

COA Opinion: A trial court may only sentence a defendant to lifetime electronic monitoring, pursuant to MCL 791.285, if the defendant has been released from prison and/or parole

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On May 25, 2010, the Michigan Court of Appeals published its opinion in *People v. Kern*, Case No. 289478, affirming the trial court's denial of the state's motion to amend the defendant's sentence to require lifetime electronic monitoring. The Court of Appeals concluded that MCL 791.285 only provides for the implementation of lifetime electronic monitoring for defendants who are released from prison and/or parole.

In *Kern*, the defendant plead guilty to one count of second-degree criminal sexual conduct. The trial court sentenced him to 365 days in jail and five years probation. At the request of the probation officer, the state subsequently filed a motion seeking to amend the judgment of sentence to require lifetime electronic monitoring. After reviewing the relevant statutes, the legislative history of these statutes, and an opinion by Judge Kolenda of the Kent County Circuit Court in an unrelated case, the trial court concluded that the statutory authority for this ruling was unclear and absent a clear directive it denied the state's motion without prejudice. The state subsequently appealed the trial court's decision by an application for delayed leave to appeal.

The Court of Appeals concluded that the power of a trial court to sentence a defendant to lifetime electronic monitoring for second-degree criminal sexual conduct, pursuant to MCL 750.520(c), is restricted by the requirements of MCL 791.285. The court went on to hold that MCL 791.285 only allows an individual to be sentenced to monitoring upon his or her release from prison or parole. The Court of Appeals concluded that in this statute "prison" and "parole" were terms of art. It refused the invitation to expand the statute to include defendants who are released from "jail" or "probation".

Here, the defendant was not sentenced to prison. He was never released on parole. Instead, he was sentenced to 365 in jail and five years probation. As such, the court was not empowered to impose lifetime electronic monitoring under MCL 791.285.

A copy of the order is [here](#).