

Order

Michigan Supreme Court
Lansing, Michigan

January 24, 2017

Stephen J. Markman,
Chief Justice

154116

Robert P. Young, Jr.
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: 154116
COA: 324668
Wayne CC: 14-005563-FC

RUSSELL ROBERSON,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the June 2, 2016 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE that part of the Court of Appeals judgment addressing the scoring of Offense Variable 7 (OV 7), MCL 777.37. The trial court record does not reveal an assessment of a base level of fear or anxiety associated with the offense of assault with intent to murder, and does not include a determination whether the defendant's conduct was intended to increase the victim's fear or anxiety by a considerable amount. See *People v Hardy*, 494 Mich 430, 442-443 (2015). We REMAND this case to the Wayne Circuit Court to make the determinations required under *Hardy* for deciding whether points should be assigned for OV 7, using the version of the sentencing guidelines in effect on the date that the sentencing offense was committed. MCL 769.34(2). If, after making the determinations required under *Hardy*, the circuit court determines that OV 7 was correctly scored, it shall implement the relief ordered by the Court of Appeals pursuant to *People v Lockridge*, 498 Mich 358, 398-399 (2015). If the circuit court determines that zero points should have been assigned for OV 7, it shall resentence the defendant. *People v Francisco*, 474 Mich 82 (2006). 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.



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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.

January 24, 2017


Clerk