

Court of Appeals, State of Michigan

ORDER

People of MI v Jason Lee Shaver

Docket No. 300959

LC No. 09-011041-FC

Joel P. Hoekstra
Presiding Judge

Kirsten Frank Kelly

Jane M. Beckering
Judges

The Court orders that this matter is REMANDED for the following purposes:

(1) The trial court shall conduct an in-camera evidentiary hearing to allow defendant to present evidence regarding the facts underlying the victims' father's conviction of first-degree criminal sexual conduct, MCL 750.520(2)(b), arising out of his sexual conduct with the victims. The trial court shall determine whether the facts underlying the father's conviction are highly similar to the conduct the victims testified to in the instant proceeding so as to be relevant to explain the victims' age-inappropriate knowledge. See *People v Morse*, 231 Mich App 424, 437; 586 NW2d 555 (1998). As we stated in *Morse*, 231 Mich App 438, the trial court may consider alternate means of admitting the evidence other than calling the victims to testify. Such alternate means may include official documents involving the father's conviction, or by stipulation. If the victims are called to testify about the prior abuse, the court should guard against excessive cross-examination. Furthermore the court should limit any such examination to the information relevant to the defense. See *State v Budis*; 125 NJ 519, 533; 593 A2d 784 (1991). The trial court shall detail its findings of fact and conclusions of law on the record or in a written opinion.

(2) The trial court shall conduct an evidentiary hearing to determine whether defendant was denied the effective assistance of counsel at trial based on his counsel's failure to investigate and present exculpatory witnesses and evidence. See *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973). The trial court shall detail its findings of fact and conclusions of law on the record or in a written opinion.

We retain jurisdiction. Proceedings on remand in this matter shall commence within 35 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded.

The parties shall promptly file with this Court a copy of all papers filed on remand. The trial court shall complete the proceedings within 112 days after the issuance of this order. Appellant shall file with this Court copies of all orders entered on remand within seven days of their entry. The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



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

DEC 16 2011

Date


Chief Clerk