

Court of Appeals, State of Michigan

ORDER

People of MI v Adrian Zamarripa

Docket No. 316925

LC No. 12-004922-FH

Stephen L. Borrello
Presiding Judge

William C. Whitbeck

Amy Ronayne Krause
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

Ronayne Krause, J., would remand for re-sentencing. At the time of defendant's first sentencing, his guidelines range was 19-38 months, based on scoring OV 4 at 10 points, OV 10 at 15 points, and OV 13 at 25 points, for a total of 50 OV points. Although the scoring of OV 4 is reflected in the transcript, the scoring worksheet did not reflect this change from the PSIR. Consequently, the initial sentence of 38 months to 15 years was within the guidelines range. At defendant's re-sentencing, defendant did not object to the scoring of OV 4, but argued that OV 13 and OV 10 should have been scored at only 10 points. The trial court took the matter under advisement. The trial court's subsequent order incorrectly stated that defendant's initial guidelines range was based on an assessment of only OV 10 at 15 points and OV 13 at 25 points. The trial court agreed with defendant and reduced OV 10 to 10 points and OV 13 to zero points. However, the court sua sponte scored OV 8 at 15 points and OV 4 at 10 points, apparently under the mistaken impression that it had not previously scored OV 4. Consequently, the court incorrectly concluded that defendant's guidelines score had not changed, when in fact his new total OV score was only 40 OV points. Therefore, his guidelines range was reduced to 12-24 months, and defendant's unchanged sentence is now outside the guidelines range. Re-sentencing is mandatory.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 05 2013

Date

Chief Clerk