

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLARD JACKSON DUTY,

Defendant-Appellant.

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UNPUBLISHED  
December 4, 2003

No. 241759  
Jackson Circuit Court  
LC No. 01-002999-FH

Before: Sawyer, P.J., and Griffin and Smolenski, JJ.

GRIFFIN, J. (*concurring*).

I join in the portion of the majority's opinion that affirms defendant's conviction. However, in regard to the remand for resentencing, I concur only because pursuant to MCR 7.215(I) I am required to follow the precedent of *People v Kimble*, 252 Mich App 269; 651 NW2d 798 (2002), lv gtd 468 Mich 870 (2003). Were it not for *Kimble*, I would enforce our court rule and hold that defendant has forfeited the sentencing guidelines scoring error, MCR 6.429(C), *People v McGuffey*, 251 Mich App 155; 649 NW2d 801 (2002).

Furthermore, even if the plain error doctrine were applicable to the sentencing guidelines scoring error, I would exercise our discretion and affirm defendant's sentence were it not for *Kimble*. In my view, defendant's thirty-six to seventy-two months' sentence is proportionate to the offense and the offender, and thus the error does not "seriously affect the fairness, integrity, or public reputation of judicial proceedings independent of the defendant's innocence." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999), quoting with approval *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1170; 123 L Ed 2d 508 (1993). See *Kimble*, *supra* at 252 Mich App 281-286 (Griffin, J., dissenting).

/s/ Richard Allen Griffin