

# Court of Appeals, State of Michigan

## ORDER

People of MI v Justin Timothy Comer

Docket No. 309402

LC No. 11-001804-FC

Michael J. Talbot  
Presiding Judge

Christopher M. Murray

Karen M. Fort Hood  
Judges

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The Court orders that, in lieu of granting the delayed application for leave to appeal, defendant's sentence is VACATED and the matter is REMANDED for resentencing. The trial court's score of 15 points for offense variable (OV) 10 was erroneous because there was no evidence establishing that defendant engaged in predatory conduct. Rather, the evidence showed that defendant engaged in "purely opportunistic criminal conduct" at the time he committed the criminal sexual conduct offense. *People v Huston*, 489 Mich 451, 462; 802 NW2d 261 (2011). Defendant's OV 10 score should have been 5 points, placing him in cell C-I with a guidelines' range of 42 to 70 months, not 51 to 85 months. MCL 777.62. Although defendant's minimum sentences are still within the lowered guidelines' range, he may nevertheless be entitled to resentencing. *People v Francisco*, 474 Mich 82; 711 NW2d 44 (2006). We do not retain jurisdiction.



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

JUN 29 2012

Date

Chief Clerk