

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD JOHNIGAN,

Defendant-Appellant.

FOR PUBLICATION

March 22, 2005

9:00 a.m.

Nos. 250909; 251408

Wayne Circuit Court

LC Nos. 03-004489-01;

03-004486

Official Reported Version

Before: Schuette, P.J., and Sawyer and O'Connell, JJ.

SCHUETTE, P.J. (*concurring*).

I join in the conclusions reached in the lead opinion authored by my distinguished colleague, Judge David H. Sawyer. However, as eloquent as he is, equaled only by the pen of my distinguished colleague Judge Peter D. O'Connell, I refrain from engaging in the legal colloquy concerning the application of *People v Mack*, 265 Mich App __; __ NW2d __ (2005), and *People v Houston*, 261 Mich App 463; 683 NW2d 192 (2004), and the errors, if any, contained in those opinions. Neither *Mack* nor *Houston* is dispositive of the case at bar. Further, there is no reason to declare a conflict with either case pursuant to MCR 7.215(J).

The case before this Court must be remanded to the trial court for an articulation of the reasons for defendant's sentence for the second conviction of felon in possession of a firearm which sentence represents an upward departure from the sentencing guidelines. *People v Babcock*, 469 Mich 247, 255-257; 666 NW2d 231 (2003). Defendant is a hardened contract killer. He has engaged in a series of planned criminal acts with deadly results. He is behind bars. He will remain behind bars. The trial court must simply state on the record the reasons (and many reasons exist) for a proper upward departure in sentencing defendant.

/s/ Bill Schuette