

# Court of Appeals, State of Michigan

## ORDER

People of MI v John Henry Hairston

Docket No. 277324

LC No. 06-013012-01

Michael J. Talbot  
Presiding Judge

Kirsten Frank Kelly

Christopher M. Murray  
Judges

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In lieu of granting the application to take a delayed appeal, pursuant to MCR 7.205(D)(2), this Court VACATES the January 17, 2007, judgment of sentence entered by the Wayne County Circuit Court. Although the trial court asked defense counsel, at sentencing, to state something positive about defendant, the “positives” stated by counsel (defendant’s age, defendant’s addiction and not having an opportunity for drug treatment, and dire family consequences) were general and summary in fashion without any explanation as to why the reasons were exceptional to warrant a downward departure. Furthermore, the trial court never stated that it was adopting any particular “positive” factor stated by counsel to justify its downward departure from the sentencing guidelines’ recommended range. Apparently, the trial court also failed to complete a guidelines departure form as required. *People v Armstrong*, 247 Mich App 423, 426; 636 NW2d 785 (2001). Because the trial court never articulated any reason for departing from the sentencing guidelines’ recommended range, as required by MCL 769.34(3), and did not justify the departure at issue, *People v Babcock*, 469 Mich 247, 257-261; 666 NW2d 231 (2003), the matter is REMANDED to the trial court for resentencing.

The Court retains no further jurisdiction.



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

OCT 28 2007

Date

*Sandra Schultz Mengel*  
Chief Clerk