

MSC Opinion: Trial court should score prior record variables when calculating a minimum and maximum sentence range that may be enhanced pursuant to MCL 333.7413(2).

17. June 2011 By Kristina Araya

On June 14, 2011, the Michigan Supreme Court decided *People v Peltola*, No. 140524. In *Peltola*, the Court limited its prior ruling in *People v Lowe*, 484 Mich 718; 773 NW2d 1 (2009) and held that when calculating an offender's minimum and maximum sentence range under the sentencing guidelines, the trial court should score the offender's prior record variables (PRVs) when the sentence may be enhanced pursuant to MCL 333.7413(2).

In this case, the defendant was convicted of several drug charges and had a prior conviction for a controlled substance offense. The trial court scored the defendant's PRVs and offense variables under the sentencing guidelines, resulting in a minimum range of 5-23 months in prison and a statutory maximum of 20 years. The trial court then doubled both the minimum and maximum sentence under MCL 333.7413(2) because of the defendant's prior conviction for a controlled substance offense. On appeal, the defendant recognized the Court's decision in *Lowe*, which held that MCL 333.7431(2) authorized the court to double both the minimum and maximum sentences. But, the defendant argued that additional language in *Lowe* indicated that PRVs should not be scored when a sentence is enhanced under MCL 333.7413(2).

The Court held that reading all the relevant statutes together and giving effect to the legislative intent required the scoring of PRVs when a sentence may be enhanced under MCL 333.7413(2). The Court reasoned that MCL 777.21(1) sets forth the general rule for calculating a minimum sentence range, and under this section PRVs must be scored unless an exception applies. The Court found that the sentence enhancement of MCL 333.7413(3) is not an exception to the general rule because the statutory language does not conflict.

The Court recognized that its holding was contrary to statements made in *Lowe*, where the Court responded to the dissent and stated that the absence of a reference to PRVs in section 21(4) of the statute indicated that offenders falling under that section should not be scored with regard to the repeat nature of the offense. However, the Court found that this statement was not dispositive to the issue in *Lowe* and was nonbinding dicta. Accordingly, the Court clarified that *Lowe* is limited to whether a trial court may enhance both a defendant's minimum and maximum sentence under MCL 333.7413(2).

Justice Zahra authored the majority opinion. Justice Cavanagh dissented in order to remain committed to his dissent in *Lowe*. Justice Cavanagh reasoned that both the prosecutor's and the defendant's preferred sentencing approaches result in sentences inconsistent with MCL 769.34(2).