

Order

Michigan Supreme Court
Lansing, Michigan

November 23, 2016

Robert P. Young, Jr.,
Chief Justice

153042

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: 153042
COA: 329257
Kent CC: 96-005065-FH

OTHEL THOMAS LOFTIES,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the January 6, 2016 order of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE in part the August 19, 2015 opinion of the Kent Circuit Court. Contrary to the circuit court's holding, the defendant has satisfied MCR 6.502(G) by demonstrating a retroactive change in the law. When he was convicted pursuant to MCL 333.7401(2)(a)(i) in 1997, he was ineligible for parole. See MCL 333.7401(3) (1997 ed.). Now, however, he is eligible for parole. MCL 791.234(7), (10). The circuit court erroneously concluded that MCL 333.7413 prohibited parole in this case, but that statute precludes parole eligibility only when both the current and prior convictions are for violations of MCL 333.7401(2)(a)(ii) or (iii), MCL 333.7403(2)(a)(ii) or (iii), or conspiracy to commit those offenses. The defendant's prior drug convictions did not rise to that level of severity because each of them involved less than 50 grams of controlled substances. Nevertheless, the circuit court properly denied the defendant's motion, because the defendant failed to establish entitlement to relief under MCR 6.508(D). The parole board has jurisdiction over the administration of MCL 791.234. MCL 791.234(7).



s1116

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.

November 23, 2016


Clerk