

# Order

Michigan Supreme Court  
Lansing, Michigan

September 18, 2013

Robert P. Young, Jr.,  
Chief Justice

146699

Michael F. Cavanagh  
Stephen J. Markman  
Mary Beth Kelly  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 146699  
COA: 310127  
Hillsdale CC: 11-352663-FH

JIM CLARENCE LUTZ, JR.,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the December 18, 2012 order of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE the sentence of the Hillsdale Circuit Court, and we REMAND this case to the trial court for resentencing. The trial court articulated substantial and compelling reasons to support a departure from the presumed applicable sentencing guidelines range; however, zero points should have been scored for Offense Variables 1 and 2 because the methamphetamine in this case was not used or possessed as a weapon. See MCL 777.31(1), MCL 777.32(1), and *People v Ball*, 297 Mich App 121 (2012). The resulting change in the defendant's total OV score produces a lower guidelines range, and he is therefore entitled to resentencing. See *People v Francisco*, 474 Mich 82 (2006). On remand, should the trial court decide to again depart from the corrected sentencing guidelines range, it shall articulate a rationale justifying the extent of the particular departure. See *People v Smith*, 482 Mich 292 (2008).



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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.

September 18, 2013

  
Clerk