

# Court of Appeals, State of Michigan

## ORDER

People of MI v Elmer Albert Frank III

Docket No. 320265

LC No. 13-005145-FH

Christopher M. Murray  
Presiding Judge

Kurtis T. Wilder

Michael J. Riordan  
Judges

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The Court, pursuant to MCR 7.205(D)(2), and in lieu of granting defendant's delayed application for leave to appeal, hereby VACATES the September 19, 2013 Judgment of Sentence and REMANDS this case for resentencing. Defendant's guidelines were scored at 2-17 months, calling for an intermediate sanction, but the trial court sentenced defendant above those guidelines, to a prison term of 1 to 2 years. The trial court's reasoning for the departure was impermissible, see *People v Lucey*, 287 Mich App 267, 273; 787 NW2d 133 (2010). We therefore remand for resentencing. We do not retain jurisdiction.



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

**MAR 25 2014**

Date

Chief Clerk