Crosby Remands¹ Flowchart

NO PREJUDICE (AND THEREFORE NO REMAND)

- (1) if the trial court departed upward; or
- (2) if the facts found by the jury and admitted by the defendant are sufficient to support the OV score; or
- (3) if the OV score as adjusted would not change the minimum guidelines range.

CROSBY REMAND

- (1) Only for sentences imposed on or before July 29, 2015.
- (1) Remand is for further inquiry to determine whether resentencing is required.

SENTENCES IMPOSED AFTER JULY 29, 2015

- (1) No Crosby remand.
- (2) Review is solely for plain error affecting substantial rights (traditional *Carines* analysis).

Trial Court Procedure: Determination Whether to Resentence

- (1) Defendant must be given the opportunity to advise the court (in writing) that he or she does NOT seek resentencing, and must do so before it expresses its intent to resentence. *People v Odom*, 327 Mich App 297, 312 (2019).
- (2) Appoint counsel for defendant if he/she is unrepresented. *People v Howard*, 323 Mich App 239, 247 (2018). The court must obtain the views of counsel, but no hearing is required and defendant need not be present.
- (3) The court must determine whether the sentence would have been materially different if the court had not been constrained by the guidelines range, based solely on circumstances existing at the time of the *original* sentencing.
- (4) When the original sentencing judge is unavailable, the assigned judge must allow the defendant an opportunity to appear and be heard before determining whether to resentence the defendant. *Howard*, 323 Mich App at 253.

Determination That Resentencing is Required

- (1) Defendant must be present at resentencing (MCR 6.425).
- (2) The guidelines range MUST be determined using normal procedures.
- (3) The guidelines range is advisory only, but MUST be considered by the trial court.
- (4) The court need not articulate substantial and compelling reasons to depart from the guidelines range; however, a departure sentence must be reasonable (i.e., proportionate under *People v Milbourn*, 435 Mich 630 (1990)).
- (5) For purposes of appellate review, the court should provide an explanation for the sentence imposed.

Determination That Resentencing is Not Required (or Defendant Provides Timely Notification That Resentencing is Not Sought)

Original sentence remains in effect.

Michigan Judicial Institute

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¹ United States v Crosby, 397 F3d 103 (CA 2, 2005). See People v Lockridge, 498 Mich 358, 395-399 (2015); People v Steanhouse, 500 Mich 453, 471, 475-476 (2017). NOTE: This flowchart addresses Lockridge and Steanhouse only and does not include supplementary holdings of the Court of Appeals unless specifically noted.