

# Court of Appeals, State of Michigan

## ORDER

People of MI v Robert Jensen Schwander

Docket No. 307921

LC No. 2011-011239-FC

Mark J. Cavanagh  
Presiding Judge

Joel P. Hoekstra

Douglas B. Shapiro  
Judges

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The Court orders that defendant's sentence is VACATED and this matter is REMANDED for resentencing before a different judge. On remand, the trial court did not articulate why the identified substantial and compelling reasons justified the *extent* of the departure sentence. *People v Smith*, 482 Mich 292; 754 NW2d 284 (2008). And, although the trial court resentenced defendant, it did so in a manner inconsistent with the procedures mandated by MCR 6.425. Because the presiding judge in this matter would reasonably be expected upon remand to have substantial difficulty in putting aside his previously expressed views, and to preserve the appearance of justice, we order that the resentencing be conducted by a different judge. See *People v Hill*, 221 Mich App 391; 561 NW2d 862 (1997). We do not retain jurisdiction.

Cavanagh, P.J. dissents for the reasons set forth in his dissenting opinion in this matter.



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

APR 09 2013

Date

A handwritten signature in black ink, appearing to read "Larry S. Royster".  
Chief Clerk