

Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V RANDOLPH K BROWN

Docket No. 302300

LC No. 2010-233448-FH

Pat M. Donofrio
Presiding Judge

Henry William Saad

Deborah A. Servitto
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting leave to appeal, the Court orders that the Oakland Circuit Court's December 27, 2010 order to strike prior offense and to dismiss is REVERSED, and the matter REMANDED to the circuit court for trial on the charge of operating while intoxicated or impaired, third offense, MCL 257.625. Defendant did not serve any time in jail for his 1989 OUIL conviction and so was not "actually imprisoned" for that misdemeanor conviction. Since defendant was not actually imprisoned, he did not have the right to appointed counsel at the time he pleaded guilty and his 1989 plea-based conviction for OUIL can be used to enhance the current charge to OWI third offense. *People v Reichenbach*, 459 Mich 109; 587 NW2d 1 (1998); *People v Haynes*, 256 Mich App 341; 664 NW2d 225 (2003).

This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



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

MAR 15 2011

Date


Chief Clerk