

Order

Michigan Supreme Court
Lansing, Michigan

October 28, 2015

Robert P. Young, Jr.,
Chief Justice

148908

Stephen J. Markman
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 148908
COA: 318562
Livingston CC: 12-020762-FC

MAXWELL TYLER FRISKEY,
Defendant-Appellant.

By order of October 1, 2014, the application for leave to appeal the January 17, 2014 order of the Court of Appeals was held in abeyance pending the decision in *People v Lockridge* (Docket No. 149073). On order of the Court, the case having been decided on July 29, 2015, 498 Mich 358 (2015), the application is again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Livingston Circuit Court for correction of the presentence report to delete the presentence investigator's subjective opinion of the defendant and the offenses and to determine whether the court would have imposed a materially different sentence under the sentencing procedure described in *Lockridge*. On remand, the trial court shall follow the procedure described in Part VI of our opinion. If the trial court determines that it would have imposed the same sentence absent the unconstitutional constraint on its discretion, it may reaffirm the original sentence. If, however, the trial court determines that it would not have imposed the same sentence absent the unconstitutional constraint on its discretion, it shall resentence the defendant. The trial court is to forward a copy of the corrected presentence report to the Department of Corrections. 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.

We do not retain jurisdiction.



s1019

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 28, 2015

Clerk