

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL ALLISON CORRIN, SR.,

Defendant-Appellant.

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UNPUBLISHED

July 27, 2010

No. 290747

Lenawee Circuit Court

LC No. 07-013418-FH

Before: SHAPIRO, P.J., and MURRAY and SERVITTO, JJ.

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

I concur in the majority's decision to affirm defendant's conviction and to remand for resentencing, but I disagree with its conclusion that (1) the trial court erred in scoring OV 12, (2) the trial court did not have at least some substantial and compelling reasons for a departure from the sentencing guidelines, and (3) that on remand this case should proceed before a different judge.

The majority correctly concludes that the trial court erred in scoring OV 7 (MCL 777.37), OV 8 (MCL 777.38), OV 10 (MCL 777.40(1)), and OV 19 (MCL 777.49(c)) for the reasons stated in the majority opinion. However, I would affirm the trial court's scoring of OV 12, MCL 777.42(1)(a), because there was evidence in the record to support a finding that defendant had falsely reported to Child Protective Services that the victim has been abused by persons other than defendant, MCL 722.633(3)(b), MCL 777.15g, and that two other acts of sexual abuse also comprised criminal sexual conduct second-degree, constituting three additional crimes that were uncharged, MCL 777.16.

Finally, I would conclude that the trial court did articulate at least several objective, substantial and compelling reasons for its departure when it specifically found that several of the guidelines did not adequately give weight to what occurred in this case, including the fact that defendant had previously molested his 11-year old daughter. In any event, because there were sentencing errors that impacted the guidelines range, a remand is necessary for resentencing. *People v Babcock*, 469 Mich 247, 260-261, 273; 666 NW2d 231 (2003).

Although a remand for resentencing is necessary in this case, remanding to a different judge is not. We recently articulated when disqualification of a judge is appropriate in *In re Contempt of Henry*, 282 Mich App 656; 765 NW2d 44 (2009). In that case we reiterated the long-standing rule that legally erroneous rulings do not require disqualification:

MCR 2.003(B)(1) provides that a judge is disqualified when the “judge is personally biased or prejudiced for or against a party or attorney.” Generally, a trial judge is not disqualified absent a showing of actual bias or prejudice. *Gates v Gates*, 256 Mich App 4120, 440; 664 NW2d 231 (2003). The mere fact that a judge ruled against a litigant, even if the rulings are later determined to be erroneous, is not sufficient to require disqualification or reassignment. *Ypsilanti Fire Marshall v Kircher (On Reconsideration)*, 273 Mich App 496, 554; 730 NW2d 481 (2007). “[J]udicial rulings, in and of themselves, almost never constitute a valid basis for emotional alleged bias, unless a judicial opinion displays a “‘deep-seated favoritism or antagonism that would make fair judgment impossible’ and overcomes a heavy presumption of judicial impartiality.” *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001) (citations omitted). [*In re Contempt of Henry*, 282 Mich App at 679-680.]

In light of this difficult standard for disqualification, and because the majority opinion has articulated nothing more than the trial court’s erroneous legal rulings and legal views as a basis for disqualification, I would conclude that disqualification is not appropriate and that this case should be remanded to the original sentencing court to resentence defendant in light of the rulings contained in the majority opinion.

/s/ Christopher M. Murray