

# Order

Michigan Supreme Court  
Lansing, Michigan

September 27, 2016

Robert P. Young, Jr.,  
Chief Justice

149647

Stephen J. Markman  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 149647  
COA: 315236  
St. Joseph CC: 12-017655-FH

ERIK PAUL GUTIERREZ,  
Defendant-Appellant.

---

By order of November 25, 2014, the application for leave to appeal the May 22, 2014 judgment of the Court of Appeals was held in abeyance pending the decision in *People v Lockridge* (Docket No. 149073). On order of the Court, the case having been decided on July 29, 2015, 498 Mich 358 (2015), the application is again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE in part the judgment of the Court of Appeals, and we REMAND this case to the St. Joseph Circuit Court to determine whether the court would have imposed a materially different sentence under the sentencing procedure described in *Lockridge*. On remand, the trial court shall follow the procedure described in Part VI of our opinion. If the trial court determines that it would have imposed the same sentence absent the unconstitutional constraint on its discretion, it may reaffirm the original sentence. If, however, the trial court determines that it would not have imposed the same sentence absent the unconstitutional constraint on its discretion, it shall resentence the defendant. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.



d0919

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 27, 2016

  
Clerk