

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JORGE LOPEZ,

Defendant-Appellant.

FOR PUBLICATION

June 19, 2014

No. 314953

Wayne Circuit Court

LC No. 12-006757-FC

Before: DONOFRIO, P.J., and GLEICHER and M. J. KELLY, JJ.

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

I concur with the majority’s resolution of defendant’s great weight of the evidence and ineffective assistance of counsel challenges, but respectfully dissent from the majority’s conclusion that defendant need not be separately sentenced for all convictions. In my view, MCL 777.21(2) compels the trial court to score the sentencing guidelines applicable to each conviction: “If the defendant was convicted of multiple offenses, subject to [MCL 771.13], *score each offense* as provided in this part.” (Emphasis added.)

The majority rests its holding on MCL 771.13(2)(e)(ii) and (iii), which fall within the “probation” chapter of the Code of Criminal Procedure. These subsections set forth the sentencing duties assigned to the probation department, not the sentencing court.

Regardless of the probation department’s responsibility to prepare presentence investigation reports and to score sentencing guidelines, the sentencing court bears an independent obligation to pass sentence in accordance with the statutory sentencing guidelines. See MCR 6.425(D) and (E). “A court may depart from the appropriate sentence range established under the sentencing guidelines set forth in chapter XVII if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure.” MCL 769.34. As Justice Markman’s dissents in *People v Warren*, 485 Mich 970; 774 NW2d 697 (2009), and *People v Stone*, 495 Mich 984; 844 NW2d 121 (2014) highlight, withholding separate scoring for each conviction means that by default, defendants may receive inadvertent departure sentences. I would remand for guidelines calculation and separate sentencing for each conviction.

/s/ Elizabeth L. Gleicher