

Court of Appeals, State of Michigan

ORDER

People of MI v Roger Dale Edmonds

Docket No. 310198

LC No. 11-029764-FH

Elizabeth L. Gleicher
Presiding Judge

Mark J. Cavanagh

Henry William Saad
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the delayed application for leave to appeal, the Court VACATES the January 10, 2012 judgment of sentence and REMANDS this case for resentencing. Offense variable (OV) 3, MCL 777.33, should not have been scored at 100 points because the sentencing offense was a "homicide" as defined by MCL 777.1(c). *People v Brown*, 265 Mich App 60; 692 NW2d 717, rev'd on other grounds 474 Mich 876 (2005). Under the circumstances of this case, OV 3 should be scored at 25 points. *People v Houston*, 473 Mich 399; 702 NW2d 530 (2005); see also *People v Brown*, 474 Mich 876; 704 NW2d 462 (2005). On remand, the trial court shall also reconsider whether OV 5, MCL 777.35, should be scored given that the conviction offense is a homicide. MCL 777.22.

In all other respects the delayed application is DENIED for lack of merit in the grounds presented. We do not retain jurisdiction.



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

AUG 27 2012

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