

11

# Court of Appeals, State of Michigan

## ORDER

People of MI v Charles David Hemminger

Docket No. 309749

LC No. 11-004078-FH

Jane E. Markey  
Presiding Judge

David H. Sawyer

Jane M. Beckering  
Judges

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Pursuant to MCR 7.205(D)(2), in lieu of granting the delayed application for leave to appeal, the Court VACATES the October 13, 2011 judgment of sentence and REMANDS this matter to the Jackson Circuit Court for resentencing. As the prosecutor concedes, the sentencing court lacked authority to impose the sentence consecutively to a probation violation sentence. *People v Malone*, 177 Mich App 393, 401-402; 442 NW2d 658 (1989). In the event that the court chooses to depart from the sentencing guidelines during resentencing, the court must state on the record substantial and compelling reasons to justify its departure, see *People v Babcock*, 469 Mich 247; 666 NW2d 231 (2003), and explain why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been, *People v Smith*, 482 Mich 292, 304; 754 NW2d 284 (2008). This order has immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



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

**JUN 19 2012**

Date

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line. Below the line, the words "Chief Clerk" are printed.

Chief Clerk