Court of Appeals, State of Michigan

ORDER

People of MI v Garrett Eugene Miner

Docket No. 297489

LC No. 2007-001745-FD

Richard A. Bandstra
Presiding Judge

William B. Murphy, C.J.

Joel P. Hoekstra
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the Court orders that the February 19, 2010 decision of the trial court granting a delayed sentence is PEREMPTORILY REVERSED and its March 17, 2010 order effectuating that ruling is VACATED. By order entered on March 5, 2009, this Court remanded these proceedings for "RESENTENCING of defendant within the guidelines." The trial court was duty bound to comply strictly with the mandate of the appellate court. *Taxpayers of Michigan Against Casinos v Michigan*, 478 Mich 99, 111-112; 732 NW2d 487 (2007); *Rodriguez v General Motors Corp (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994). The imposition of a delayed sentence constitutes an action outside the scope of our remand order. Accordingly, this matter is REMANDED for the prompt resentencing of defendant within the sentencing guidelines range. The trial court is not precluded, however, from imposing a sentence that departs from the guidelines range so long as the court identifies on the record substantial and compelling reasons that are objectively verifiable to justify its departure, *People v Babcock*, 469 Mich 247; 666 NW2d 231 (2003), and explains why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been, *People v Smith*, 482 Mich 292; 754 NW2d 284 (2008). Because more than 18 months have passed since defendant's initial sentencing, the trial court may look to conduct and events occurring since that initial sentencing when determining whether a sentence within the guidelines range is appropriate. See *People v Fields*, 448 Mich 58, 77; 528 NW2d 176 (1995). This order has immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.

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

MAY 18 2010
Date

Sandra Schultz Mengel
Chief Clerk