

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 158989

Berrien Circuit Court
LC No. 92-002142-FH

TERRENCE ALLEN WALKER,

Defendant-Appellant.

Before: White, P.J., and Sawyer, and R.M. Pajtas,* J.

White, J. (concurring in part and dissenting in part).

I concur in all respects with the majority opinion except regarding defendant's arguments concerning sentencing. Defendant asserts that counsel at sentencing was ineffective for failing to argue that the court should downwardly depart from the mandatory minimum twenty year sentence for substantial and compelling reasons, and that the court did not understand that it had discretion. The trial court's statements at sentencing were sufficiently ambiguous to raise the question whether the court understood it could depart for substantial and compelling reasons. MCL 333.7403(3); MSA 14.15 (7403)(3). Under all the circumstances, I would remand to the trial court for a determination whether resentencing is in order.

/s/ Helene N. White

* Circuit judge, sitting on the Court of Appeals by assignment.