

Order

Michigan Supreme Court
Lansing, Michigan

April 1, 2015

Robert P. Young, Jr.,
Chief Justice

148448

Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 148448
COA: 313828
Monroe CC: 12-039436-FH

MATTHEW EDWARD SIDERS,
Defendant-Appellant.

By order of April 23, 2014, the prosecuting attorney was directed to answer the application for leave to appeal the November 15, 2013 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. Pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE the sentence of the Monroe Circuit Court, and we REMAND this case to the trial court for resentencing. The trial court erred in scoring five points for Offense Variable (OV) 17, MCL 777.47. That offense variable can only be scored for larceny from a person, MCL 750.357, if the crime involved the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive. MCL 777.22(1). In this case, the defendant's operation of a vehicle occurred after he completed the crime of larceny from a person. See *People v Smith-Anthony*, 494 Mich 669, 689 n 61 (2013) ("In a larceny case, the crime is completed when the taking occurs."); see also *People v McGraw*, 484 Mich 120, 122 (2009) ("[A] defendant's conduct after an offense is completed does not relate back to the sentencing offense for purposes of scoring offense variables unless a variable specifically instructs otherwise."). Accordingly, in this case, OV 17 should not be scored. This lowers the defendant's guidelines range to 29 to 71 months. Under *People v Francisco*, 474 Mich 82, 89 (2006), the defendant is entitled to resentencing.



d0325

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.

April 1, 2015

Clerk