

# Order

Michigan Supreme Court  
Lansing, Michigan

December 7, 2022

Elizabeth T. Clement,  
Chief Justice

164505

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Megan K. Cavanagh  
Elizabeth M. Welch,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 164505  
COA: 356217  
Calhoun CC: 2017-003699-FH

JAMES EDWARD LOCKMILLER,  
Defendant-Appellant.

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By order of September 6, 2022, the prosecuting attorney was directed to answer the application for leave to appeal the April 14, 2022 judgment of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals declining to address the defendant's challenges to the trial court's imposition of lifetime electronic monitoring (LEM) as beyond the scope of the remand. On the defendant's first appeal, the Court of Appeals did not merely remand to the trial court with instructions to correct a scoring error for Offense Variable 7; rather, it vacated the original sentence and remanded for resentencing. By vacating the defendant's original sentence and remanding for resentencing, "the case was before the trial court in a presentence posture, allowing for objection to any part of the new sentence." *People v Rosenberg*, 477 Mich 1076 (2007). Therefore, when the trial court imposed LEM at the resentencing, the defendant was free to raise his challenges to this part of the sentence on an appeal of right.

We REMAND this case to the Court of Appeals to consider those issues the defendant raised in that court challenging the imposition of LEM.

We do not retain jurisdiction.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 7, 2022

Clerk