

Order

Michigan Supreme Court
Lansing, Michigan

October 24, 2017

Stephen J. Markman,
Chief Justice

155027

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: 155027
COA: 335094
Chippewa CC: 15-001840-FH

MATTHEW MARTIN HAYS,
Defendant-Appellant.

By order of May 2, 2017, the prosecuting attorney was directed to answer the application for leave to appeal the November 15, 2016 order of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE the sentence of the Chippewa Circuit Court, and we REMAND this case to the circuit court for resentencing. The circuit court erred by assigning 25 points to Offense Variable 11 (OV 11), MCL 777.41(1)(b), when the record evidence does not support a finding that the second sexual penetration arose from the same sexual penetration that gave rise to the requisite sentencing offense. See *People v Johnson*, 474 Mich 96 (2006). That error resulted in the alteration of defendant's minimum sentencing guidelines range, entitling him to a resentencing hearing. See *People v Francisco*, 474 Mich 82 (2006). On resentencing, the circuit court shall assign zero points to OV 11.



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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.

October 24, 2017

Clerk