

# Order

Michigan Supreme Court  
Lansing, Michigan

September 21, 2016

Robert P. Young, Jr.,  
Chief Justice

151849

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: 151849  
COA: 326365  
Roscommon CC: 14-007145-FC

DAVID SUTTON,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the May 8, 2015 order of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE the sentence of the Roscommon Circuit Court, and we REMAND this case to the trial court for resentencing. The trial court erred by assigning 50 points under Offense Variable 11, MCL 777.41, for penetrations that did not arise out of the particular sentencing offense. *People v Johnson*, 474 Mich 96 (2006). Because correcting the OV score would change the applicable guidelines range, resentencing is required. *People v Kimble*, 470 Mich 305 (2004).

We do not retain jurisdiction.



a0914

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.

September 21, 2016

  
Clerk