

Court of Appeals, State of Michigan

ORDER

People of MI v Jason Robert Morrison

Docket No. 318948

LC No. 10-020091-FH; 10-020173-FH

Douglas B. Shapiro
Presiding Judge

Jane E. Markey

Mark T. Boonstra
Judges

This matter is before the Court on defendant's Motion for Reconsideration of this Court's January 9, 2014 order. This court in that order "remand[ed] this case to the trial court for the court to either articulate its reasons for the extent of the guideline departure imposed, or to resentence the defendant. *People v Smith*, 482 Mich 292; 754 NW2d 284 (2008)." Subsequent to that order, and in accordance with its stated requirements, the trial court issued its written reasons for the extent of its previous guideline departure. Defendant then moved for reconsideration of this Court's January 9, 2014 order.

On further consideration, we note that *Smith* allows for alternative interpretations of the appropriate relief to be granted in circumstances, such as in this case, where the trial court at sentencing failed to articulate adequate reasons to support the extent of the departure imposed. Specifically, our Supreme Court in *Smith* initially stated that the appropriate remedy was to "vacate [the] defendant's sentences and . . . remand . . . to the trial judge for resentencing *and* articulation of the rationale for the extent of *any departure made on remand*." *Id.*, 482 Mich at 295 (emphases added). Subsequently in the *Smith* opinion, the Court stated that the appropriate remedy was to "vacate [the] defendant's sentences and remand the case to the trial judge so that he may articulate why *this* level of departure is warranted *or* resentence defendant." *Id.*, 482 Mich at 311 (emphases added). In the concluding section of the *Smith* opinion, the Court returned to its initial statement, and held, "We vacate defendant's sentences and remand this case to the trial judge for resentencing *and* for an explanation of the extent of *any departure made on remand*." *Id.*, 482 Mich at 319 (emphases added).

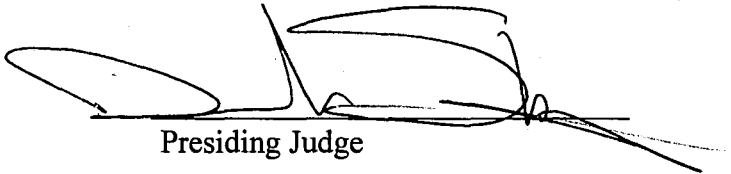
Smith is therefore arguably ambiguous with respect to whether it is appropriate in these circumstances to allow the trial court, on remand, to simply articulate the rationale for the extent of the previous departure that occurred at sentencing (as our January 9, 2014 order allowed in this case), or whether, alternatively, the trial court must be required to resentence the defendant and to articulate at that time the extent of any departure made on remand. We further note that panels of this Court have, in various unpublished opinions, followed either approach, all while ostensibly following *Smith*.

We conclude that the prudent course is to follow what we perceive to be the holding of *Smith*, as stated in its conclusion, and that, notwithstanding our January 9, 2014 order, we must "vacate defendant's sentence[]" and remand this case to the trial judge for resentencing and for an explanation of the extent of any departure made on remand."

Therefore, the Motion for Reconsideration is GRANTED. In accordance with *Smith*, we vacate defendant's sentence and remand this case to the trial court for resentencing and for an explanation of the extent of any departure made on remand.

We invite our Supreme Court to clarify *Smith* and the appropriate remedy that it requires in the circumstances presented.

We do not retain jurisdiction.


Presiding Judge



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

MAY 19 2014

Date


Chief Clerk