

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY BENARD JACKSON,

Defendant-Appellant.

UNPUBLISHED

March 22, 2005

No. 253392

Wayne Circuit Court

LC No. 03-010142-01

Before: Owens, P.J., and Sawyer and White, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I agree that there was sufficient evidence to sustain defendant's convictions. I would, however, remand for a *Ginther*¹ hearing as requested in defendant's brief and in his timely motion to remand.

The record reflects that after the court granted a request for separate juries, defendant agreed to a joint trial before a single jury. In support of his request for a *Ginther* hearing, defendant submitted an affidavit asserting that he agreed to waive his right to a separate jury on the advice of counsel. On this record, there is no apparent trial strategy that would support such advice. Further, the codefendant's statement was a central piece of evidence in the case. I would remand for a determination whether counsel advised against separate juries, if so, why, and whether that advice, and the failure to otherwise object to the admission of the codefendant's statement as against defendant, constituted ineffective assistance of counsel warranting a new trial.

/s/ Helene N. White

¹ *People v Ginther*, 390 Mich 436. 443-444; 212 NW2d 922 (1973).