

# Order

Michigan Supreme Court  
Lansing, Michigan

July 26, 2016

Robert P. Young, Jr.,  
Chief Justice

150581 & (16)

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: 150581  
COA: 323978  
Ionia CC: 2013-015838-FC  
2012-015596-FC

WILLIAM CARL KILBURN,  
Defendant-Appellant.

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On order of the Court, the motion to add issue and additional file number is GRANTED. The application for leave to appeal the November 12, 2014 order of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Ionia Circuit Court to determine whether the court would have imposed a materially different sentence under the sentencing procedure described in *People v Lockridge*, 498 Mich 358 (2015). 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 addition, we VACATE the trial court's November 21, 2014 order reinstating costs. The court did not have authority to *sua sponte* enter the order because the correction was not a clerical error under MCR 6.435(A), the judgment of sentence was not invalid within the meaning of MCR 6.429(A), and the amended version of MCL 769.1k does not apply to the court's amended judgment of sentence issued September 29, 2014.

We do not retain jurisdiction.



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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.

July 26, 2016

  
Clerk