

# Order

Michigan Supreme Court  
Lansing, Michigan

December 7, 2005

129035

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

CHARLES WAYNE FRANCISCO,  
Defendant-Appellant.

Clifford W. Taylor,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

SC: 129035  
COA: 252188  
Oakland CC: 03-189882-FH

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On order of the Court, the application for leave to appeal the May 26, 2005 judgment of the Court of Appeals is considered, and we direct the Clerk to schedule oral argument on whether to grant the application or take other preemptory action. MCR 7.302(G)(1). The parties are directed to file supplemental briefs by January 5, 2006, addressing: (1) whether *People v McDaniel*, 256 Mich App 165, 172-173 (2003), was correct in deciding that OV 13 may be scored based on three or more felonies committed in any five-year period even if that period does not include the date of the sentencing offense, and (2) assuming OV 13 should not have been scored, is defendant automatically entitled to resentencing because of the scoring error, or is resentencing unnecessary because the minimum sentence imposed was "within the appropriate guidelines sentence range" within the meaning of MCL 769.34(10).

We further order the Oakland Circuit Court to appoint the State Appellate Defender Office to represent the defendant in this Court.



t1206

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 7, 2005

*Corbin R. Davis*

Clerk