

Order

Michigan Supreme Court
Lansing, Michigan

July 23, 2010

Marilyn Kelly,
Chief Justice

140845

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 140845
COA: 295673
Oakland CC: 2009-224699-FC

JAJUAN DESHAWN WILLIAMS,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the February 12, 2010 order of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE the sentence of the Oakland Circuit Court and REMAND this case to the trial court for resentencing. Because conduct subject to scoring under Offense Variable (OV) 12, MCL 777.42, must be considered under that variable before it is considered under OV 13, see *People v Bemmer*, 286 Mich App 26 (2009), and because conduct already scored under OV 12 must not be scored under OV 13, see MCL 777.43(2)(c), it appears that the defendant should have been assessed 5 points under OV 12, rather than 25 points under OV 13. The resulting change in the defendant's total OV score produces a lower applicable guidelines range, and the defendant is therefore entitled to resentencing. See *People v Francisco*, 474 Mich 82 (2006).

YOUNG, J. (*concurring*).

I concur in the order remanding this case for resentencing only because we are bound to do so under *People v Francisco*, 474 Mich 82 (2006). I write separately to reiterate my continued adherence to Justice CORRIGAN's dissenting opinion in *Francisco*. Just as in *Francisco*, the current defendant's minimum sentence falls within the corrected minimum sentencing guidelines range. Accordingly, but for *Francisco*, I would hold that any error in scoring the guidelines was harmless and deny leave to appeal.

CORRIGAN, J., joins the statement of YOUNG, J.

WEAVER, J. (*dissenting*).

I dissent. I would affirm and overrule *People v Francisco*, 474 Mich 82 (2006).



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I, Corbin R. Davis, 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.

July 23, 2010

Corbin R. Davis

Clerk