

## COA Opinion: Sentencing Guidelines

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20. October 2010 By Jeanne Long

In *Michigan v. Hunt*, No. 292639, the Court of Appeals held that a trial court may not apply Offense Variable 7 (OV 7) of the Michigan sentencing guidelines, Mich. Comp. L. 777.37, to enhance a defendant's sentence on the basis of acts committed during the course of the crime by individuals other than the defendant. The Court of Appeals also held that resentencing is required any time the guidelines are incorrectly applied by the trial court.

In *Hunt*, Defendant participated in a kidnapping with two other individuals. During the commission of the crime, the victims were moved from location to location and were severely beaten. Although Defendant aided in moving the victims, he did not participate in or encourage the beatings. Based on these facts, the trial court enhanced Defendant's sentence under OV7, which permits enhancement when "a victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense."

The Court of Appeals vacated the sentence and remanded for resentencing, holding that Defendant's conduct did not justify such an enhancement. The Court noted that unlike other enhancement provisions that expressly apply to "cases involving multiple offenders" or that require "all offenders [] be assessed the same number of points," OV 7 included no such language, and therefore the trial court could only take Defendant's conduct into account. Defendant did not participate in the beatings, so the Court held that only the aid Defendant provided in moving the victims from location to location counted toward the OV7 determination. The Court held that moving the victim was inherent in the offense of kidnapping and therefore insufficient to justify the sentencing enhancement. The Court concluded that resentencing was required because "[s]entencing must be based on accurately scored guidelines," and the trial court had incorrectly applied the guidelines to Defendant.