

MSC: People v. Wilcox

12. May 2010 By John Bursch

In a 4-3 decision with a slightly unusual alignment of Justices, the Michigan Supreme Court held yesterday that a 10-year minimum sentence imposed under MCR 750.520f, the repeat criminal sexual conduct offender statute, represents a departure from the legislative sentencing guidelines and thus had to be reversed based on the trial court's failure to state the "substantial and compelling reasons" for the sentence imposed. [People v. Wilcox, No. 136956](#). Chief Justice Kelly authored the majority opinion, in which Justices Cavanagh, Markman, and Hathaway joined. Justice Young authored a dissenting opinion joined by Justice Corrigan. Justice Weaver also dissented, joining in large part Justice Young's dissent.

The key issue in the case is whether MCL 750.520f(1) mandates a five-year sentence, or any minimum sentence of five years or more. The Court of Appeals concluded that the mandate was five years or more. The statute states:

If a person is convicted of a second or subsequent offense under [MCL 750.520b, 750.520c, or 750.520d], the sentence imposed under those sections for the second or subsequent offense shall provide for a mandatory minimum sentence of at least 5 years.

MCL 750.520f(1). The majority agreed with the defendant that a five-year minimum is the only sentence that is mandatory, and that any sentence above five years is permissive, thus triggering the need for a sentencing court explanation for any "departure," i.e., a sentence in excess of five years. The dissent believed that conclusion to be "wholly inconsistent with the plain meaning" of the statute, which does not create an absolute "mandatory minimum" sentence of five years, but instead creates an indeterminate "mandatory minimum," under which five years is the starting point of the minimum sentence, not its upper terminus.