) \$ \_\_\_\_\_  
Debts that you must pay (describe type of debt)

NONE                      \_\_\_\_\_                      \_\_\_\_\_  
Kind of public assistance you are receiving, if any                      Amount of public assistance                      Week                      Month                      \_\_\_\_\_  
Assistance case number

**RECEIVED**  
**DEC 21 2006**  
**JUDICIAL AIDE**

**I REQUEST THE APPOINTMENT OF AN ATTORNEY TO APPEAL MY CONVICTION.** I am indigent and have no means with which to secure counsel myself. I authorize the courts and the Judicial Aide Department to verify this information and obtain any other information regarding my financial condition and employment they desire in their sole discretion. I give the Courts, Judicial Aide and any of their agents permission to contact any credit reporting agency and review any credit report from any credit reporting agency. I agree to reimburse the County of Macomb all monies expended on my behalf for attorney and defense costs in this matter, and, if I am unable to repay those attorney fees and defense costs in full, I will enter into a reimbursement payment plan at a rate in accordance with my ability to pay. I understand that MCL 600.4801 and MCL 600.4803 provide for imposition of a 20% late fee for any amounts due and owing if not paid within 56 days of the due date. The total amount is due upon approval of payment to my attorney by the Judicial Aide.

**VERIFICATION UNDER MCR 2.114:** I declare that the statements above are true to the best of my information, knowledge and belief.

Harvey Jackson  
Signature of defendant

\_\_\_\_\_  
Date

**RETURN THIS FORM TO JUDICIAL AIDE, 40 N. MAIN, MT. CLEMENS, MI., 48043**

1 only a nonobjection, whatever that might be.

2 I think the Court, I think the sentence  
3 is appropriate considering the facts of the case  
4 and so the motion is denied.

5 MS. GOETZ: Your Honor, but I, may I  
6 also argue one more point. The fact that counsel  
7 for the defendant did not move to withdraw his  
8 plea.

9 THE COURT: Well, that is a good point.  
10 That is right.

11 MS. YANTUS: Your Honor, there was a  
12 second issue about attorney fees. You had  
13 ordered attorney fees of I believe it was \$725.  
14 And I don't know if anyone else has ever raised  
15 this issue with you.

16 The case law says that you have to  
17 consider that, the Defendant's ability to pay.  
18 And there actually was a very recent Michigan  
19 Supreme Court order saying the same thing about a  
20 week or two ago. When you consider the ability  
21 to pay, you have to consider current and future  
22 ability. And the case law says that you only  
23 order attorney fees when the defendant is  
24 partially indigent meaning, say, for example  
25 somebody could afford to pay a couple hundred

1 dollars for an attorney, but couldn't afford to  
2 retain somebody for a couple thousand.

3 Now with Mr. Jackson he was, according  
4 to the pre-sentence report, he was making roughly  
5 \$200 a month doing handyman jobs.

6 So I would suggest to the court that he  
7 was fully indigent and, therefore, he doesn't  
8 have the ability to pay.

9 And given the fact that you have given  
10 him 8 years plus -- well, 8 years plus. We don't  
11 know how long the prison will hold him, that he  
12 doesn't have a future ability to pay.

13 MS. GOETZ: Your Honor, if I may. I  
14 would note this court based on the sentencing  
15 reviewed the p.s.i. which does not mention,  
16 unless counsel can show us where, that the  
17 Defendant has any physical problems with working.  
18 He was working at the time.

19 And I would argue that based on the  
20 fact that he was working at the time that he  
21 committed this crime, and that you made it a  
22 condition of parole, not ordering him to pay at  
23 this moment, that he would have the ability to  
24 pay.

25 Now granted it wouldn't be, based on

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

his income it wouldn't be immediately all in one lump sum, but he has the ability; as well as also the ability if there is a problem with his ability to pay as a condition of parole, he can come to this court.

THE COURT: Yes. Attorney fees absent a presentation made at sentencing to waive the fee because of indigency, I don't believe that was done. So we'll have to deny that motion as well.

MS. YANTUS: Thank you, Your Honor.

THE COURT: Thank you.

**MACOMB COUNTY  
CIRCUIT COURT  
HEARING DISPOSITION**

Hearing Disposition 17a  
(UnitCC\_Hear\_Dis)

Circuit Court Motion

PEOPLE VS. **HARVEY EUGENE JACKSON**  
  
CTN: 50-6006235-01  
SID: 0915251X  
O.B.

**ERIC J. SMITH**  
PROSECUTING ATTORNEY  
  
DATE: **07/02/2007**

DEFENSE COUNSEL SIGNATURE  
**ANNE YANTUS- SADO**  
  
JUDGE  
**Donald G. Miller**

ASSISTANT PROSECUTING ATTORNEY  
ASSIGNED:  
SIGNED APA: *Tonya Goetz*

CIRCUIT COURT NUMBER:  
PA FILE NUMBER: **06-4473-FH**  
DISTRICT COURT NUMBER: **06-005933**  
**06-005933**  
**06-8667**

OFFENSE: **Police Complaint Number:**

COUNT 1 _____	MCLA _____
COUNT 2 <u>HOME INVASION - 1ST DEGREE</u>	MCLA <u>750/110A2</u>
COUNT 3 <u>ASSAULT WITH INTENT TO ROB WHILE UNARMED</u>	MCLA <u>750/68</u>
COUNT 4 <u>LARCENY IN A BUILDING</u>	MCLA <u>750/300</u>
<input type="checkbox"/> THERE ARE ADDITIONAL CHARGES	<u>750/540</u>
<u>TELEPHONE - TAPPING/CUTTING LINES</u>	

} <input type="checkbox"/> JURY	V E R D I C T	} <input type="checkbox"/> NOT GUILTY	C H A R G E	} COUNT 1 <input type="checkbox"/> _____
} <input type="checkbox"/> NON JURY				} COUNT 3 <input type="checkbox"/> _____
				} COUNT 4 <input type="checkbox"/> _____

Lesser Include Offense Of: \_\_\_\_\_

<input type="checkbox"/> GUILTY	<input type="checkbox"/> PSI ORDERED	SENTENCE DATE: _____
<input type="checkbox"/> NO CONTEST	<input type="checkbox"/> PROBATE REPORT ORDERED	
<input type="checkbox"/> ACCEPTED		
<input type="checkbox"/> U/A		

<input type="checkbox"/> BY PEOPLE	<input type="checkbox"/> GRANTED	TITLE OF MOTION: <u>TO CORRECT MISTAKEN</u> <u>SENTENCE</u>
<input checked="" type="checkbox"/> BY DEFENDANT	<input checked="" type="checkbox"/> DENIED	
	<input type="checkbox"/> U/A	

DESCRIPTIVE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

HIV TESTING

SUBSTANCE ABUSE / ALCOHOL SCREENING

DISPOSITION

DEFENDANT DISCHARGED / DISMISSED

DEFENDANT REMANDED TO CUSTODY

RELEASED (ON OWN RECOGNIZANCE ON BOND POSTED)

BOND: \_\_\_\_\_

POLICE AGENCY \_\_\_\_\_

*Donald G. Miller*  
CIRCUIT COURT JUDGE

EASTPOINTE POLICE DEPARTMENT  
OFFICER IN CHARGE: **DET. JAMES** **PLEASE PRESS FIRMLY**

**Court of Appeals, State of Michigan**

**ORDER**

People of MI v Harvey Eugene Jackson

Docket No. 282579

LC No. 2006-004473 FH

Deborah A. Servitto  
Presiding Judge

Henry William Saad

Pat M. Donofrio  
Judges

---

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.



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

JAN 30 2008

Date

*Sandra Schultz Mengel*  
Chief Clerk

# Order

Michigan Supreme Court  
Lansing, Michigan

January 28, 2009

Marilyn Kelly,  
Chief Justice

135888

Michael F. Cavanagh  
Elizabeth A. Weaver  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
Diane M. Hathaway,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 135888  
COA: 282579  
Macomb CC: 2006-004473-FH

HARVEY EUGENE JACKSON,  
Defendant-Appellant.

On order of the Court, the application for leave to appeal the January 30, 2008 order of the Court of Appeals is considered, and it is GRANTED. The parties shall include among the issues to be briefed: (1) whether *People v Dunbar*, 264 Mich App 240 (2004), was correctly decided; (2) whether trial courts are required to consider a defendant's ability to repay attorney fees as articulated in *Dunbar* before ordering the defendant to commence reimbursement of attorney fees pursuant to MCL 769.1k; (3) whether *Dunbar* correctly held that a challenge to an order for repayment of attorney fees may be premature until collection efforts have begun; (4) what standards should govern a trial court's determination of whether a defendant should be responsible for the repayment of attorney fees and when repayment should begin, including what consideration, if any, should be given to a defendant's other financial obligations (such as restitution or child support), or a defendant's incarceration; and (5) whether imposing a 20 percent late fee pursuant to MCL 600.4803(1) constitutes an impermissible collection effort or sanction for non-payment or provides a means of enforcement that exposes a defendant to more severe collection practices than the ordinary civil debtor. See *Dunbar*, *supra* at 253.

The Clerk of the Court is directed to place this case on the April 2009 session calendar for argument and submission. Appellant's brief and appendix must be filed no later than March 2, 2009, and appellee's brief and appendix, if appellee chooses to submit an appendix, must be filed no later than March 27, 2009.

The Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan are invited to file briefs amicus curiae, to be filed no later than April 2, 2009. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae, to be filed no later than April 2, 2009.



d0127

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 28, 2009

Clerk