

Court of Appeals, State of Michigan

ORDER

People of MI v Aaron Michael Roush

Docket No. 342658

LC No. 2017-000680-FH

Colleen A. O'Brien
Presiding Judge

Kathleen Jansen

Deborah A. Servitto
Judges

In lieu of granting the delayed application for leave to appeal, the Court orders, pursuant to MCR 7.205(E)(2), that the October 4, 2017 judgment of sentence is VACATED, and the matter REMANDED for resentencing. The majority of the reasons articulated by the trial court, including defendant's extensive history of misdemeanor convictions, are not taken into account by the sentencing guidelines. These are valid reasons to depart. *People v Dixon-Bey*, 312 Mich App 490, 524-525; ___ NW2d ___ (2017). However, defendant's prior felony convictions were taken into account by the prior record variables and defendant's status as a fourth-habitual offender, MCL 769.12. The trial court did not explain why this was insufficient. Thus, while most of the trial court's stated reasons for departing are valid considerations, one, defendant's felony record, is not. Further, a trial court's obligation in explaining its sentencing decision goes beyond simply stating reasons justifying any departure and then stating a sentence. "[T]he trial court's articulation of the reasons for imposing a departure sentence must explain how the extent of the departure is proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Steanhouse*, ___ Mich App ___, ___; ___ NW2d ___ (2017) (Docket No. 318329); slip op at 3. If the trial court again departs from the sentencing guidelines on resentencing, it must justify the extent of the departure in a manner sufficient to permit appellate review. *People v Smith*, 482 Mich 292, 306-311; 754 NW2d 284 (2008).

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



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

APR 11 2018

Date


Chief Clerk