

Court of Appeals, State of Michigan

ORDER

People of MI v Dangelo Hayes

Docket No. 308612

LC No. 11-007360-01-FC

Mark T. Boonstra
Presiding Judge

David H. Sawyer

Christopher M. Murray
Judges

The Court orders that the prosecutor's confession of error under MCR 7.211(C)(7) is accepted, defendant's sentence is REVERSED, and the matter is REMANDED for resentencing. Offense Variables 1, 3, 9, and 16 were scored in error because the points were scored on the basis of conduct that neither occurred during the sentencing offense nor was specifically allowed to be considered under the applicable offense variable statutes. *People v McGraw*, 484 Mich 120, 135; 771 NW2d 655 (2009). The Court, however, finds no clear error in the scoring of Offense Variable 13, because the statute for this variable specifically allows consideration of conduct other than that which occurred during the sentencing offense, regardless of whether the conduct resulted in conviction, and the evidence supports a finding that defendant committed three crimes against the persons of Gregory Mariweather and Donald Trice within the five year period prior to sentencing. MCL 777.43(2)(a); *People v Francisco*, 474 Mich 82, 85-86; 711 NW2d 44 (2006); *People v Ratkov (After Remand)*, 201 Mich App 123, 125; 505 NW2d 886 (1993). Because correction of the errors changes the guidelines' sentencing range, resentencing is required. *Francisco, supra*; *People v Kimble*, 470 Mich 305; 684 NW2d 669 (2004). We do not retain jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUL 25 2013

Date

Chief Clerk