

Court of Appeals, State of Michigan

ORDER

People of MI v Mario Willis

Docket No. 320659

LC No. 09-028750-FC

Joel P. Hoekstra
Presiding Judge

Kathleen Jansen

Patrick M. Meter
Judges

In an order dated December 22, 2015, the Michigan Supreme Court vacated this Court's prior decision in *People v Willis*, unpublished opinion per curiam of the Court of Appeals, issued August 11, 2015 (Docket No. 320659), and remanded the case to this Court "for reconsideration in light of *People v Lockridge*, 498 Mich 358[; 870 NW2d 502] (2015)." *People v Willis*, ___ Mich ___ (Docket No. 152553).

Preliminarily, the Supreme Court's decision in *Lockridge* does not implicate the analysis in section II of our prior opinion, addressing the scoring of prior record variable 5, and offense variable (OV) 1, OV 2, OV 3, and OV 19. Accordingly, we reaffirm the analysis in section II of our prior opinion.

Pursuant to *Lockridge*, the trial court erred to the extent that it used judicially-found facts to mandatorily increase the floor of the sentencing guidelines minimum sentence range. *Lockridge*, 498 Mich at 365, relying on *Alleyne v United States*, 570 US ___; 133 S Ct 2151; 186 L Ed 2d 314 (2013). However, because defendant "received an upward departure sentence that did not rely on the minimum sentence range from the improperly scored guidelines . . . defendant cannot show prejudice from any error in scoring the OVs in violation of *Alleyne*." *Lockridge*, 498 Mich at 394.

Regarding the trial court's departure from the sentencing guidelines range, the Supreme Court in *Lockridge* struck down "the requirement of a 'substantial and compelling reason' to depart from the guidelines range in MCL 769.34(3)." *Id.* at 391. The Court held that "the sentencing court may exercise discretion to depart from that guidelines range without articulating substantial and compelling reasons for doing so" and that "[a] sentence that departs from the applicable guidelines range will be reviewed by an appellate court for reasonableness." *Id.* at 392. The "reasonableness" of a sentence is determined by applying the principle of proportionality as delineated in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). *People v Steanhouse*, ___ Mich App ___, ___; ___ NW2d ___ (2015) (Docket No. 318329); slip op at 24. Because defendant was sentenced before *Lockridge* was decided and the trial court was unaware of and not expressly bound by a reasonableness standard rooted in the *Milbourn* principle of proportionality at the time of sentencing, we remand this case to the trial court for further consideration of defendant's sentences consistent with *Lockridge* and *Steanhouse*. See *Steanhouse*, ___ Mich App at ___; slip op at 25. On remand, the trial court shall follow the procedure articulated in *Lockridge*, 498 Mich at 397-398, and modeled on that adopted in *Unites States v Crosby*, 397 F3d 103 (CA 2, 2005). *Steanhouse*, ___ Mich App at ___; slip op at 25. "Defendant may elect to forego resentencing by providing the trial court with prompt notice of his intention to do so. If

notification is not received in a timely manner, the trial court shall continue with the *Crosby* remand procedure as explained in *Lockridge*." *Steanhouse*, ___ Mich App at ___; slip op at 25 (quotation marks and citations omitted).

Consistent with our prior decision, this case shall be reassigned to a different judge on remand.

We do not retain jurisdiction.

Meter, J., I respectfully dissent from the decision to remand. As explained in my dissent of August 11, 2015, I conclude that the trial court was aware of its duty to apply the principle of proportionality in this matter and that the trial court did in fact apply the principle. As such, I would affirm this case in its entirety.



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

FEB 12 2016

Date


Chief Clerk