

Court of Appeals, State of Michigan

ORDER

People of MI v Wade Lee Davis

Docket No. 310203

LC No. 2011-001692-FH

David H. Sawyer
Presiding Judge

Douglas B. Shapiro

Mark T. Boonstra
Judges

The Court orders that, in lieu of granting the delayed application for leave to appeal, this case is REMANDED to the trial court for resentencing. The trial court erred in considering individual members of the relevant Veterans of Foreign Wars (VFW) post to have been victims of the embezzlement crime in this case for purposes of scoring offense variable (OV) 9 of the sentencing guidelines. Rather, because only the VFW post suffered direct property loss as a result of the embezzlement, only the VFW post as an entity is properly considered a victim of the embezzlement crime for purposes of scoring OV 9. See *People v Carrigan*, ___ Mich App ___, (Docket No. 302090, released August 2, 2012), p 2 (improper to score 25 points for OV 9 based on 20 or more victims based on indirect harm to members of the community where direct damage done to two schools owned by same school district). Because there was only one victim for purposes of scoring OV 9, zero points should have been scored for that guidelines variable, MCL 777.39(1)(d), rather than the 25 points scored by the trial court. We note that, because the embezzlement crime was the sentencing offense for which the sentencing guidelines were scored, only defendant's conduct during that offense is properly considered in scoring OV 9. *Carrigan*, p 1. Because the incorrect scoring of OV 9 affected the sentencing guidelines range, defendant is entitled to resentencing. *Id.*, p 2. In light of this analysis, we need not reach the second issue presented in defendant's delayed application for leave to appeal. We retain no jurisdiction.



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

NOV 29 2012

Date


Chief Clerk