

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID RAY COURTNEY,

Defendant-Appellant.

UNPUBLISHED

August 2, 1996

Nos. 155158; 157603
LC Nos. 91-006447-FH;
89-005768-FC
ON REHEARING

Before: Neff, P.J., and Young and B.U. Morrow,* JJ.

PER CURIAM.

Defendant was convicted of assault with intent to commit criminal sexual conduct involving penetration, MCL 750.520g; MSA 28.788(7), fourth-degree criminal sexual conduct, MCL 750.520e; MSA 28.788(5), and probation violation, MCL 771.4; MSA 28.1134. He was sentenced to prison terms of four to ten years, sixteen to twenty-four months, and four to fifteen years for the respective convictions.

We reversed defendant's conviction for fourth-degree criminal sexual conduct in an opinion released on December 26, 1995. In that opinion we remanded for resentencing on the probation violation because the CSC conviction affected that sentence. Defendant moved for rehearing, arguing that the CSC conviction also affected the sentence on the assault charge. We granted rehearing.

The CSC conviction resulted in an assessment of ten points for a contemporaneous conviction. Removing that conviction from the calculations will not affect the guidelines range. Nonetheless, we recognize that the reversal of defendant's CSC conviction may affect the trial court's sentencing decision. We therefore remand on the assault sentence so the trial court can determine whether it would impose a different sentence in light of the changed guidelines scoring. If it does, then the trial court shall resentence defendant. See *People v Chesebro*, 206 Mich App 468, 474; 522 NW2d 677 (1994).

* Recorder's Court Judge, sitting on the Court of Appeals by assignment.

This opinion changes only the scope of our remand order. Any portion of our opinion released on December 26, 1995, not in conflict with this opinion remains in full force and effect. We acknowledge that Judge Morrow would still reverse the convictions for the reasons stated in his dissent. His approval of this opinion does not represent a reversal of his views previously expressed.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Robert P. Young, Jr.

/s/ Bruce U. Morrow