

TABLE OF CONTENTS

Table of Contents	i
Index of Authorities	ii
Statement of Appellate Jurisdiction	iv
Questions Presented	iv
Statement of Facts	1
Argument I	10

A. THE TRIAL COURT’S ASSESSMENT OF TWENTY POINTS FOR PRV-5 [PRIOR MISDEMEANORS], WAS ERROR RESULTING IN A HIGHER GUIDELINES’ RANGE THAN WAS SUPPORTED BY THE RECORD, AND THE SENTENCE IMPOSED THUS WAS BASED ON INACCURATE INFORMATION NECESSITATING RE-SENTENCING; FURTHER,

B. MR. STEVENS WAS DENIED HIS SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING THROUGH COUNSEL’S FAILING TO EXPRESSLY OBJECT AND CHALLENGING THE SCORING OF THE TWENTY POINTS FOR PRV-5 AND THE RESULTING HIGHER GRID-RANGE.

Relief Requested	17
------------------	----

INDEX OF AUTHORITIES

Federal Cases

<i>Glover v United States</i> , 531 US 198; 121 S Ct 696; 148 L Ed 2d 604 (2001)	16
<i>Kimmelman v Morrison</i> , 477 US 365 (1986)	16
<i>North Carolina v Pearce</i> , 395 US 11; 89 S Ct 2072; 23 L Ed 2d 656 (1969)	10
<i>Strickland v Washington</i> , 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1980)	11
<i>United States v Olano</i> , 507 U S 725; 113 S Ct 1770; 123 L Ed 2d 508 (1993)	11

Michigan Cases

<i>People v Allen</i> , 466 Mich 86; 643 NW 2d 227 (2002)	11
<i>People v Babcock</i> , 469 Mich 247; 666 NW2d 231 (2003)	10
<i>People v Barbee</i> , 470 Mich 283; 681 NW2d 348 (2004)	10
<i>People v Crews</i> , __ Mich App __ (2013), decided February 5, 2013 (Docket No. 305830)	15
<i>People v Endres</i> , 269 Mich App 414; 711 NW2d 398 (2006)	15
<i>People v Francisco</i> , 474 Mich 82; 711 NW2d 44 (2006)	16
<i>People v Hegwood</i> , 465 Mich 432; 636 NW2d 127 (2001)	10
<i>People v Jackson</i> , 487 Mich 783; 790 NW2d (2010)	16
<i>People v Jones</i> , 468 Mich 345; 662 NW2d 376 (2003)	11
<i>People v Jones</i> , 403 Mich 527; 271 NW2d 515 (1978)	10
<i>People v Lowery</i> , 258 Mich App 167; 673 NW2d 107 (2003)	10
<i>People v Pickens</i> , 446 Mich 298; 521 NW2d 797 (1994)	11
<i>People v Rodgers</i> , 248 Mich App 702; 645 NW2d 294 (2001)	16

Statutes

MCR 750.411j	14
--------------	----

MCL 769.34	13, 16
MCL 777.55	13, 14
MCL 777.65	12

STATEMENT OF APPELLATE JURISDICTION

Jurisdiction was conferred through Const 1963, art. 1, §20; MCL 600.308(1); MCL 770.3; MCR 7.203(A); MCR 7.204(A)(2)(a); and MCR 6.425(F)(3). The final judgment was entered August 6, 2012, petition for counsel was August 23, 2012, and pursuant to MCR 6.425(F)(3) the Claim of Appeal issued September 4, 2012.

QUESTIONS PRESENTED

I. WHERE THE TRIAL COURT ERRONEOUSLY SCORED TWENTY POINTS FOR PRV-5 [PRIOR MISDEMEANORS], RESULTING IN A HIGHER GUIDELINES' RANGE THAN WAS SUPPORTED BY THE RECORD, AND THE SENTENCE IMPOSED THUS WAS BASED ON INACCURATE INFORMATION AND WAS AN UNSUPPORTED UPWARD DEPARTURE FROM THE APPROPRIATE GUIDELINES' RANGE, IS RE-SENTENCING REQUIRED? FURTHER,

WAS MR. STEVENS DENIED HIS SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING THROUGH COUNSEL'S FAILING TO EXPRESSLY OBJECT AND CHALLENGE THE SCORING OF THE TWENTY POINTS FOR PRV-5, THE RESULTING HIGHER GRID-RANGE, AND UPWARD DEPARTURE?

Defendant-Appellant answers "yes" to both

Plaintiff-Appellee would answer "no"

STATEMENT OF FACTS

Background.

This is an appeal of right by Roland Stevens following a jury-tried conviction of assault with intent to do great bodily harm less than murder, MCL 750.84, as a lesser/alternative offense of the charged assault with intent to murder, and was acquitted of additional counts of felonious assault and first-degree home invasion (Trial transcript ["TT"], 7/02/2012, verdict, 51).

Mr. Stevens was sentenced as a fourth habitual offender b Wayne County Circuit Judge Gregory Bill to a prison term of seven to twenty years, with credit for 151 days (Sentence transcript ["ST"], 8/06/2012, 39).

Judge Bill scored Mr. Stevens at an E-IV level, which, for a fourth habitual offender, provided a range for the minimum term of 29 to 114 months (*Id.* at 18; Appendix A, Sentencing Information Report). At sentencing, the prosecutor successfully sought to increase the points scored for PRV 5, prior misdemeanors, from ten points to twenty points (*Id.* at 4-5). The prior calculations of the parties suggested a prior record variable total score of 45 points; with the additional ten points requested by the prosecutor, the new total was 55 points and the range was changed from D-IV (19 to 76 months) to E-IV (20 to 114 months)(*Id.* at 5; Appendix A).

Trial.

The charge arose from an incident occurring March 7, 2012, at 8886 Lane in Detroit. The prosecution theory was that Mr. Stevens stabbed and intended to kill Luther Albright. The defense was self-defense.

Mr. Albright testified that he was forty-two years-old and lived at 8886 Lane. He said he had known Mr. Stevens for anywhere from three weeks to two months (TT, 6/27/2012, 38-40). At about 2:30 p.m., while he was “scrapping,” or taking things out of his house that he no longer wanted and putting them in a friend’s van, Mr. Stevens -- whom he knew as “King Tut” -- arrived and started cussing at him. Mr. Albright said he tried to ignore Mr. Stevens and tried to avoid an altercation (*Id.* at 40-41).

Albright continued to scrap, and went inside his house; he left the door open. Mr. Stevens entered, Albright said, and said, “You’re my bitch now,” and “Why did you bring all that drama to my house?” (*Id.* at 42, 43). Albright told him he had nothing to do with it [i.e., the drama](*Id.* at 43).

Mr. Albright said the drama involved events from the night before involving two homeless ladies, Maria and Sandra, who had been staying at Albright’s house for less than one week (*Id.* at 44-45, 74). Sandra had walked with Mr. Stevens to his apartment building. After awhile, Maria became worried, and “panicking,” about Sandra, and spent the next hour walking back and forth from Albright’s house to Stevens’

apartment building, and yelling at the building trying to get inside; the people inside the apartment building would not let Maria in. Ultimately, Albright walked over there -- about one block from Albright's house -- with Maria, called to a friend who lived in the building, and he and Maria were let inside. They went to Mr. Stevens' third-floor apartment and Maria knocked, then starting hitting the door, and then kicking the door. Mr. Stevens opened the door and punched Maria. Albright left and went home (*Id.* at 44-47, 72, 77-79, 101). Before he left and went home to bed, Albright could see Sandra inside Mr. Stevens' apartment; she looked okay (*Id.* at 80-81).

In the afternoon of the 7th, when Mr. Stevens came to his house, Mr. Albright said, the two men argued, then Mr. Stevens threw a punch and a fight started. After about five minutes, the two men fell to the ground. They wrestled and rolled around until Mr. Stevens pinned Mr. Albright, and told him "I'm King Tut, bitch" (*Id.* at 48-49). When they were rolling around, Albright said, he felt a wound, but did not see a knife; it "happened so quick" (*Id.* at 50, 92). Stevens left, Albright got up and noticed his back was bleeding and there was blood on the floor (*Id.* at 55). He had received three stab wounds, two on the left-side of his back and one on the lower right-side of his back; one of the wounds collapsed a lung. He also sustained a cut on his forearm and an injury on his head (*Id.* at 50-51, 62, 63). He denied that he had threatened Mr. Stevens (*Id.* at 102).

Mr. Stevens had been to Mr. Albright's house three or four times before that day, and would bring some beer and the me would drink; Albright described their relationship, however, as "nothing" (*Id.* at 53). he could not remember if he had been taking drugs that day, but did not think he did (*Id.* at 67-68).

Maria Castillo testified that she had known Mr. Albright for about six months; she knew Mr. Stevens as "King Tut" (TT, 6/28/2012, 4-5). In March, 2012, she and her girlfriend, Sandra, were living at Albright's.

In the evening of March 6, 2012, some people, including Mr. Stevens, were at Albright's getting high. Sandra left with Mr. Williams, but was only suppose to be gone a little while. Ms. Castillo said she became worried after a couple of hours, so she went to Mr. Stevens' apartment building with Mr. Albright, knocked at his apartment, then pounded, and yelled that if he did not open the door she would kick the door in. She kicked the door, Mr. Stevens opened it and punched her in the face (*Id.* at 5-8, 12-14, 16, 17-18).

Sandra came out of the bathroom and Ms. Castillo told her that Mr. Stevens had punched her. Mr. Stevens invited Ms. Castillo in, so as to not disturb the neighbors, she said, and she sat on the couch crying. Mr. Stevens gave her some money for drugs, so she left, purchased some crack cocaine and returned to Mr. Stevens' apartment and

smoked the drug. After about an hour, Ms. Castillo said, Mr. Stevens and Sandra “got into it,” so the women left. Castillo said Stevens did not want Sandra to leave, so he ran after them and took Sandra’s keys and MP3 player (*Id.* at 8-10).

Ms. Castillo denied that she and/or Sandra took anything from Mr. Stevens’ apartment (*Id.* at 22).

Sandra Williams testified that in March, 2012, she and her significant other, Ms. Castillo, were living at Mr. Albright’s house; she had known Albright for several years (*Id.* at 26-27, 33). She had met Mr. Stevens three or four times before over the previous few weeks (*Id.* at 27, 33).

In the afternoon of March 7, 2012, she was in her room and heard Mr. Albright and Mr. Stevens arguing (*Id.* at 27). She heard Mr. Stevens say, “Man, why you bring that girl over there to kick at my door?” She heard him also ask, “Have I ever did (sic) you wrong, have I ever mistreated you?” She heard Albright answer, “No” (*Id.* at 28-29).

Ms. Williams said she then heard tussling, or struggling, for two or three minutes, then heard a loud thump (*Id.* at 29, 30-31). She then heard the voice of another person she knew as “Knowledge” come into the house, and talk to Mr. Stevens; when she thought Knowledge and Stevens left she came out of the bedroom and saw Albright on the floor; there was blood “everywhere.” She called 911 and then left to look for Ms.

Castillo (*Id.* at 31-32).

The evening before, March 6, 2012, Ms. Williams said, she and Mr. Stevens had been at Albright's, but she went with him to his apartment. She said he offered to give her \$200.00 so she would not have to live on Albright's floor (*Id.* at 35-37). At Mr. Stevenson's she sat on the couch and smoked a couple of "stones;" Mr. Stevens mostly stayed in his room (*Id.* at 38).

About 45 minutes later, Ms. Williams heard Mr. Stevens open the door; Ms. Castillo came in and said something about being punched; Ms. Williams noticed a couple of small bruises on Castillo's face. They got high and Mr. Stevens gave Ms. Castillo some money to buy some more drugs, Ms. Williams said (*Id.* at 40-41).

Later, Ms. Williams said, when she and Ms. Castillo were leaving, Mr. Stevens ran after them in his underwear and wanted some keys, or something; he took her keys, one of her cell-phones, and her MP3. Ms. Williams denied having taken anything from Mr. Stevens' apartment (*Id.* at 42).

Police Officer Robert Sanchez testified that he went to Mr. Stevens' apartment, knocked, and Mr. Stevens answered. Mr. Steven was swearing and it looked like he had been in a fight. Mr. Stevens' hand was bleeding, and was subsequently bandaged by medics. Mr. Stevens, who was cooperative, said that he had gotten into a fight

when the guy attacked him, and he ended up stabbing the guy (*Id.* at 52-56, 59-60).

Police Officer Brian Gadwell testified that he went to Mr. Stevens' apartment and saw that he was sweating; his hand was bleeding and blood was dripping on the floor. A knife was taken from Mr. Stevens' pocket; there was wet blood on the knife (*Id.* at 64-67, 68-69). Mr. Stevens asked the officers to secure his apartment, and told them the keys were on the table, Gadwell said. Officers looked for the keys (*Id.* at 70).

Police Officer Jose Martinez testified that he interviewed Mr. Stevens (*Id.* at 75-76). Mr. Stevens told him that Albright and another person were kicking in his door and had entered the building illegally. He went to talk to Albright, who got physical, the two tussled, fell to the floor and wrestled until Mr. Stevens, who suffered from congestive heart failure and arthritis in his back, pulled his knife and stuck Albright three or four times when it seemed that Albright would not let him up (*Id.* at 81-82).

Mr. Stevens testified that he was 48 years-old and ran his own business of preparing colognes, fragrances, and oils; his products were called the "King Tut Collection" (*Id.* at 97-98). He described Albright as a friend and good neighbor, whom he had known for about seven or eight months (*Id.* at 99, 101). He had met Ms. Castillo and Ms. Williams about one week and one-half before March 7th (*Id.* at 100).

Mr. Stevens said in the evening of March 6, 2012, he was at Albright's house; there

were quite a few people there. No drugs were being used by anyone, including Mr. Stevens (*Id.* at 101-102, 125-126).

He spoke with Ms. Williams, told her about his cologne collection, and told her she could probably assist him. She came to his apartment to look at the collection (*Id.* at 102). After about one and one-half to two hours, there was a banging at the door at the front of the building; he looked out the window and saw Albright and Castillo. About ten minutes later there was a banging at his apartment door. He got close to the door to listen to who was in the hallway and the door flew open and a hysterical lady came in asking, "Where's my wife?." He hit her twice before realizing it was a female and was Ms. Castillo (*Id.* at 107, 148). Mr. Stevens saw Mr. Albright in the hallway before Albright dashed away (*Id.* at 108). Ms. Castillo hollered at Ms. Williams, and Mr. Stevens asked the women to leave. After they left he noticed that his keys, \$457.00 from his wallet and two cell-phones were missing (*Id.* at 111-112, 135, 136).

Mr. Stevens said he went after the women and asked for his things; he tried to find the items, but did not find them. He did not take anything from the women (*Id.* at 111-112). He went to a neighbor and asked the person to call police. He then spent the night trying to fix the door=frame, which had been damaged; the dead-bolt was broken (*Id.* at 112-113, 135).

Mr. Stevens said that he was on Social Security Disability, and suffered from gout in his feet, congestive heart failure, hypertension, arthritis in his back, and he had been robbed and shot twice in 2009, causing him injury and pain (*Id.* at 11-116, 117-118).

In the afternoon of March 7, 2012, he went over to Mr. Albright's house. The door was open, but he knocked and yelled "Dave." Mr. Albright answered, "Yeah." Mr. Stevens, who walked with a cane that day, entered (*Id.* at 118, 120). Mr. Stevens asked him about his keys; Albright became argumentative and grabbed Mr. Stevens' shoulders. Mr. Stevens grabbed Mr. Albright's shirt to keep his balance, the two men rolled to the floor and tussled for a couple of minutes. No punches were thrown. Mr. Stevens said he was having trouble breathing and did not have the strength to get Mr. Albright off of him. He took out his pocketknife and stuck it in Albright's sides. Albright got up, and Mr. Stevens got up and left (*Id.* at 122-123, 149).

Mr. Stevens said he stopped at the store for a beer and then went home to wait for the police (*Id.* at 123-124).

Mr. Stevens was acquitted of assault with intent to murder, felonious assault and first-degree home invasion. He was convicted of assault with intent to do great bodily harm (TT, 7/02/2012, verdict, 51).

ARGUMENT I

A. THE TRIAL COURT'S ASSESSMENT OF TWENTY POINTS FOR PRV-5 [PRIOR MISDEMEANORS], WAS ERROR RESULTING IN A HIGHER GUIDELINES' RANGE THAN WAS SUPPORTED BY THE RECORD, AND THE SENTENCE IMPOSED THUS WAS BASED ON INACCURATE INFORMATION NECESSITATING RE-SENTENCING; FURTHER,

B. MR. STEVENS WAS DENIED HIS SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING THROUGH COUNSEL'S FAILING TO EXPRESSLY OBJECT AND CHALLENGING THE SCORING OF THE TWENTY POINTS FOR PRV-5 AND THE RESULTING HIGHER GRID-RANGE.

Standard of Review and Preservation of Issue

A trial court's sentencing decision is normally reviewed for an **abuse of discretion**; however, questions of law, statutory interpretation, and the implication of constitutional rights are reviewed **de novo**. See *People v Barbee*, 470 Mich 283, 285; 681 NW2d 348 (2004); *People v Babcock*, 469 Mich 247, 253; 666 NW2d 231 (2003); *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001); *North Carolina v Pearce*, 395 US 11; 89 S Ct 2072; 23 L Ed 2d 656 (1969); *People v Jones*, 403 Mich 527; 271 NW2d 515 (1978). Additionally, the trial court's factual findings are reviewed for **clear error**; the trial court's determination that a factor is objective and verifiable, so as to support a departure, is reviewed **de novo**; and the trial court's determination that the objective and verifiable factor(s) constitute a substantial and compelling reason for a departure is reviewed for an **abuse of discretion**. *Babcock, supra*; *People v Lowery*, 258 Mich App 167;

673 NW2d 107 (2003).

Forfeited error, constitutional or nonconstitutional, is subject to the “plain-error” analysis. *United States v Olano*, 507 U S 725, 734; 113 S Ct 1770; 123 L Ed 2d 508 (1993); *People v Allen*, 466 Mich 86, at 89-90; 643 NW 2d 227 (2002); *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999); *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003).

Sixth Amendment effective assistance of counsel claims are reviewed **de novo**, to determine whether the counsel’s performance fell below an objective standard of reasonableness, prejudiced the defendant and as a result denied him a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994); *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1980) (setting forth a two-prong standard that a claimant must show that counsel’s performance fell below an objective standard of reasonableness, and that a reasonable probability exists that, but for counsel’s deficient performance, the result of the proceeding would have been different).

The record does not appear to contain an express objection by counsel to the scoring of PRV 5; however, the record does show that Mr. Stevens had “some question, some issues” (ST, 4) to the scoring of his prior record. Counsel further noted that the prosecutor had an objection to the way the prior misdemeanors had been scored, or, more precisely, that not all of the prior misdemeanors had been scored (*Id.*).

Subsequently, the record shows that the trial court asked counsel about the correctness of the scoring of the misdemeanors, but counsel was four times cut-off before he could answer, and when he answered he stated he did not know if Mr. Stevens was contesting the scoring of the misdemeanors (*Id.* at 8-9, 10). The court then proceeded examining all of the listed prior felonies and misdemeanors (*Id.* at 14-18), accepted the prosecution's argument that 20 points, instead of 10 points, should be scored in PRV 5 (see, e.g., *id.* at 10), and imposed sentence based upon a guidelines' range which included the 20 points for PRV 5 (see Appendix A, SIR).

The issue of the scoring of PRV 5 was, thus, timely addressed, and preserved, in the trial court. Alternatively, the Court might review it for plain error affecting substantial rights.

Analysis

Without the contested 10 additional points scored in PRV 5, for a total of 20 points for that variable, Mr. Stevens would be within the D-IV grid-range with a range for the minimum term of 19 to 38 months [the maximum, however is increased to 76 months for a fourth habitual offender]. MCL 777.65 (Appendix C, sentencing grid). With the additional points, Mr. Stevens' total PRV score was 55 points (Appendix A), which placed him into the E-IV grid (Appendix C).

The Legislature has required trial courts, absent a substantial and compelling reason, to impose a sentence within the appropriate range. MCL 769.34(2).

MCL 777.55 provides for scoring PRV 5 (see Appendix B). An offender with seven or more prior scorable misdemeanor convictions receives 20 points (*Id.*). Only certain misdemeanors may be scored; that is, under MCL 777.55(2), only prior misdemeanors that are offenses against a person, property a controlled substance offense, a weapon offense, or an impaired operation of a motor vehicle, ORV, etc. (see Appendix C, statute).

The Presentence Investigation Report (a copy of which is filed under separate cover) lists Mr. Stevens' prior offenses and contacts with the system as items 1 through 18, between pages 3 and 9. The trial court examined each of the items at sentencing (ST, 14-18).

Mr. Stevens had the following misdemeanors, between the years 1998 and 2009:

- aggravated assault;
- disorderly conduct;
- resisting and obstructing police;
- possession of paraphernalia;
- loitering;

loitering;

loitering;

trespassing and possession of drug paraphernalia;

possession of drug paraphernalia;

possession of drug paraphernalia;

trespassing and indecent exposure.

The offenses against a person or property, and not against public order, would be: aggravated assault, resisting and obstructing; and two trespassing convictions. That is four scorable prior misdemeanors. Four scorable misdemeanors, pursuant to MCL 777.55(1)(c), is scored at 10 points (Appendix C).

Without the extra 10 points in PRV 5 Mr. Stevens would have 45 total PRV points, which places him within the D-level, and a range of 19 to 76 (for a fourth habitual offender). The 10-point error adversely affected the sentencing range. Further, the 84-month minimum actually imposed represents an upward departure.

It is helpful to look at the definition of “controlled substance offense” found in MCL 750.411j(a) [applicable to that chapter], which is:

“a felony violation of part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, concerning controlled substances.”

In the Public Health Code, "controlled substance offense" is defined as "a drug, substance, or immediate precursor included in schedules 1 to 5." See *People v Endres*, 269 Mich App 414, 418; 711 NW2d 398 (2006)("A "controlled substance" is "a drug, substance, or immediate precursor included in schedules 1 to 5 of part 72" of the Public Health Code, MCL 333.7201 *et seq.* MCL 333.7104(2)."). While the Public Health Code "does not directly apply to the statutory sentencing guidelines," *Endres* at 269 Mich App at 419, since "the sentencing guidelines apply to controlled substance offenses that are designated as felonies by the Public Health Code, MCL 777.13m" and there are similar Legislative penal objectives, *id.*, the Public Health Code definition can be applied for purposes of analyzing PRV 5. *Id.*

It is clear that the definitions, regardless of in which chapter found, the focus is upon the substance that is controlled; paraphernalia is not listed in the statutory definitions as a "controlled substance offense," it is not an offense against a person, property or a weapons offense, and it cannot therefore be scored under PRV 5. See, for example, *People v Crews*, __ Mich App __ (2013), decided February 5, 2013 (Docket No. 305830), Sl. Op. p. 10, note 10, where the Court called the question of drug paraphernalia for PRV 5 a close question; the question was not decided there, however, for it did not -- unlike the instant case -- impact the sentencing range.

Counsel was ineffective for not objecting to the mis-scored guidelines. The mis-scoring of PRV 5 was easily discernible. Defense counsel's failure to make appropriate motions or objections can constitute ineffective assistance of counsel, the result of which -- a higher than appropriate sentence -- is actual prejudice. See *Kimmelman v Morrison*, 477 US 365 (1986) (failure to make motion to suppress on search issue constituted ineffective assistance of counsel); *People v Rodgers*, 248 Mich App 702; 645 NW2d 294 (2001) (failure to make proper challenges to sentencing information constitutes ineffective assistance of counsel at sentencing); *Glover v United States*, 531 US 198; 121 S Ct 696; 148 L Ed 2d 604 (2001)(wherein the Supreme Court stated that its jurisprudence has held that any additional incarceration due to counsel's ineffectiveness constitutes prejudice and implicates the Sixth Amendment).

The actual minimum sentence imposed, seven years, or 84 months, is outside the maximum range of correctly-scored guidelines; that is, it represents an unsupported and unwarranted departure. The maximum possible sentence for a fourth habitual offender in the D-IV grid is 76 months. Resentencing is the appropriate remedy. *People v Jackson*, 487 Mich 783, 786; 790 NW2d (2010); *People v Francisco*, 474 Mich 82; 711 NW2d 44 (2006); MCL 769.34(3)(a court may depart from the statutory range if there is a substantial and compelling reason stated on the record).

RELIEF REQUESTED

WHEREFORE, Defendant-Appellant, Roland Stevens, requests this Honorable Court vacate his sentence and remand for resentencing.

Respectfully submitted,

/S/ NEIL J. LEITHAUSER

NEIL J. LEITHAUSER P-33976

Attorney for Defendant-Appellant

101 W. Big Beaver Rd., 14th Flr.

Troy, MI 48084

(248) 687-1404

Dated: May 16, 2013