

Order

Michigan Supreme Court
Lansing, Michigan

May 17, 2017

Stephen J. Markman,
Chief Justice

154697

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen
Kurtis T. Wilder,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 154697
COA: 333964
Leelanau CC: 15-001870-FH

SALVADOR GUTIERREZ,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the September 13, 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 VACATE the sentence of the Leelanau Circuit Court and we REMAND this case to that court for resentencing. The defendant was improperly assigned ten points on Offense Variable 9 (OV 9), MCL 777.39, because the facts found by the trial court did not establish an evidentiary basis for concluding that any victim of the defendant's crime was placed in danger of physical injury or death or in danger of property loss. MCL 777.39(1)(d); *People v Hardy*, 494 Mich 430, 438 (2013). On remand, the trial court shall rescore this variable at zero points. The resulting change in the defendant's total OV score produces a lower guidelines range, entitling the defendant to resentencing. See *People v Francisco*, 474 Mich 82, 88-90 (2006). In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining question presented should be reviewed by this Court.



s0510

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.

May 17, 2017


Clerk