

Court of Appeals, State of Michigan

ORDER

People of MI v Dennis Ray Magyari

Docket No. 335627

LC No. 2014-252567-FH

Henry William Saad
Presiding Judge

Deborah A. Servitto

Elizabeth L. Gleicher
Judges

The Court orders that in lieu of granting the delayed application for leave to appeal, this case is REMANDED to the trial court for further proceedings consistent with this order. MCR 7.205(E)(2). Based on its remarks at sentencing the trial court does not appear to have considered that its sentence constituted a departure from the sentencing guidelines. MCR 7.205(E)(2). While the sentencing guidelines are advisory under *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015), a trial court must nevertheless take the applicable sentencing guidelines range into account before imposing a sentence that departs from the sentencing guidelines and justify its departure sentence under the principle of proportionality established in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). *People v Steanhouse*, 313 Mich App 1, 46-48; 800 NW2d 297 (2015). On remand, defendant shall be afforded an opportunity to avoid resentencing by promptly notifying the trial court that resentencing will not be sought because of the possibility he could receive a more severe sentence. *Id.*, 48. If such notification is not received in a timely manner the trial court shall determine whether it would have imposed the same sentence under the applicable principles articulated in *Steanhouse*. *Id.*, 48-49. If so, the trial court shall reaffirm the sentence previously imposed. If not, the trial court shall resentence defendant.

We do not retain jurisdiction

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



JAN 10 2017

Date


Chief Clerk