

Court of Appeals, State of Michigan

ORDER

People of MI v Kevin Allen Ferguson

Docket No. 307416

LC No. 10-038504-FC

William B. Murphy, C.J.
Presiding Judge

Jane E. Markey

Jane M. Beckering
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the delayed application for leave to appeal, the Court VACATES defendant's sentence. The trial court abused its discretion when it assigned 50 points to Offense Variable 7 where the acts engaged in by defendant were not acts in excess of those necessary to accomplish the robbery and were not of an egregious nature such that it may be concluded that the acts were designed to substantially increase the fear and anxiety the victims suffered during the offense. *People v Hunt*, 290 Mich App 317; ___ NW2d ___ (2010); *People v Kegler*, 268 Mich App 187; 706 NW2d 744 (2005); *People v McLaughlin*, 258 Mich App 635; 672 NW2d 860 (2003); *People v Johnson*, 206 Mich App 122; 520 NW2d 672 (1994). This matter is REMANDED to the Monroe Circuit Court for the rescoring of OV 7 as zero points and resentencing. *People v Francisco*, 474 Mich 82; 711 NW2d 44 (2006). This order has immediate effect. MCR 7.215(F)(2). The Court does not retain jurisdiction.



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

FEB 08 2012

Date


Chief Clerk