STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee

v.

KWAME KILPATRICK
Defendant-Appellant

No.

L.C. Nos: 08-010496-01
08–010777-01

ANSWER TO MOTION FOR RECONSIDERATION

KYM L. WORTHY
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County of Wayne

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NOW COME the People of the State of Michigan, by Kym L. Worthy, Prosecuting Attorney, and Timothy A. Baughman, Chief, Research, Training, and Appeals, and in answer to the emergency application motion for reconsideration say as follows:

1. Defendant has moved for reconsideration of this court's order denying his motion for stay, while holding the application for leave to appeal in abeyance pending receipt of transcripts. This court should deny the motion for reconsideration, and deny the application at this time.

2. MCR 2.119(F)(3), applicable here under MCR 7.215(I)(1), provides that "Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error."

3. Defendant does not meet this standard. The motion is essentially a "rant," complaining of the trial judge and that defendant "is not being allowed to move forward," and explaining that though defendant "has expended considerable sums to keep up appearances," this is necessary because "the clientele he must establish a rapport with are likely to be the privileged and the affluent."

4. This is a remarkable motion, taking no heed of the millions of dollars in cost to the taxpayers of the City of Detroit by defendant's actions, and in no way meets the standards of the court rule. The order for restitution in this case is only a fraction of the cost to the City of Detroit by defendant's actions. A review of the payment schedule was caused by defendant himself, when he filed pleadings indicating he could only afford $6.00 a month. A hearing on review of the payment schedule revealed failures to disclose assets and an extravagant lifestyle. This resulted in an adjustment of the payment schedule, requiring two lump sum payments toward the total amount of $1,000,000.00, these payments to occur at specified times.

5. Defendant has not met the deadline for the first lump-sum payment. A probation-violation warrant will be issued. A probation-violation hearing will be held pursuant to that warrant, at which defendant may present any defense he wishes regarding ability to pay. See MCL 780.766(14). Should the trial judge revoke probation, defendant has an appeal as of right from that order and any sanctions imposed, and may seek a stay at *that* time. For this court to intercede at this juncture would be extraordinary.

6. This matter should proceed as do all other probation-violation hearings. A hearing will be held, the trial judge will rule, and the defendant may seek relief, if necessary, from any order entered at the end of that hearing. Again, *People v Jackson*, 483 Mich 271 (2009) supplies the analogy, holding, in the context of imposition of an order to payback a portion of assigned

counsel fees, that "defendant is not entitled to an ability-to-pay assessment until the imposition of the fee is enforced." No enforcement will have occurred here unless and until probation is actually violated and some sanction imposed. Leave should be denied, and defendant should seek remedies according to the ordinary course if necessary at the conclusion of the probation-violation hearing.

Relief

WHEREFORE, the People request that reconsideration be denied, and leave denied at this time.

Respectfully submitted,

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Prosecuting Attorney
County of Wayne

TIMOTHY A. BAUGHMAN
Chief of Research
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