

Order

Michigan Supreme Court
Lansing, Michigan

November 17, 2006

Clifford W. Taylor,
Chief Justice

130988

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 130988
COA: 268031
Genesee CC: 05-015648-FH

BERNARD GEORGE HARPER, JR.,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the February 24, 2006 order of the Court of Appeals is considered, and it is GRANTED. The parties shall include among the issues to be briefed: (1) whether the intermediate sanction described in MCL 769.31(b) and MCL 769.34(4), which require the trial court to impose a sentence that does not include prison, constitutes a statutory maximum sentence under *Blakely v Washington*, 524 US 296 (2004), for which the departure reasons must be decided by a jury or admitted by the defendant; (2) whether, in general, a defendant's failure to challenge the accuracy of facts contained in a presentence investigation report constitutes an admission of those facts for purposes of an analysis under *Blakely, supra* at 303, 310; (3) whether in this case an admission occurred where the sentencing judge informed the defendant that it is important that any mistake in such a report be caught and specifically asked the defendant if he saw any such mistake, and where both the defendant and his counsel stated that they were not contesting anything in the report; and (4) whether, by affirmatively stating that he did not contest the facts in the presentence investigation report, the defendant waived his right to argue that the facts were not admitted for purposes of sentencing. *People v Carter*, 462 Mich 206, 215 (2000).

The Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



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I, Corbin R. Davis, 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 17, 2006

Corbin R. Davis

Clerk