

COA Opinion: Disseminating sexually explicit material to a minor is not a “crime against a person” for purposes of scoring Offense Variable 12

7. July 2010 By Madelaine Lane

On Tuesday, July 6, 2010, the Court of Appeals published its unanimous per curiam opinion in [People v. Wiggins, Case No. 290017](#). The Court determined that the defendant was improperly assessed a score of 25 points for Offense Variable (“OV”) 12, where two crimes of disseminating sexually explicit matter to a minor used to score this variable are “crimes against the public order” and not “crimes against a person” for purposes of MCL § 777.42. Accordingly, the Court concluded that the defendant should have only been assessed 10 points under OV 12. Because the scoring error altered the appropriate guideline range, and because the defendant’s sentence lies outside that range, the Court vacated the defendant’s sentence and remanded the case to the Gratiot Circuit Court for resentencing.

This case arises out of defendant’s conviction for allowing a child to engage in sexually abusive activity for the purpose of producing child sexually abusive material, in violation of MCL § 750.145c(2). In calculating the defendant’s sentencing guideline range, the probation officer assigned the defendant an OV 12 score of 25. To score a 25 in this category, the court must find that the defendant committed three or more contemporaneous felonious criminal acts involving crimes against a person.

At the sentencing hearing, the defendant objected to his guideline range and argued that only one of his initial three charges, in addition to the violation of MCL § 777.42, was designated under the Michigan Sentencing Guidelines as a crime against a person. The defendant opined that the remaining two charges for disseminating sexually explicit matter to a minor constituted crimes against the public order. The trial court disagreed and found that all three additional charges involved crimes against persons. Accordingly, the court assessed the defendant a score of 25 points under OV 12. This score placed the defendant in the C-V grid for a class B offense. His corresponding minimum sentencing range was 51 to 85 months.

On appeal, the defendant again asserted that he was improperly scored 25 points under OV 12, and therefore his recommended sentencing guideline range was incorrect. The Court of Appeals agreed. Specifically, the Court held that the crime of disseminating sexually explicit matter to a minor in violation of MCL § 722.675, is specifically designated as a crime against the public order under the plain language of the sentencing guidelines. MCL § 777.15g. The Court further ruled that the trial court erred when it found that it was free to look at the substance of the crime rather than the class designations under the guidelines. “Crimes against a person” is a

technical term under the sentencing guidelines. As such, the Court ruled that only the crimes designated as “person” crimes under MCL §§ 777.11-777.18 can be scored as “crimes against a person” under OV 12 or OV 13.

Ultimately, the Court concluded that the defendant should have been scored 10 points for OV 12. This would have resulted in an overall OV score of 40 and reduced the defendant’s minimum sentence guideline range to 45 to 75 months. Accordingly, the Court vacated the defendant’s sentence and remanded the case to the trial court for resentencing.