Court of Appeals, State of Michigan

ORDER

People of MI v Timothy Lawrence Thompkins

Docket No. 300432

LC No. 10-004768-FC

Christopher M. Murray
Presiding Judge

Michael J. Talbot

Deborah A. Servitto
Judges

This matter arises from defendant's appeal of right from his conviction of second-degree criminal sexual conduct, MCL 750.520c(1)(b)(ii). This matter came before the Court on its January 5, 2012 case call calendar. In preparation for this case, the Court ordered the parties to appear before the Court and address whether the evidence established that defendant was related to the victim "by blood or affinity to the fourth degree" as required by MCL 750.520c(1)(b)(ii). Counsel appeared, and the prosecution conceded error in defendant's conviction because the evidence established that defendant was as a matter of law and fact not related to the victim "by blood or affinity to the fourth degree", and therefore could not be prosecuted or convicted of this crime. See *People v Zajaczkowski*, __ Mich App __, __; __ NW2d __ (Docket No. 295240, issued July 26, 2011). First cousins are related to the fourth degree of affinity, *Crystal v Hubbard*, 414 Mich 297, 313 n 6; 324 NW2d 869 (1982), but defendant and the victim were once removed. CJI2d 20.4.

Accordingly, the Court hereby ORDERS that the judgment encompassing defendant's conviction and sentence for second degree criminal sexual conduct in violation of MCL 750.520c(1)(b)(ii) is hereby VACATED and this matter is REMANDED to the trial court for entry of an appropriate order of dismissal.

IT IS FURTHER ORDERED that defendant shall be immediately transferred from the Department of Corrections to the Wayne County Circuit Court for purposes of the proceedings on remand.

This order has immediate effect. The Court does not retain jurisdiction.

Presiding Judge

A true copy entered and certified by Larry S. Royster, Chief Clerk, on

JAN 06 2012
Date

Chief Clerk