

Court of Appeals, State of Michigan

ORDER

People of MI v Lonnie James Arnold

Docket No. 320772

LC No. 13-040404-FH

David H. Sawyer
Presiding Judge

Pat M. Donofrio

Stephen L. Borrello
Judges

The Court orders that the motion for reconsideration is GRANTED. We VACATE Part IV of this Court's opinion issued July 28, 2015.

A day after our opinion was issued, our Supreme Court released its opinion in *People v Lockridge*, ___ Mich ___; ___ NW2d ___ (Docket No. 149073, decided July 29, 2015). In *Lockridge*, the Supreme Court held that in order to avoid any Sixth Amendment violations, Michigan's sentencing guidelines scheme is to be deemed advisory, instead of being mandatory. *Id.*, slip op at 28. The concern is that when a judge makes findings of fact "beyond facts admitted by the defendant or found by the jury" in a sentencing proceeding that increases a defendant's minimum sentence, this runs afoul of a defendant's right to a jury trial. *Id.*, slip op at 1. As a result, the guidelines no longer can be considered mandatory, and sentencing judges must consult the guidelines and "take them into account when sentencing." *Id.*, slip op at 28, quoting *United States v Booker*, 543 US 220, 264; 125 S Ct 738; 160 L Ed 2d 621 (2005).

In the instant case, the trial court scored 25 points for OV 13 because it determined that defendant had committed three or more felonies against a person within five years of the sentencing offense. See MCL 777.43(1)(c). In doing so, the trial court took testimony from a witness at the sentencing hearing, which acted as the basis for the trial court's finding by a preponderance of the evidence that a third felony had been committed. Because this fact was not admitted by defendant or found by the jury and because the facts found by the jury verdict were insufficient to assess the minimum number of OV points necessary for defendant's OV level, defendant has established a "threshold showing of the potential for plain error." *Lockridge*, slip op at 32-33.

Consequently, we REMAND for the trial court to conduct a *Crosby*¹ hearing consistent with the Supreme Court's guidelines in *Lockridge*, slip op at 34-36, including an inquiry into whether defendant seeks resentencing with the understanding that the sentencing guidelines are now advisory, *id.*, slip op at 35.

We do not retain jurisdiction.

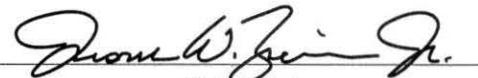
¹ *United States v Crosby*, 397 F3d 103 (CA 2, 2005).



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

AUG 20 2015

Date


Chief Clerk