

Court of Appeals, State of Michigan

ORDER

People of MI v John Gene Deluigi Jr

Docket No. 276026

LC No. 03-001075-FH

Deborah A. Servitto
Presiding Judge

Henry William Saad

Jessica R. Cooper
Judges

The Court orders pursuant to MCR 7.205(D)(2) that in lieu of granting the delayed application for leave to appeal the February 8, 2007 order denying defendant's motion to withdraw his plea is REVERSED. Defendant was subject to a minimum sentence under MCL 777.62 and subject to sentencing under the guidelines. *See People v Buehler*, 477 Mich 18; 727 NW2d 127 (2007). The trial court erred in sentencing defendant to a minimum of one day in prison as his minimum sentence under the guidelines was fifty-one to eighty-five months in prison. Under these circumstances, defendant's sentence is erroneous. Because the court advised defendant at his plea hearing that he faced a minimum of only one day in prison, we find that the trial court's misstatement regarding the minimum sentence was not harmless error and defendant is entitled to withdraw his plea. *See People v Saffold*, 465 Mich 268, 273; 631 NW2d 320 (2001).

This matter is REMANDED for proceedings not inconsistent with this order.

This Court retains no further jurisdiction.



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

APR 17 2007

Date

Sandra Schultz Mengel
Chief Clerk