

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEBBIE CAROL MENDEZ,

Defendant-Appellant.

UNPUBLISHED

October 8, 1996

No. 183212

LC No. 94-050906-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant pleaded guilty to violating probation on his underlying conviction of conspiracy to receive and conceal firearms, MCL 750.157(a); MSA 28.354(1) and MCL 750.535b; MSA 28.803(2), and was sentenced to five to ten years' imprisonment. He appeals as of right. We remand for resentencing. This case has been decided without oral argument pursuant to MCR 7.214(A).

Resentencing is required because the trial court based its sentence on inappropriate considerations. *People v Coles*, 417 Mich 523, 546, 550; 339 NW2d 440 (1983); *People v Fleming*, 428 Mich 408, 423-424; 410 NW2d 312 (1987). We also believe that resentencing is required because defendant's sentence is disproportionate. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). Under the circumstances, we hold that resentencing shall be before another judge to preserve the appearance of justice. *People v Evans*, 156 Mich App 68, 72; 401 NW2d 312 (1986).

Remanded for resentencing before a different judge. We do not retain jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.