

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TABITHA MICHELLE PETERSON,

Defendant-Appellant.

---

UNPUBLISHED  
February 25, 1997

No. 183626  
Saginaw Circuit  
LC No. 94-010025-FH

Before: D.F. Walsh,\* P.J., and R.P. Griffin\*\* and W.P. Cynar,\* JJ.

MEMORANDUM.

Defendant pleaded guilty to delivery of less than fifty grams of a controlled substance, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and habitual offender, second offense, MCL 769.10; MSA 28.1082. She was sentenced to five to thirty years' imprisonment, and now appeals as of right. We remand for resentencing. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant is entitled to resentencing because the trial court incorrectly presumed that weapons were present during the commission of the instant offense. *People v Fortson*, 202 Mich App 13, 21; 507 NW2d 763 (1993); *People v Glover*, 154 Mich App 22, 45; 397 NW2d 199 (1986). There appears to be no reason to resentence before a different judge. *People v Evans*, 156 Mich App 68, 72; 401 NW2d 312 (1986). Given the disposition of that issue, we need not address defendant's remaining issues.

---

\*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

\*\*Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Remanded for resentencing. We do not retain jurisdiction.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar