

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TOMMY ROMAN POLUS,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 184565

LC No. 90-003955-FH

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

In a prior appeal in this case, this Court affirmed defendant's plea-based conviction for third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4), but remanded for further proceedings with regard to whether the sentence of six to fifteen years' imprisonment was affected by an error in the scoring of an offense variable of the guidelines. *People v Polus*, 197 Mich App 197; 495 NW2d 402 (1992). On remand, the trial court conducted a full resentencing before reaffirming the sentence of six to fifteen years' imprisonment. Defendant again appeals as of right, challenging the proportionality of his sentence. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

In reviewing defendant's argument, we note that the power of the trial court on remand was to take such action as law and justice may require so long as it was not inconsistent with the judgment of this Court in the prior appeal. *People v Fisher*, 449 Mich 441, 446; 537 NW2d 577 (1995). We do not believe that the trial court's decision to conduct a full resentencing hearing without first deciding if the original sentencing would be changed in light of the correct scoring of the guidelines comports with the

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**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

direction of this Court in *Polus, supra*. Nevertheless, because it is now clear that the trial court's decision to impose a minimum sentence of six years was not affected by inaccurately scored guidelines and because we find the sentence to be proportionate, there is no basis for granting defendant's request for another resentencing. *In re Dana Jenkins*, 438 Mich 364, 369 n 3; 475 NW2d 279 (1991).

Affirmed.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.