

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN WILLIAM SCHMIDT,

Defendant-Appellant.

UNPUBLISHED

October 8, 1996

No. 183254

LC No. 94-132714-FC

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

MEMORANDUM.

Defendant pleaded nolo contendere to first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and was sentenced to seven to twenty years' imprisonment. He appeals as of right. We remand for resentencing. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

We find defendant's fourth issue dispositive of this appeal. The record indicates that defendant's attorney was not afforded his right of allocution. For that reason, we must remand the case for resentencing. MCR 6.425(D)(2)(c); *People v Sean Jones (On Rehearing)*, 201 Mich App 449, 453; 506 NW2d 542 (1993); *People v Theobald*, 117 Mich App 216; 323 NW2d 658 (1982).

Since we are remanding for a full resentencing, we do not address defendant's other sentencing issues. However, we direct the trial court on remand to respond to any challenges made by defendant at the resentencing hearing to the contents of the presentence report in accordance with MCR 6.425(D)(3). Unless reversed or modified by our Supreme Court or a special panel of this Court pursuant to Administrative Order No. 1994-4, 435 Mich xci, we also direct the trial court to follow the rule of law established by *People v Polus*, 197 Mich App 197; 495 NW2d 402 (1992), when

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

resolving any challenge to the score of Offense Variable 12 of the guidelines. See *People v Hyland*, 212 Mich App 701; 538 NW2d 465 (1995), lv pending. Finally, we deny defendant's request to have resentencing conducted by a different judge. *People v Evans*, 156 Mich App 68; 401 NW2d 312 (1986).

Remanded for resentencing. No further jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan