State of Michigan
In the Supreme Court

The People of the State of Michigan

Plaintiff-Appellee,

v.

Armond Pinson

Defendant-Appellant.

MSC No. 164465

COA No. 356624

Ottawa County Circuit Court
Case No. 20-043663 FH

Armond Pinson's Supplemental Brief

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Statement of the Question Presented

First Question

Did the sentencing court err by sentencing Mr. Pinson to six months in jail? Does MCL 769.8 require a prison sentence for first-time felony offenders?

Mr. Pinson answers: No.

The Court of Appeals answers: Yes.

Statement of Facts

Armond Pinson accepted responsibility for his actions and pled guilty as charged to third-degree criminal sexual conduct in the Ottawa County Circuit Court, the Honorable Jon H. Hulsing presiding, on September 28, 2020. (Plea 9/28/20 3-7). There was no plea or sentencing agreement with the prosecution.

Mr. Pinson's sentencing guidelines were calculated at 21 to 35 months. (Sentencing Information Report (SIR)). On November 30, 2020, Judge Hulsing sentenced Mr. Pinson to six months in jail, with credit for six days previously served. (Sent 11/30/2020 10).[1]

The prosecution subsequently filed a Motion for Resentencing in which it argued that a six-month jail sentence was a legally invalid sentence for third-degree criminal sexual conduct. (Motion Requesting Resentencing 2).. At the motion hearing, the prosecution argued Mr. Pinson's six-month jail sentence is invalid under MCL 769.8(1) and cited two unpublished opinions by the Court of Appeals. (Motion 12/21/20 3).

Judge Hulsing ultimately denied the prosecution's Motion for Resentencing. (Motion 12/21/20 12). In doing so, Judge Hulsing noted the legislature created an exception to MCL 769.8(1) when it classified third-degree criminal sexual conduct as a class B offense for which the sentencing grid allows for intermediate sanctions. *Id.* at 9-10.

Appellate Procedural History

The prosecution subsequently filed an application for leave to appeal in the Court of Appeals, which the Court of Appeals granted on June 17, 2021. On April 7, 2022, the Court of Appeals issued a published decision vacating Mr. Pinson's sentence and remanding the case for resentencing. *People v Pinson*, ___ Mich App ___; ___ NW2d ___ (2022) (Docket No. 356624). Specifically, the Court of Appeals held that 1) Mr. Pinson's determinate six-month jail sentence for third-degree criminal sexual conduct was an invalid sentence and 2) the trial court was

[1] Mr. Pinson has since served his jail sentence and has been out for almost two years.

required to impose a minimum and maximum sentence, either within or outside of the recommended sentencing guidelines range. *Id.* at slip op 7.

Mr. Pinson then filed an application for leave to appeal in this Court. On October 7, 2022, this Court issued an order vacating the judgment of the Court of Appeals and remanding the case to the Court of Appeals for reconsideration. (10/7/22 MSC Order). Specifically, this Court ordered the Court of Appeals to reconsider its opinion that relied in part on the conclusion that "jailtime is not an intermediate sanction pursuant to MCL 769.31(b)," given that Mr. Pinson was convicted and sentenced before MCL 769.31(b) was amended in this way.

On December 1, 2022, the Court of Appeals issued a second published opinion vacating Mr. Pinson's sentence and remanding the case for resentencing. *People v Pinson*, ___ Mich App ___; ___ NW2d ___ (2022) (on remand), slip op at 1. The Court of Appeals again held that MCL 769.8(1) required the sentencing court to impose an indeterminate sentence. *Id.* at 7. Specifically, the Court of Appeals found that the sentencing court was required to impose an indeterminate prison sentence because third-degree criminal sexual conduct is not a probationable offense and because Mr. Pinson did not have a statutory right to an intermediate sanction. The Court held as such even though the version of MCL 769.31(b) in effect at the time of Mr. Pinson's offense and sentencing allowed for a county jail sentence as an intermediate sanction. at 4, 7.

Mr. Pinson filed an application for leave to appeal with this Court. On May 24, 2023, this Court granted oral argument on the application "to address whether MCL 769.8 requires an indeterminate prison sentence for first-time felony offenders where the offense provides prison as a possible punishment, or whether the statute instead requires that, when a trial court decides to impose a prison sentence, that sentence must be indeterminate."

Arguments

I. The sentencing court did not err by sentencing Mr. Pinson to six months in jail because MCL 769.8 does not require a prison sentence for first-time felony offenders.

Standard of Review

This Court reviews the interpretation of a statute, including the application of facts to the law, de novo. *People v Calloway*, 500 Mich 180, 186 (2017).

Discussion

MCL 769.8 provides that a court must fix a minimum term when imposing a prison sentence for a first-time felony offender:

> Sec. 8. (1) When a person is convicted for the first time for committing a felony and the punishment prescribed by law for that offense may be imprisonment in a state prison, the court imposing sentence shall not fix a definite term of imprisonment, but shall fix a minimum term, except as otherwise provided in this chapter. The maximum penalty provided by law shall be the maximum sentence in all cases except as provided in this chapter and shall be stated by the judge in imposing the sentence.
>
> (2) Before or at the time of imposing sentence, the judge shall ascertain by examining the defendant under oath, or otherwise, and by other evidence as can be obtained tending to indicate briefly the causes of the defendant's criminal character or conduct, which facts and other facts that appear to be pertinent in the case the judge shall cause to be entered upon the minutes of the court.

By application of MCL 769.8, the Legislature established that when sentencing a first-time felony offender to *prison*, that *prison sentence* must be indeterminate. The statute does not apply when a court sentences a first-time felony offender to a determinate sentence in *jail*. To hold otherwise would contravene this Court's prevailing modes of

statutory interpretation, undermine Michigan sentencing jurisprudence, and implicate grave public policy concerns.

This Court's prevailing modes of statutory interpretation support a finding that MCL 769.8 requires an indeterminate sentence only when a prison sentence is imposed.

Plain Language of Statute

The plain language of MCL 769.8 only mandates an indeterminate sentence when a prison sentence is imposed. It does not require a prison sentence for all first-time felonies.

When reviewing questions of statutory interpretation, the goal of this Court is to "ascertain the legislative intent that may reasonably be inferred" from the statutory language. *Sanford v State*, 506 Mich 10, 14–15 (2020) (citing *People v Couzens*, 480 Mich 240, 249 (2008)). In so doing, this Court first looks to the statute's express or plain language, which "offers the most reliable evidence of the Legislature's intent." *Sanford*, 506 Mich at 15 (citing *Badeen v PAR, Inc*, 496 Mich 75, 81 (2014)). If the statute is unambiguous on its face, the Legislature is presumed to have intended the meaning expressed, and judicial construction is neither required nor permissible. *People v Laney*, 470 Mich 267, 271 (2004). Where the statute's plain language is "clear and unambiguous, judicial construction is limited to enforcement of the statute as written." *Sanford*, 506 Mich at 15 (citing *People v Gardner*, 482 Mich 41, 50 (2008)).

The language of MCL 769.8(1) clearly states that a sentencing court "shall not fix a definite term of imprisonment" in instances "[w]hen . . . the punishment prescribed by law for that offense may be imprisonment in a state prison." The statute's plain language dictates how a prison sentence should look in the event that one is imposed but does not require that a prison sentence be imposed in all cases. Moreover, MCL 769.8 provides for exceptions to its rule, by including the clause "except as otherwise provided in this chapter." These exceptions include parolable life sentences, MCL 769.9, and life without parole sentences, see, e.g. MCL 750.316.

Legislative History of MCL 769.8 and its Antecedents

A review of the historical antecedents of MCL 769.8 and Michigan's legislative history as to indeterminate sentencing further supports the conclusion that an indeterminate prison sentence is required only when a prison sentence is imposed. At the time the Legislature enacted and revised MCL 769.8, it was also enacting statutes for felony offenses with penalty provisions allowing for jail or prison.

"[I]t is often useful to consider legislative history because even those statutes lacking clearly contradictory language are often subject to different—yet reasonable—interpretations." *In re Certified Question from US Ct of Appeals for Sixth Cir*, 468 Mich 109, 120 (2003). This mode of interpretation is particularly helpful "when a literal reading of the statute will produce absurd or illogical results." *Id.* at 120-121 (citing *DiBenedetto v West Shore Hosp*, 461 Mich 394, 408 (2000) (Cavanagh, J., dissenting)). "[T]he most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it ... for when this reason ceases, the law itself ought likewise to cease with it." *In re Certified Question*, 468 Mich at 121; see also 1 Blackstone, Commentaries 61.

In 1902, the state constitution was amended to allow the legislature to enact an indeterminate sentence law. Martin Zalman, *The Rise and Fall of the Indeterminate Sentence*, 24 L REV 45, 60 (1977). This law was proposed and then ratified by voters in 1902. *Id.* at 60. It "provide[d] for indeterminate sentences . . . as *a* punishment for crime." *Id.* (emphasis added). The law was revised in 1905, rendering it more structurally similar to the language of MCL 769.8. *Id.* Despite the change in language, this Court found that these statutes had the same general purpose, i.e., that the Legislature intended for indeterminate sentences to be "a" punishment for a crime. *Ex parte Forscutt*, 167 Mich 438, 443 (1911).

This statute was revised again in 1921 and 1927. 1921 PA 259; 1927 PA 175. The 1927 revision added the language "convicted for the first time," which remains in the current version of MCL 769.8(1). 1927 PA 175. Yet still, this provided guidance for indeterminate prison

sentences as a potential punishment for an offense, rather than the only punishment.

This reading of MCL 769.8 aligns with the language of statutes on the books in 1929 and 1931, many of which provided for either jail or prison as alternative sentences for certain offenses. For example, the penalty for "failure to stop in event of accident involving injury or death to a person" was "imprisonment in the county or municipal jail for not less than thirty [30] days nor more than one [1] year, or in the state prison for not less than one [1] nor more than five [5] years . . . . " 4748 sec 56. The same is recognized by the current statute for failure to stop at the scene of an accident resulting in serious impairment or death, MCL 257.617(2). Another example is within the statute criminalizing "[b]ribery of officer of public institution[,]" Act 107, 1873, section 484: "the offender shall be punished . . . by imprisonment in the state prison not more than five [5] years, or by imprisonment in the county jail not more than one [1] year, or by both such fine and imprisonment in the discretion of the court."

The same is true within the penal code of 1931, which included statutes with language that is very similar, if not the same, as the language of penal code statutes currently on the books. For example, MCL 750.161, the statute criminalizing "desertion" and "abandonment" indicates that it is "a felony, punishable by imprisonment in a state correctional facility for not less than 1 year and not more than 3 years, or by imprisonment in the county jail for not less than 3 months and not more than 1 year." The same applies to the statute criminalizing an attempt to commit a crime, MCL 750.92. Subsection two dictates that an attempt to commit an offense punishable by life or five or more years is "guilty of a felony, punishable by imprisonment in the state prison not more than 5 years or in the county jail not more than 1 year." MCL 750.92(2). An attempt to commit an offense punishable by prison "for a term less than 5 years, or imprisonment in the county jail or by fine" is "punishable by imprisonment in the state prison or reformatory not more than 2 years or in any county jail not more than 1 year[.]" MCL 750.92(3).

Given the history of MCL 769.8, and that the Model Penal Code provides for non-prison sentences as an option for certain felony offenses, it is not feasible to read MCL 769.8 as requiring an

indeterminate prison sentence for all first-time felony offenders.

Reading MCL 769.8 *in Pari Materia* with Code of Criminal Procedure and Sentencing Guidelines

From the time of its enactment, Michigan's indeterminate sentencing statute has been construed as providing courts with guidance on how to impose a prison sentence as a punishment. In nearly one hundred years, no court has construed this law to mean that prison is the *only* permissible punishment for first-time felony offenders.

MCL 769.8 and the statutory authority for the guidelines and offense classes are all contained within the Code of Criminal Procedure. "Under the rule of construction of statutes *in pari materia*, it is appropriate to harmonize statutory provisions that serve a common purpose when attempting to discern the intent of the Legislature." *Lindsey v Harper Hosp*, 455 Mich 56, 65 (1997) (italics added) (citing *Jennings v Southwood*, 446 Mich 125, 136–137 (1994)). The purpose of the Code of Criminal Procedure is to "codify the laws relating to criminal procedure[2] Preamble, MCL 760.1 *et seq*.

Reading these statutes together, it is evident that the Legislature intended to provide for different types of sentences depending on the severity of an offense and the individual circumstances of each case. A blanket rule that requires an indeterminate prison sentence for all first-time felonies would contradict this.

The Legislature specified that the guidelines were to apply to felony offenses. See MCL 769.33(1)(a), later repealed by 2002 PA 31 § 1 (sentencing commission shall "[c]ollect, prepare, analyze, and disseminate information regarding the state and local sentencing practices for felonies and the use of prisons and jails"); MCL 769.34(1), as first enacted by 1994 PA 445, ("The sentencing guidelines promulgated by order of the Michigan supreme court shall not apply to felonies committed on or after the effective date of the act by which the

[2] Under MCL 760.2, all provisions in the Code of Criminal Procedure "shall be liberally construed to effectuate the intents and purposes thereof."

legislature enacts sentencing guidelines into law"); MCL 769.34(2), as first enacted by 1994 PA 445, ("[T]he minimum sentence imposed by a court of this state for a felony committed on or after the effective date of the act first enacting into law the sentencing guidelines developed pursuant to section 33 of this chapter shall be within the appropriate sentence range under the sentencing guidelines in effect on the date the crime was committed").[3]

The Legislature created crime classes to reflect the seriousness of an offense and to determine which guidelines grid is to be used in determining an appropriate minimum sentence. MCL 777.11 et seq. Guidelines grids contain guidelines cells, see *People v Lockridge*, 498 Mich 358, 364-365 (2015), which can provide for three different types of sentencing recommendations: 1) an "intermediate sanction," meaning probation or any other such sanction, if the upper limit of the recommended guidelines range is 18 months or less; 2) a "straddle cell," meaning either prison or an intermediate sanction, if the upper limit of the range exceeds 18 months and the lower limit is 12 months or less; or 3) a "prison cell," recommending a prison sentence when the lower limit of the guidelines range exceeds 12 months. MCL 769.31; MCL 769.34. Crime classes also dictate the maximum term of imprisonment for each felony offense. For example, offenses that fall under Class H, i.e., the least "serious" offenses, are offenses for which jail or other intermediate sanctions may be appropriate. MCL 777.69. Mr. Pinson's offense of third-degree criminal sexual conduct is a class B offense, which is punishable by up to 20 years. MCL 777.63. Based on his offense class, criminal history, and offense characteristics, Mr. Pinson's guidelines recommendation was 21-35 months. SIR. Thus, his guidelines recommended a prison sentence. MCL 769.31; MCL 769.34.

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[3] The final report of the Michigan Sentencing Guidelines Commission specifies under a category labeled "Offenses Included" that "[t]he following criminal offenses are included in the proposed guidelines: All offenses which are by statute designated as felonies; and All misdemeanor offenses which are punishable by more than one (1) year of incarceration." *Report of the Michigan Sentencing Guidelines Commission* (December 2, 1997), Appendix 109a.

However, in *Lockridge*, *supra* at 373-374, this Court held that the guidelines were advisory, as mandatory guidelines violated an individual's constitutional right to a jury trial. Trial judges are permitted to depart from a recommended guidelines range and impose a sentence either below or above the range, as long as the judge considers the guidelines when fashioning a sentence, any departure is "reasonable," and the judge places their reasons for the departure on the record. MCL 769.34(3). This gives trial judges the discretion to individualize sentences so that they are proportionate to an individual and their offense, while still taking into account the advisory nature of the guidelines.

The Code of Criminal Procedure also contains sentencing guidance for habitual offenders. Within these statutes, the Legislature provided trial judges with the discretion to sentence habitual second offenders to jail or probation:

> (a) If the subsequent felony is punishable upon a first conviction by imprisonment for a term less than life, the court, except as otherwise provided in this section or section 1 of chapter XI,[2] may place the person on probation or sentence the person to imprisonment for a maximum term that is not more than 1-½ times the longest term prescribed for a first conviction of that offense or for a lesser term.
>
> (b) If the subsequent felony is punishable upon a first conviction by imprisonment for life, the court, except as otherwise provided in this section or section 1 of chapter XI, may place the person on probation or sentence the person to imprisonment for life or for a lesser term. MCL 769.10(1).

This further evinces the Legislature's intent to provide exceptions where a non-prison sentence can be imposed for a felony offense.

To hold that MCL 769.8 requires a mandatory indeterminate prison sentence for every first-time felony would implicitly overrule the advisory sentencing guidelines and upend the current sentencing

scheme in Michigan. It would require a prison sentence to be imposed even when an offense's crime class, and guidelines grid, call for a jail sentence or an intermediate sanction. Trial judges would also be prevented from imposing a downward departure sentence involving jail or an intermediate sanction, despite the authority given to them by MCL 769.34.

MCL 769.8 mandates an indeterminate sentence only when a prison sentence is imposed. It does not require a prison sentence for all first-time felonies. This interpretation of MCL 769.8 comports with the statute's plain language, the legislative history of the indeterminate sentence, and a reading of the Code of Criminal Procedure as a whole. If this Court were to hold otherwise and find that MCL 769.8 requires a prison sentence for all first-time felonies, it should also find that the Legislature carved out exceptions to this statute when it created the sentencing guidelines.

It is consistent with Michigan's sentencing jurisprudence to find that MCL 769.8 does not impose mandatory prison sentences for first-time felony offenders.

Reading MCL 769.8 to only require an indeterminate sentence when a prison sentence is imposed, rather than requiring a prison sentence for first-time felony offenders, is also consistent with Michigan sentencing jurisprudence.

This is an issue of first impression in Michigan. Neither the Supreme Court nor the Court of Appeals have directly opined on whether MCL 769.8 requires a prison sentence for all first-time felony offenders. However the Court of Appeals has addressed a related issue – whether MCL 769.8 requires a prison sentence for certain felony offenses where probation is unavailable. See *People v Martin*, 257 Mich App 457, 461 (2003) (finding that intermediate sanctions constitute an exception to MCL 769.8); *People v Frank*, 155 Mich App 789, 791 (1986) (finding that because third-degree criminal sexual conduct is not a probationable offense, MCL 769.8 requires a 15-year maximum sentence); *People v Austin*, 191 Mich App 468, 469 (1991) (holding that because armed robbery is not a probationable offense, when the court imposes a term of years, it must be an indeterminate sentence under

MCL 769.8 and MCL 769.9).

These cases were wrongly decided and ignore Michigan jurisprudence holding that non-prison sentences are sentencing options for some felony offenses and offenders. For example, in *People v Haymond*, 74 Mich App 632, 632-633 (1977), an individual was convicted of larceny in a building, MCL 750.360, and sentenced to one year in the county jail. The sole issue on appeal was whether a year in jail was a permissible sentence for larceny in a building when "the statutorily described penalties are a maximum of four (4) years in the state prison and/or a . . . fine[.]" *Id.* at 633. Because the statute for the offense itself did not explicitly prescribe a penalty, the appropriate sentencing parameters were dictated by MCL 750.503, which stated that a felony "for which no punishment is specially prescribed" within its statute is "punishable by imprisonment for not more than 4 years or a fine[.]" Further, MCL 769.28 provides that any sentence "to imprisonment for a maximum of 1 year or less" was to be served in the county jail. Therefore, a sentence of one year in jail for larceny in a building was valid. *Haymond*, 74 Mich App at 633. In *People v Johnson*, 74 Mich App 652, 655 (1977), the Court of Appeals invoked the same reasoning to find that the trial court in that case had the authority to sentence the defendant to one year in jail, even where such sentence was not required by statute or made a part of the defendant's probation.

Although *Haymond* and *Johnson* date back to the 1970s, they have not been overturned. Moreover, their holdings have been extended in subsequent opinions by the Court of Appeals. See *People v Moon*, 125 Mich App 773, 776 (1983) (citing *Johnson* as supporting the prosecution's argument that the defendant "could have received one year in the county jail" for assault with intent to commit second-degree criminal sexual conduct); *People v Wilson*, 111 Mich App 770, 773 (1981) (citing *Johnson* when reiterating that "this court has upheld sentences of one year in the county jail for the crime of larceny in a building").More recently, the Court of Appeals recognized a non-prison sentence was a permissible sentencing option for individuals convicted of second-degree criminal sexual conduct. *People v Kern*, 288 Mich App 513 (2010). In *Kern*, an individual was sentenced to five years' probation, with the first year to be served in county jail, for second-degree criminal sexual

conduct. *Id.* at 514. Second-degree criminal sexual conduct is punishable by imprisonment "for not more than 15 years." *Id.* at 517; MCL 750.520c. The Court held that the imposition of lifetime electronic monitoring was not authorized by statute for a non-prison sentence. *Kern*, 288 Mich App at 520. This finding was highlighted by this Court in *People v Cole*, 491 Mich 325, 335 n 7 (2012) (emphasis added), when it held that pursuant to *Kern*, "only defendants sentenced to prison—*not those sentenced to probation or jail*—are subject to lifetime electronic monitoring."*Martin*, *Frank*, and *Austin* only analyzed the application of ML 769.8 in the context of certain, nonprobationable felony offenses. They did not address the question before this Court now – whether or not MCL 769.8 requires an indeterminate prison sentence for all first-time felony offenders. Moreover, *Martin*, *Frank*, and *Austin* are wrongly decided as they contradict Michigan jurisprudence recognizing that non-prison sentences are sentencing options for some felony offenses and offenders. This includes criminal sexual conduct offenses. *Kern*, 288 Mich App at 520; *Cole*, 491 Mich at 335 n 7. To hold that MCL 769.8 requires a prison sentence for all first-time felony offenders would ignore Michigan courts' holdings that jail is a sentencing option for some first-time felony offenses and offenders, including those convicted of criminal sexual conduct.

Imposing mandatory prison sentences for first-time felony offenders violates public policy.

To hold that MCL 769.8 requires courts to impose prison sentences for all first-time felony offenders would lead to untenable implications. Construing MCL 769.8 in this way would work a vast change on Michigan sentencing law. For example, it would create a sentencing scheme that punishes first-time felony offenders more severely than second habitual offenders for whom probation is an authorized sentence. See MCL 769.10(1); section IA, *supra*.

Further, if MCL 769.8 were to require a prison sentence for all first-time felony offenders, it would create a mandatory minimum term. 'Mandatory minimum sentencing" laws require that persons convicted of specified crimes or crimes within specified categories *must* serve a prison term of some designated length. Zalman, *The Rise and Fall of the Indeterminate Sentence: Part III*, 24 WAYNE L REV 857, 859 (1978).

Should MCL 769.8 create a mandatory minimum term, this Court would have to conclude that trial judges are required to warn of this consequence when accepting a guilty plea. See MCR 6.302(B)(2) (requiring advice of any "mandatory minimum sentence required by law").

Finally, interpreting MCL 769.8 to create a rule requiring an indeterminate prison sentence for first-time felony offenders would severely curtail trial judges' discretion to impose individualized sentences that are tailored to the particular offense and offender. Such an interpretation would deprive trial courts of the ability to impose a jail sentence when an individual's guidelines call for an intermediate sanction – particularly given the 2021 amendments to the definition of "intermediate sanction." MCL 769.31(b) ("'Intermediate sanction' means probation or any sanction, other than imprisonment in a county jail, state prison, or state reformatory, that may lawfully be imposed").[4] Therefore, judges would be required to impose an upward departure sentence of prison, or a solely non-custodial sentence, such as probation or community service. This would significantly change the way trial courts sentence in Michigan and would sharply narrow the scope of judges' sentencing discretion. Moreover, requiring judges to impose prison sentences for all first-time felonies would drastically change the allocation of expenses in Michigan's carceral system. Specifically, county jails would see a significant decrease in funding, as far fewer individuals would be eligible for jail sentences. At the same time, state prisons would require a significant increase in funding to accommodate the increased number of individuals sentenced to prison.

In sum, MCL 769.8 requires an indeterminate sentence only when a *prison* sentence is imposed. The statute does not require a prison sentence for first-time felony offenders; instead, it merely speaks to the *form* of a prison sentence when one is imposed. See *Brinson*, 403 Mich

[4] Mr. Pinson was convicted and sentenced before the 2021 amendments took place; however, the amended definition of "intermediate sanction" has implications for other, similarly situated individuals.

at 683 (twice referring to the legislature's intention as to the "form" of a prison sentence for non-habitual offenders).

Given all the above, Mr. Pinson's six-month jail sentence for third-degree criminal sexual conduct was a valid sentence under Michigan law. The version of MCL 769.31(b) in effect at the time of Mr. Pinson's offense and his sentencing expressly authorized a jail sentence without probation as part of the legislative guidelines scheme.[4] MCL 777.16y classifies third-degree criminal sexual conduct as a class B offense. Grid A-I in the sentencing grid for class B offenses is 0 to 18 months and is an intermediate sanction cell. MCL 777.63. Additionally, grids A-II and B-I are straddle cells which also allow for an intermediate sanction. *Id.* Thus, intermediate sanctions were authorized for the lowest ranges as well as straddle cells. Furthermore, the trial court had the discretion to depart from Mr. Pinson's guidelines "if the departure is reasonable and the court states on the record the reasons for departure." MCL 769.34(3). The trial court did so here in imposing a six-month jail sentence for Mr. Pinson, given that his guidelines of 21-35 months called for a prison sentence.

What the court did in Mr. Pinson's case is analogous to when a sentencing court gives an individual probation as a departure from a prison cell when an offense is probationable. While MCL 777.1(1) precludes probation for third-degree criminal sexual conduct, the principle is the same. Mr. Pinson's sentence was not required to be indeterminate, and thus a six-month jail sentence was an authorized departure at the time of his sentencing.

Therefore, at a minimum, this Court should peremptorily reverse the Court of Appeals' decision and affirm Mr. Pinson's sentence.

Conclusion and Relief Requested

For the reasons stated above, Armond Pinson respectfully requests that this Honorable Court grant leave to appeal, issue an opinion or order reversing the Court of Appeals' opinion, or grant any other peremptory relief the Court deems just and appropriate.

Respectfully submitted,

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Certificate of Compliance

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Respectfully submitted,

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