

Court of Appeals, State of Michigan

ORDER

People of MI v Thomas George Burger

Docket No. 306722

LC No. 10-014843-FH

Michael J. Kelly
Presiding Judge

Patrick M. Meter

Amy Ronayne Krause
Judges

We conclude that there were no errors warranting a new trial or resentencing; for that reason, we DENY defendant's application for leave to appeal. However, we agree that the trial court plainly erred when it scored Offense Variable (OV) 17 at ten points, because the crime at issue did not involve the negligent "operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive." MCL 777.22(i); see also MCL 777.47. Moreover, although the scoring error does not warrant resentencing, see *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006), we nevertheless REMAND this matter to the trial court to amend the sentencing report to reflect a score of zero for OV 17. We do not retain jurisdiction.



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

NOV 21 2011

Date


Chief Clerk