

Court of Appeals, State of Michigan

ORDER

People of MI v Brian Stanley Wittman

Docket No. 304377

LC No. 10-028073-FH

Michael J. Kelly
Presiding Judge

Peter D. O'Connell

Patrick M. Meter
Judges

The Court orders pursuant to MCR 7.205(D)(2) that in lieu of granting the delayed application for leave to appeal, defendant's sentence for possession of child sexually abusive material, MCL 750.145c(4)(a), is VACATED. The recommended minimum sentence range under the sentencing guidelines was 0 to 17 months. MCL 769.34(4)(a) provides that if the upper limit of the recommended range is 18 months or less, the trial court must impose an intermediate sanction or articulate a substantial and compelling reason to impose a prison sentence. MCL 769.34(4)(a); *People v Stauffer*, 465 Mich 633; 640 NW2d 869 (2002); *People v Lucey*, 287 Mich App 267; 787 NW2d 133 (2010). The trial court did not articulate a substantial and compelling reason to depart from an intermediate sanction.

This matter is REMANDED for resentencing. On remand, the trial court must either impose an intermediate sanction, or, if the court determines that a prison term is justified, articulate a substantial and compelling reason on the record for sentencing defendant to the jurisdiction of the department of corrections for this offense. *People v Babcock*, 469 Mich 247; 666 NW2d 231 (2003); MCL 769.34(4)(a).

We retain no further jurisdiction.

O'Connell, J., would deny the delayed application for leave to appeal.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

JUL 18 2011

Date

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line. Below the line, the words "Chief Clerk" are printed.

Chief Clerk