

COA Opinion: Offense variable 12 cannot be scored for contemporaneous felonious acts of robbery and either larceny from a person or larceny from a building, where the defendant was convicted of unarmed robbery

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On Tuesday, November 23, 2010, the Michigan Court of Appeals published its opinion in *People v. Light, No. 293746*. In *Light*, the court concluded that a conviction for unarmed robbery completely subsumes larceny. Therefore, under the plain wording of OV 12, MCL 777.12, the defendant may not be assessed five points for contemporaneous felonious acts of robbery and either larceny from a person or larceny in a building. Because the trial court erroneously assessed the defendant five points under OV 12, his sentence was vacated and the case was remanded to the Leelenau County Circuit Court for resentencing.

Defendant Michael Light pled no contest to unarmed robbery after he held up a grocery store with a knife, took \$300, and fled the scene. The trial court assessed five points under OV 12 based on the contemporaneous felonious acts of carrying a concealed weapon and larceny from a person or larceny in a building (the record was unclear as to which form of larceny the trial court used as the second contemporaneous act). The Defendant appealed the resulting sentence of 4-15 years because the trial court allotted five points under OV 12.

The Court of Appeals considered the plain language of OVs 11-13 and determined that each OV clearly distinguishes the sentencing offense from the activity being used to increase the offense level. The Court stated that when a court is considering OV 12, it “must look beyond the sentencing offense and consider only those separate acts or behavior that did not establish the sentencing offense.”

The Court of Appeals next considered Defendant Light’s sentencing offense. It concluded that the Defendant’s physical act of wrongfully taking money while inside the grocery store was the same single act under any form of larceny. So despite the fact that the Defendant’s sentence was for unarmed robbery, his sentencing offense included all acts occurring during the commission of the larceny or in flight from the commission of the larceny. As such, neither larceny in a building nor larceny of a person may be used as the contemporaneous felonious act to increase Defendant Light’s OV 12 score.

The Court stated that Defendant Light’s OV 12 score should have been one, instead of five, based on the contemporaneous felonious acts of carrying a concealed weapon. This new application of the sentencing guidelines changed the Defendant’s sentencing range to 19-38 months. The case was reversed and remanded for the trial court to reconsider Defendant’s sentencing in light of the Court’s opinion.