

SUPREME COURT OF MICHIGAN

People of the State of Michigan v. Kena Banks

769 N.W.2d 221 (Mich. 2008) · No. 136524 · Decided November 14, 2008

SUMMARY

The Michigan Supreme Court denied Kena Banks's application for leave to appeal under MCR 6.508(D) concerning collection of court-appointed attorney fees from prisoner funds. Justice Corrigan concurred, concluding that Michigan statutes authorize collection without a prior ability-to-pay hearing for an incarcerated defendant. Justice Kelly dissented, stating that the trial court should have conducted a hearing under *People v. Dunbar* to assess the defendant's present and future ability to pay.

CASE DETAILS

COURT	Supreme Court of Michigan
JURISDICTION	Michigan
DECIDED	November 14, 2008
DOCKET	136524
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Defendant sought Michigan Supreme Court review of the Court of Appeals' denial of leave to appeal from the trial court's denial of her motion to modify an attorney-fee reimbursement order and to suspend collection from her prison account.
STANDARD OF REVIEW	Whether the defendant established entitlement to post-conviction relief under MCR 6.508(D).
PRECEDENTIAL VALUE	limited
PARTIES	Kena Banks v. People of the State of Michigan

TOPICS

- post-conviction relief
- appellate procedure
- restitution criminal
- criminal procedure
- statutory interpretation

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure
- restitution
- remedies

QUESTIONS PRESENTED

1. Whether Banks established entitlement to relief under MCR 6.508(D) from the order requiring collection of court-appointed attorney fees from her prison account.
2. Whether a trial court must conduct a *People v. Dunbar* ability-to-pay hearing before ordering the Department of Corrections to remit prisoner funds for court-appointed attorney fees.

HOLDINGS

1. Banks failed to meet her burden of establishing entitlement to relief under MCR 6.508(D); therefore, the Michigan Supreme Court denied her application for leave to appeal.

KEY QUOTATIONS

“the application for leave to appeal the April 2, 2008 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D).” (769 N.W.2d 221)

“This statutory scheme leaves no room for a Dunbar requirement where the defendant is in prison, so defendant here is ineligible for a Dunbar hearing.” (769 N.W.2d 222)

“For these reasons, I would remand this case to the trial court for a Dunbar hearing.” (769 N.W.2d 223)

FACTUAL BACKGROUND

In 2003, Banks pleaded no contest to assault with a dangerous weapon and was sentenced to probation, with a later-calculated obligation of \$810 in court-appointed attorney fees. After she pleaded guilty to second-degree murder and began serving a 22-to-40-year prison sentence, the trial court ordered the Department of Corrections to collect 50 percent of funds she received over \$50 per month and remit them to Macomb County. Banks moved to modify the attorney-fee order, seeking suspension of payments during imprisonment and a hearing on her ability to pay upon release.

PROCEDURAL HISTORY

Banks pleaded no contest to assault with a dangerous weapon in 2003 and was ordered to pay court-appointed attorney fees. After she later received a prison sentence for second-degree murder, the trial court ordered the Department of Corrections to deduct qualifying funds from her prison account and remit them to the county. The trial court denied her motion to modify the attorney-fee order, and the Court of Appeals denied leave to appeal under MCR 6.508(D). The Michigan Supreme Court denied leave to appeal because Banks failed to establish entitlement to relief under MCR 6.508(D).

DISPOSITION

writ_denied

CASES CITED

- *People v. Dunbar*, 264 Mich. App. 240, 690 N.W.2d 476 (2004)
- *People v. Guajardo*, 213 Mich. App. 198, 539 N.W.2d 570 (1995)

- People v. LaPine, 63 Mich. App. 554, 234 N.W.2d 700 (1975)
- People v. Trapp (On Remand), 280 Mich. App. 598, 760 N.W.2d 791 (2008)
- People v. Trapp, 482 Mich. 1044, 769 N.W.2d 219 (2008)

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