

Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V GARY LOUIS SINGER

Docket No. 290039

LC No. 05-009914-FH

Henry William Saad
Presiding Judge

Pat M. Donofrio

Deborah A. Servitto
Judges

In lieu of granting the delayed application for leave to appeal, pursuant to MCR 7.205(D)(2), this Court VACATES the Grand Traverse Circuit Court's December 23, 2008 order to the extent it affirmed defendant's 57 to 120-month prison sentence and REMANDS the matter for resentencing in accordance with this order. On remand the circuit court must either sentence defendant to probation and jail or allow defendant the opportunity to withdraw his plea before imposing a prison sentence. The plea agreement which induced defendant's guilty plea was based upon the December 20, 2005 memorandum letter as supplemented by the statements on the record at the January 6, 2006 plea hearing. The last paragraph of that memorandum included a sentence recommendation of jail time for defendant if at least an additional \$100,000 in restitution was paid before sentencing. It is undisputed that defendant and other responsible parties paid an additional \$100,000 in restitution before the February 16, 2007 sentencing hearing. While the circuit court was not bound by the sentence recommendation contained in the December 20, 2005 memorandum, it was required to allow defendant the opportunity to withdraw his guilty pleas before imposing a sentence which exceeded that recommendation. *People v Williams*, 464 Mich 174, 177; 626 NW2d 899 (2001); *People v Killebrew*, 416 Mich 189, 209; 330 NW2d 834 (1982).

In all other respects the delayed application for leave to appeal is DENIED. The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR - 8 2009
Date

Sandra Schultz Mengel
Chief Clerk