STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-v-

KRIS EDWARD SITERLET,

Defendant-Appellant.
_____/

Supreme Court No. Publ ord 12-27-12

Court of Appeals No. 308080

Circuit Court No. 10-4061 FH

Clare

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App

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State

APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF JURISDICTION

Defendant-Appellant was convicted in the Clare County Circuit Court following a jury trial, and a Judgment of Sentence was entered on December 9, 2011. A Claim of Appeal was filed on January 9, 2012, by the trial court pursuant to the indigent defendant's timely request for the appointment of appellate counsel dated December 29, 2011, as authorized by MCR 6.425(F)(3). The Court of Appeals had jurisdiction over this appeal as of right provided for by Const 1963, art 1, §20, pursuant to MCL 600.308(1), MCL 770.3, MCR 7.203(A), and MCR 7.204(A)(2). Defendant-Appellant is filing this application within 56 days of the published opinion issued below. MCR 7.302(C)(2).

STATEMENT OF QUESTION PRESENTED

I. DOES THE PUBLISHED OPINION OF THE COURT BELOW INCLUDE A PLAIN ERROR ANALYSIS THAT CONFLICTS WITH THIS COURT'S DECISION IN *PEOPLE V KIMBLE* AND WITH THE U.S. SUPREME COURT'S DECISION IN *UNITED STATES V OLANO*?

Court of Appeals made no answer.

Defendant-Appellant answers, "Yes".

STATEMENT OF FACTS

This appeal stems from a jury trial held in the Clare County Circuit Court, the Honorable Roy G. Mienk presiding.[1] On September 23, 2011, the jury found Defendant-Appellant Kris Siterlet guilty of operating while visibly impaired, MCL 257.625(3).[2] (JT-II 189). The offense was enhanced to a felony pursuant to the recidivist provisions of MCL 257.625(11)(c). On December 5, 2011, the trial court sentenced Mr. Siterlet as a fourth habitual offender to a prison term of 46 months to 25 years. (ST 16). The Court of Appeals affirmed in a published opinion. *People v Siterlet*, __ Mich App __; __ NW2d __ (December 27, 2012) (attached as Appendix A). Mr. Siterlet now seeks leave to appeal to this Court.

A. Relevant Trial Court Proceedings

The prosecution originally charged Mr. Siterlet with operating while intoxicated ("OWI"), alleging that he drove with a blood alcohol content of 0.11. (JT-I 154); *Appendix B: Original Information and Subsequent Amendments*. The original information indicated that the charge would be enhanced to a felony by virtue of Mr. Siterlet's prior misdemeanor convictions for OWI. *Id.* at B-1. It also cited three prior OWI felonies as grounds for sentencing Mr. Siterlet as a fourth habitual offender under MCL 769.12. *Id.* The prosecution filed this document on November 18, 2010; Mr. Siterlet waived arraignment a few days later. *Id.; see Docket Entries.*

Several months later, on June 14, 2011, the prosecution amended the information. *Id.* at B-2. Instead of charging Mr. Siterlet as a fourth habitual offender, the amended information

[1] The transcripts of Mr. Siterlet's jury trial are cited as "JT," with additional reference to the volume of proceedings. The sentencing transcript is cited as "ST." Transcripts of pre-trial hearings are cited as "Pre-Trial," with additional reference to the date of proceedings.

[2] Before trial, Mr. Siterlet pled guilty to second-offense operating on a suspended license, MCL 257.904(3)(b). The plea-based conviction is not part of this appeal. *See* MCR 7.203(A)(1)(b).

charged him as a third habitual offender. *Id.* This notice remained in place when the case went to trial.

One month before trial, in August of 2011, the prosecution extended a plea offer to Mr. Siterlet. (Pre-Trial 8/16/2011, at 4). In exchange for Mr. Siterlet's plea to third-offense OWI, the prosecution promised that it would seek only to sentence him as a second-habitual offender, and not as a third-habitual as charged in the amended information. (Pre-Trial 8/16/2011, at 4). The prosecution also promised that Mr. Siterlet would receive a sentence within the guidelines range for second habitual offenders, estimated to be 7-28 months. (Pre-Trial 8/16/2011, at 4). Lastly, the prosecution promised to dismiss a charge of operating on a suspended license. (Pre-Trial 8/16/2011, at 4). Mr. Siterlet declined the offer. (Pre-Trial 8/16/2011, at 5).

The jury convicted Mr. Siterlet of the lesser offense of operating while visibly impaired. (JT-II 189). Four days after the verdict, the prosecution amended the information for a second time. *Appendix B*, at B-3. This time, the prosecution indicated that it would seek the enhancement reserved for fourth habitual offenders. *Id.* The defense did not object to this second amendment.

The trial court ultimately sentenced Mr. Siterlet as a fourth habitual offender. (ST 4). This increased the controlling guidelines range to 7-46 months. (ST 4). It also increased the potential maximum sentence from ten years to life. *See* MCL 769.11(1)(a); MCL 769.12(1)(b); MCL 257.625(11)(c)(i). The trial court sentenced Mr. Siterlet at the very top of the guidelines range, imposing a prison term of 46 months to 25 years. (ST 16).

B. Appellate Court Proceedings

Mr. Siterlet subsequently appealed by right to the Court of Appeals, challenging only the post-trial amendment of the habitual enhancement notice. *Appendix A*, at 1. The Court of

Appeals agreed that this second amendment was improper because it took place more than 21 days after the filing of the original information. *Id.* at A-1, A-4 (citing MCL 769.13(1)). This is because "[t]he 21-day notice rule is a bright-line test that must be strictly applied." *Id.* at A-3 (citing *People v Morales*, 240 Mich App 571, 575-576; 618 NW2d 10 (2000)). Once the 21-day period expires, "the prosecution may not amend an information . . . to include additional prior convictions and, therefore, increase potential sentence consequences." *Id.* (citing *People v Ellis*, 224 Mich App 752, 756-757; 569 NW2d 917 (1997)). Applying this rule, the Court concluded that the trial court erred by allowing the prosecution to increase Mr. Siterlet's habitual-offender level after trial and "[w]ell after the expiration of the 21-day perod[.]" *Id.* at A-4.

The Court held, however, that Mr. Siterlet was not entitled to relief from this error. *Id.* at A-5. Because the defense did not object to the post-trial amendment, the Court applied the plain error rule of *People v Carines,* 460 Mich 750; 597 NW2d 130 (1999). *Appendix A*, at A-2. Under that rule, the defendant must establish the following: (1) there was an error, (2) the error was plain, i.e. clear or obvious, and (3) the plain error affected substantial rights, i.e., the outcome of the lower-court proceedings. *Id.* (citing *Carines*, 460 Mich at 763). The Court agreed that Mr. Siterlet had established the first and third prongs, reasoning that the trial court's error was outcome determinative because it increased the potential minimum and maximum sentences. *Id.* at A-4. But the Court held that the error was not "plain" because no existing precedent had ever addressed the procedural facts present in this case. *Id.* at A-5.

As an alternative holding, the Court of Appeals indicated that "even if the error was plain, we would decline to exercise our discretion in this case to order resentencing." *Id.* The Court noted that "[r]eversal is warranted only if the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings or resulted in the conviction of an

actually innocent person." *Id.* at A-2 (citing *Carines*, 460 Mich at 763-764). According to the Court of Appeals, the error in this case failed to meet that threshold for two reasons. *Appendix A*, at A-5. First, the defendant's prior convictions provided an indisputable factual basis for the fourth-offense enhancement. *Id.* Second, defense counsel acknowledged the prosecution's intent to pursue fourth-offense enhancement in pleadings filed after the first amendment but before the second. *Id.* at A-5-A-6. Accordingly, the Court of Appeals declined to remand the case so that Mr. Siterlet could be re-sentenced as a third-habitual offender. *Id.* at A-6. Mr. Siterlet now seeks leave to appeal this determination.

I. THE PUBLISHED OPINION OF THE COURT BELOW INCLUDES A PLAIN ERROR ANALYSIS THAT CONFLICTS WITH THIS COURT'S DECISION IN *PEOPLE V KIMBLE* AND WITH THE U.S. SUPREME COURT'S DECISION IN *UNITED STATES V OLANO.*

Issue Preservation

Trial counsel did not raise this issue at the original sentencing proceedings. Nor did appellate counsel raise this issue in either a motion for resentencing or a motion to remand. *See* MCL § 769.34(10). This unpreserved issue is therefore subject to review for plain error. *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004) (citing *People v Carines,* 460 Mich 750, 774; 597 NW2d 130 (1999)). To avoid forfeiture, the defendant must establish that: (1) there was an error, (2) the error was plain, i.e. clear or obvious, and (3) the plain error affected substantial rights, i.e., the outcome of the lower-court proceedings. *Id.* (citing *Carines*, 460 Mich at 763). The defendant also bears the additional burden of establishing that the unpreserved sentencing error "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" *Id.* (quoting *Carines*, 460 Mich at 763-764).

Standard of Review

Questions of statutory interpretation are subject to *de novo* review. *Id.* at 308-309.

Analysis

In a published opinion, the Court of Appeals misapplied the plain error doctrine to the unpreserved error which occurred at sentencing. The Court correctly found that the trial court erred by sentencing Mr. Siterlet as a fourth habitual offender in the wake of the prosecution's improper post-trial amendment of the habitual enhancement notice. *Appendix A*, at A-1, A-4. *See* Part A, *infra.* The Court also correctly held that this error was outcome determinative insofar as it allowed the trial court to impose a sentence that it otherwise could not have imposed.

Id. at A-4. *See* Part B, *infra.* But the Court of Appeals incorrectly found that the error was not "plain," despite the plain language of the Habitual Offender Act, MCL 769.10 *et seq.*, and the clarity of the cases construing it. As discussed in Part C, *infra*, this ruling conflicts with *United States v Olano*, 507 US 725; 113 S Ct 1770; 123 L Ed 2d 508 (1993), the case which inspired this Court to adopt the plain-error test in *Carines*, 460 Mich at 763, and in *People v Grant*, 445 Mich 535; 520 NW2d 123 (1994).

As an alternative holding, the Court of Appeals indicated that "even if the error was plain," it did not warrant reversal because it did not "seriously affect the fairness, integrity, or public reputation of the judicial proceedings." *Appendix A*, at A-5. The Court reached this conclusion despite its acknowledgment that the error allowed the trial court to impose a sentence beyond what the correctly scored guidelines actually permitted. *Id.* at A-4. The Court's published opinion therefore conflicts with *Kimble*, *supra*, which held that "[i]t is difficult to imagine what could affect the fairness, integrity and public reputation of judicial proceedings more than sending an individual to prison and depriving him of his liberty for a period longer than authorized by the law." *Kimble*, 470 Mich at 313. *See* Part D, *infra.* Leave to appeal is warranted to resolve these conflicts and clarify how the plain error standard applies in the context of sentencing errors.

A. The Court of Appeals correctly found that the trial court committed error in sentencing Mr. Siterlet as a fourth habitual offender.

The Habitual Offender Act requires the prosecution to give notice of its intent to pursue an enhanced sentence within 21 days of the arraignment or the filing of the information. MCL 769.13(1) plainly states:

> In a criminal action, the prosecuting attorney may seek to enhance the sentence of the defendant as provided under section 10, 11, or 12 of this chapter, by filing a written notice of his or her intent to do so

> within 21 days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.

The purpose of this rule is to ensure that a defendant has notice at an early stage in the proceedings that he could be sentenced as a habitual offender. *People v Morales,* 240 Mich App 571, 582; 618 NW2d 10 (2000). The rule is to be read in harmony with MCL 767.76, which gives the trial court the discretion to allow an amendment of the information, so long as the defendant does not suffer prejudice. *People v Hornsby*, 251 Mich App 462, 471; 650 NW2d 700 (2002) (citing *People v Ellis,* 224 Mich App 752, 756; 569 NW2d 917 (1997)). After the expiration of the 21-day period, the prosecution may not amend the habitual notice to increase the potential sentence. *Id.* at 472.

Here, while the original charging instrument did indicate that prosecution would seek the enhancement for fourth habitual offenders, the prosecution abandoned that pursuit early in the case. *Appendix B: Original Information and Subsequent Amendments*, at B-1. Two months before trial, on June 14, 2011, the prosecution filed an amended information designating Mr. Siterlet as a third habitual offender. *Id.* at B-2. This amended notice remained in place throughout trial, from jury selection through the final verdict. More importantly, the amended notice remained in place during plea negotiations. (Pre-Trial 8/16/2011, at 4-5). The prosecutor waited until after the jury reached its verdict (and after Mr. Siterlet rejected the plea offer) before amending the information to reinstate the fourth habitual notice. *Appendix B*, at B-3.

This was error, as the Court of Appeals correctly concluded. *Appendix A*, at A-3-A-5. For one thing, the prosecution never sought leave from the trial court to amend the information after the jury had already reached its verdict. MCL 767.76. Again, under MCL 769.13(1), "the prosecutor may not amend a notice to seek enhancement to include additional prior convictions

after the twenty-one-day period." *Hornsby*, 251 Mich App at 470 (citing *Ellis*, 224 Mich App at 755). This rule prevents the prosecution from changing the defendant's habitual offender level beyond the statutory timeframe, thereby increasing the potential sentence without "'the required notice that if he was convicted of the underlying felony he risked conviction for felony offender, fourth offense.'" *Id.* at 472 (quoting *People v Manning,* 163 Mich App 641, 644; 415 NW2d 1 (1987), overruled in part on other grounds *People v Bailey,* 483 Mich 905; 762 NW2d 161 (2009)).

B. The Court of Appeals' opinion conflicts with the *Olano* Court's determination that a trial court necessarily commits "plain" error when it disregards the plain language of the controlling statute.

In finding error, the Court of Appeals observed that the plain language of MCL 769.13(1) set forth a "bright-line test that must be strictly applied." *Appendix A*, at A-3 (citing *People v Morales*, 240 Mich App 571, 575-576; 618 NW2d 10 (2000)). The Court also relied on a number of earlier cases establishing that "the prosecution may not amend an information after the 21-day period provided for in MCL 769.13(1) to include additional prior convictions and, therefore, increase potential sentence consequences." *Id.* at A-3-A-4 (citing *People v Ellis*, 224 Mich App 752, 756-757; 569 NW2d 917 (1997), and *People v Hornsby*, 251 Mich App 462, 472-473; 650 NW2d 700 (2002)). Yet the Court concluded that the trial court's failure to adhere to these rules was not "plain" because no existing precedent had ever addressed the precise facts present in this case. *Id.* at A-5.

This ruling is at odds with the United States Supreme Court's decision in *Olano*, *supra.* The *Olano* Court determined that a trial court necessarily commits "plain" error when it disregards the plain language of the controlling statute. The unpreserved error in that case related to the presence of alternate jurors during jury deliberations. *Olano*, 507 US at 727. The

federal rules, specifically F.R. Crim. P. 24(c), explicitly provided: "An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict." *Id.* at 737. The trial court, however, allowed the alternates to remain present. *Id.* Although no reviewing court had addressed the issue, the *Olano* Court accepted the Government's concession that the error was plain because the text of the rule was so clear. *Id. See also United States v. Perry*, 479 F3d 885, 893, fn 8 (CA DC, 2007) ("Some legal norms are absolutely clear (for example, because of the clarity of a statutory provision or court rule); in such cases, a trial court's failure to follow a clear legal norm may constitute plain error, without regard to whether the applicable statute or rule previously had been the subject of judicial construction.") (quoting *United States v Merlos*, 8 F3d 48, 51 (CA DC, 1993)).

Here, the plain language of MCL 769.13(1) is just as clear. The 21-day rule set forth in that statute establishes a clear legal norm that prevents prosecutors from changing Mr. Siterlet's habitual level after trial. Further, unlike the trial court in *Olano*, the sentencing judge had the benefit of *Ellis*, *Hornsby*, *Morales*, and other appellate decisions construing the "bright-line test" of MCL 769.13(1). Accordingly, the sentencing judge's error was "plain."

C. The Court of Appeals correctly found that the trial court's committed error in sentencing Mr. Siterlet as a fourth habitual offender.

As the Court of Appeals correctly noted, the prosecution's post-trial amendment of the information prejudiced Mr. Siterlet by erroneously increasing the potential penalties. *Appendix A*, at A-4. The error increased Mr. Siterlet's potential minimum sentence by one year—from 34 months as a third habitual offender to 46 months as a fourth habitual offender. *Id. See also* MCL 777.21(3)(c); MCL 777.66. It also increased his potential maximum sentence from 10 years to life. *Id.* (citing MCL 769.11(1)(a); MCL 769.12(1)(b); MCL 257.625(11)(c)(i)). The

sentence that Mr. Siterlet ultimately received—a prison term of 46 months to 25 years—could not have been imposed had he been sentenced as a third habitual offender. (ST 16).

Additionally, the prosecution's post-trial amendment of the information deprived Mr. Siterlet of the opportunity to intelligently evaluate whether to accept the plea bargain. As the United States Supreme Court recently observed, plea bargaining "is not some adjunct to the criminal justice system; it ***is*** the criminal justice system." *Missouri v Frye*, __ US __; 132 S Ct 1399, 1407; 182 L Ed 2d 379 (2012) (quoting Scott & Stuntz, *Plea Bargaining as Contract*, 101 Yale L J 1909, 1912 (1992)) (emphasis in original). For that reason, the Court has made clear that defense lawyers have a duty to provide reasonable advice as to whether to accept or reject a plea offer. *Lafler v Cooper*, __ US __; 132 S Ct 1376, 1384; 182 L Ed 2d 398 (2012). But counsel cannot fulfill this duty without knowing what sentence the prosecution intends to seek. That is why it is so important to "provid[e] notice at an ***early*** stage of the proceedings to the defendant of the potential consequences of conviction of the underlying felony." *Morales*, 240 Mich App at 582 (quoting *People v Shelton*, 412 Mich 565, 569; 315 NW2d 537 (1982)) (emphasis added).

Here, the plea negotiations in this case were premised on the assumption that if the jury convicted Mr. Siterlet, he would be sentenced as a third habitual offender. *Appendix B*, at B-2. If that happened, his worst-case scenario would be a maximum sentence of ten years in prison and a minimum sentencing range of 7-34 months. (Pre-Trial 8/16/2011, at 4); MCL 257.625(11)(c)(1); MCL 769.12; MCL 777.66. So when he rejected the plea offer, he did so believing that the prosecution was only offering a two-and-a-half-year reduction of the maximum potential sentence and a one-year reduction of the top end of the guidelines.

Only after the jury's verdict did Mr. Siterlet learn that the prosecution would be pursuing a fourth-habitual enhancement after all. *Appendix B*, at B-3. So it was not until after trial that Mr. Siterlet learned the true value of the prosecution's offer. In fact, the prosecution was offering a substantial reduction of the potential life sentence he faced as a fourth habitual offender. And the proposed maximum-minimum was a year and a half shorter than what he ended up facing at sentencing. *Compare* (ST 4), *with* (Pre-Trial 8/16/2011, at 4). For all of these reasons, the Court of Appeals correctly concluded that Mr. Siterlet established the first and third plain-error requirements: an error that affected the outcome of the lower-court proceedings.

D. The Court of Appeals' opinion conflicts with the *Kimble* Court's ruling that plain error which results in imprisonment in excess of what is permitted by the law necessarily has a serious affect upon the fairness, integrity or public reputation of a judicial proceeding.

For the final part of its plain-error analysis, the Court of Appeals examined whether "the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings or resulted in the conviction of an actually innocent person." *Id.* at A-2 (citing *Carines*, 460 Mich at 763-764). It declared that "even if the error was plain," resentencing was not required "[g]iven defendant's qualification as a fourth habitual offender and his knowledge that the prosecution was pursuing the fourth-offense enhancement[.]" *Id.* at A-5-A-6. This analysis misses the mark on two key points.

First, the Court of Appeals failed to distinguish between the mistake made by the prosecutor (the failure to perfect its fourth-habitual enhancement) and the trial court's error (the decision to sentence Mr. Siterlet as a fourth-habitual offender despite the prosecutor's mistake and despite the plain language of MCL 769.13(1)). The former implicates Mr. Siterlet's right to notice of the potential penalties he faced. *Morales*, 240 Mich App at 582. But the latter

implicates his right to be sentenced consistently with what is permitted by law. *Kimble*, 470 Mich at 312-313. Only the trial court's error is subject to plain error review.

To start, the decision to pursue a habitual enhancement rests within the discretion of the prosecution. *People v Hendrick*, 398 Mich 410, 416; 247 NW2d 840 (1976). This discretion is, of course, subject to the requirement of written notice within 21 days. MCL 769.13(1). If the prosecution elects not to pursue a habitual enhancement, or fails to perfect the enhancement, then the sentencing court must proceed without it. *Morales*, 240 Mich.App at 574-575. The trial court does not have the discretion to impose a habitual enhancement that the prosecution failed to perfect. *Id.*; *see also People v Sunday*, 183 Mich App 504, 506; 455 NW2d 321 (1990) (noting that the constitutional doctrine of separation of powers prevented the trial court from second-guessing the prosecutor's exercise of discretion under the Habitual Offender Act).

The Court of Appeals limited its analysis to the deprivation of notice, reasoning that Mr. Siterlet could infer his sentencing exposure from the prosecution's pleadings and from knowledge of his own drunk driving record. *Appendix A*, at A-5-A-6. However, the fact that the prosecution could have pursued a fourth-habitual enhancement is irrelevant. The fact that the prosecution wanted to seek a fourth-habitual enhancement is also irrelevant. Rather, what matters here is the fact that the prosecution failed to perfect its right to do so. When Mr. Siterlet rejected the plea offer, he did so rightfully believing that the trial court lacked the authority to impose anything more severe than a maximum sentence of ten years in prison and a minimum sentence of 34 months. *Id.* at A-4.

Second, the Court of Appeals wholly ignored the distinctions between plain error review of trial errors and plain error review of sentencing errors. When the *Carines* Court adopted the plain error test, it was addressing a trial error—namely, a faulty jury instruction. *Carines*, 460

Mich at 761. The *Carines* Court began by noting that MCL 769.26 prevented it from creating a rule of automatic reversal. *Id.* at 762. While that statute did not address the vacating of a sentence or resentencings, it did impose limits on a reviewing court's ability to reverse and/or remand for a new trial:

> No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice. [MCL 769.26].

To give this statute effect, the *Carines* Court adopted the plain error test of *Olano*, *supra*, for unpreserved trial court errors implicating constitutional or nonconstitutional rights. *Id.*

This Court subsequently applied the *Carines* test to an unpreserved sentencing error in *Kimble*, 470 Mich at 312-314. The *Kimble* Court noted that an entirely different statute applied to sentencing error. Specifically, MCL 769.34(10) provides:

> If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence. A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals. [MCL 769.34(10); *see also* MCR 6.429(C)].

Interpreting this provision, the *Kimble* Court held that "a sentence that is outside the appropriate guidelines sentence range, for whatever reason, is appealable regardless of whether the issue was raised at sentencing, in a motion for resentencing, or in a motion to remand." *Kimble*, 470 Mich at 310. Further, such an error would be reversible under the plain error standard because "[i]t is

difficult to imagine what could affect the fairness, integrity and public reputation of judicial proceedings more than sending an individual to prison and depriving him of his liberty for a period longer than authorized by the law." *Kimble*, 470 Mich at 313.

The Court of Appeals failed to acknowledge the *Kimble* Court's conclusion that a sentence in excess of statutory limits constitutes plain error affecting the fairness, integrity, and public reputation of the sentencing proceedings. *Appendix A*, at A-6. The prosecution's mistake meant that the trial court lacked the authority to impose a 46-minimum sentence without a substantial and compelling reason. It also meant that the trial court lacked the authority to impose a 25-year maximum. (ST 10). Because the court's plain error deprived Mr. Siterlet "of his liberty for a period longer than authorized by the law[,]" *Kimble*, 470 Mich at 313, Mr. Siterlet is entitled to resentencing at a third habitual offender. He therefore asks this Court to grant leave to appeal.

JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Defendant-Appellant seeks leave to appeal from the published opinion issued by the Court of Appeals in the proceedings below. *People v Siterlet*, __ Mich App __; __ NW2d __ (December 27, 2012) (attached as Appendix A). Defendant-Appellant respectfully asks this Honorable Court to either grant leave to appeal or order any peremptory relief it deems appropriate.

Respectfully submitted,

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