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# Table Of Contents

**Table Of Authorities i**

**Statement Of Question Presented ii**

**I. Mr. Defendant Is Entitled To A *Crosby* Remand For Resentencing Under *Lockridge*, As The Court Engaged In Judicial Factfinding That Increased His Sentencing Range In Violation Of His Sixth Amendment Rights 1**

**Summary And Relief And Request For Oral Argument 3**

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# Table Of Authorities

CASES

*People v Stokes,* No. 321303, 2015 WL 5224936 (Mich Ct App September 8, 2015) 2, 3

STATUTES

MCL 777.21 3

MCL 777.21(3) 2

MCL 777.33, 777.38, and 777.44 3

# Statement Of Question Presented

I. Is Mr. Defendant Entitled To A *Crosby* Remand For Resentencing Under *Lockridge*, As The Court Engaged In Judicial Factfinding That Increased His Sentencing Range In Violation Of His Sixth Amendment Rights

Trial Court made no answer.

Defendant-Appellant answers, "Yes".

1. Mr. Defendant Is Entitled To A *Crosby* Remand For Resentencing Under *Lockridge*, As The Court Engaged In Judicial Factfinding That Increased His Sentencing Range In Violation Of His Sixth Amendment Rights

Issue Preservation/Standard Of Review

This issue is unpreserved.“A Sixth Amendment challenge presents a question of constitutional law that this Court reviews de novo.”  *People v Stokes,* No. 321303, 2015 WL 5224936 (Mich Ct App September 8, 2015)

Argument

As this Court knows, on July 29, 2015, the Michigan Supreme Court, in *People v Lockridge*, concluded that all defendants who can demonstrate that the facts admitted by the defendant or found by the jury “were *insufficient* to assess the minimum number of OV points necessary for the defendant’s score to fall in the cell of the sentencing grid under which he or she was sentenced” and whose sentences were not upward departures, “can establish a threshold showing of the potential for plain error sufficient to warrant a remand to the trial court for further inquiry.” *Lockridge,* slip opn at 32-33. This error is, as stated by the Michigan Supreme Court, a violation of his Sixth Amendment right to a jury trial. *Lockridge, supra.*

Mr. Defendant can make such a threshold showing. He was scored a total of 51 OV points, which with his “F” level PRVs put him in a sentencing range of FIII, or 135-450 months as a habitual fourth offender. (SIR, attached with his PSIR as Appendix A; MCL 777.21(3)) A OV level of III requires that 40-59 OV points be scored. MCL 777.21(3). To reach this level, the trial court scored at least 3 OVs based on facts that were neither found by the jury or admitted by the defendant: OV 4 (psychological injury), OV 13 (three crimes against a person in a 5 year period) and OV 19 (interference with administration of justice). (SIR: MCL 777.33, 777.38, and 777.44) None of these variables is an element of the crime of armed robbery, and as the PSIR indicates, Mr. Defendant has only been convicted of these two crimes in this five year period. Mr. Defendant did not admit to any facts supporting those variables either.

These variables were scored at 10, 25 and 15 points respectively. (SIR) Had these variables not been scored, Mr. Defendant ’s OV point total would have been 1 and his sentencing grid would have been FI with a range of 108-360 months. (SIR; MCL 777.21) Thus, it cannot be disputed that the trial court relied on facts not admitted by Mr. Defendant or found by the jury in order to calculate his sentencing guidelines range, and these judicially-found facts resulted in an increased minimum sentencing range. As such, under *Lockridge,* Mr. Defendant 's Sixth Amendment rights were violated at sentencing.

“[I]f a defendant is able to ‘establish a threshold showing of the potential for plain error,’ the case must ‘be remanded to the trial court to determine whether that court would have imposed a materially different sentence but for the constitutional error.’”  *People v Stokes,* No. 321303, 2015 WL 5224936 (Mich Ct App September 8, 2015)(quoting *Lockridge, supra*) As Mr. Defendant has made such a showing, he is entitled to a *Crosby* remand and, if appropriate, a resentencing.

# Summary And Relief And Request For Oral Argument

**WHEREFORE**, for the foregoing reasons, Defendant-Appellant asks that this

Honorable Court reverse his conviction, grant him a resentencing, or any other such appropriate relief.

Respectfully submitted,

**STATE APPELLATE DEFENDER OFFICE**

/s/ Christine A. Pagac

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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