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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v EVAN TAYLOR ARMOGEDA, Defendant-Appellant.	MSC Case No. 167760 Court of Appeals No. 365184 Circuit Court No. 21-260-FC

DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF

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STATEMENT OF QUESTIONS PRESENTED

1. Is resentencing required when the Trial Court has clearly indicated that it would have imposed the same sentence regardless of the scoring error when: (1) such statement was made before the proper guidelines were determined; (2) the sentence does not fall within the appropriate guidelines range as amended; and (3) the Trial Court did not, and could not, adequately justify the departure from the proper guideline range or the extent of the departure as required by this Court's precedent?

   Defendant-Appellant states, "Yes."
   Plaintiff-Appellee states, "No."
   Trial Court states, "No."
   Court of Appeals states, "No."

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INTRODUCTION

After a jury trial, Mr. Armogeda was convicted of Assault with Intent to Murder (AWIM), Carrying a Dangerous Weapon with Unlawful Intent (CWUI), and Fleeing and Eluding a Police Officer (F&E). It was undisputed that Mr. Armogeda stabbed the victim Zachary Wickizer once with a knife. After the stabbing, Mr. Armogeda went home. When law enforcement quickly responded, Mr. Armogeda briefly attempted to evade law enforcement before stopping his vehicle and being arrested without incident.

A Motion to Correct Invalid Sentence was filed alleging that Mr. Armogeda's California misdemeanor convictions were improperly scored as felony convictions. At the Motion hearing, the parties disagreed about what the proper guidelines would be, but both agreed that the guidelines were different than what was used to sentence Mr. Armogeda to the mathematical center of those guidelines on the AWIM. Despite the Defense citing this Court's precedent in *People v Francisco* (which states that resentencing is required when the applicable guideline range changes - even when the old sentence is in the new guideline range), the Trial Court did not calculate the proper guidelines and denied the motion because: (1) the sentencing guidelines are advisory; and (2) even if the guidelines were lower, the Trial Court indicated that 360 months is the lowest sentence that it felt was appropriate. Appellant's Appendix at 131a:12-133a:11. The Court of Appeals upheld the sentence but remanded for proper calculation of the guidelines. On remand, the parties agreed that the proper guidelines were 171-285 months making the 360 months sentence an upward deviation of over 5 years from the top, and 11 years from the mathematical center, of the guidelines. This Court granted oral argument on the application on whether resentencing is required when the Trial Court has "clearly indicated that it would have imposed the same sentence regardless of the scoring error, but the sentence does not fall within the appropriate guidelines range as amended."

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STATEMENT OF FACTS

Years before this incident, Mr. Armogeda and Ms. O'Connor met through a mutual friend and began an online romantic relationship. Appellant's Appendix at 83a:22-84a:10. Mr. Armogeda moved back to Michigan specifically to have a romantic relationship with Ms. O'Connor. Appellant's Appendix at 97a:8-11. At the time their relationship was ending, Ms. O'Connor found out she was pregnant and told Mr. Armogeda. Appellant's Appendix at 85a:23-86a:8, Appellant's Appendix at 92a:22-93a:4. Before any child was born, the incident occurred. Appellant's Appendix at 47a:21-50a:6.

In the weeks leading up to the incident, there were numerous upsetting messages sent by Ms. O'Connor and Mr. Wickizer to Mr. Armogeda. Appellant's Appendix at 79a:16-21, Appellant's Appendix at 118a:24-119a:10. It was undisputed that Mr. Armogeda stated in these messages that he was upset about Mr. Wickizer raising his baby (Appellant's Appendix at 109a:24-110a:5), but Mr. Wickizer denied ever saying such to Mr. Armogeda (Appellant's Appendix at 110a:6-11). On the date of the incident, Mr. Armogeda arrived at Ms. O'Connor's house to confront Mr. Wickizer and Ms. O'Connor, Mr. Wickizer, and three other individuals were present. Appellant's Appendix at 89a:5-11. Video surveillance footage from the residence captured the whole incident on camera. Appellant's Appendix at 57a:13-19. It looked like Mr. Armogeda was walking up getting ready to fight, but with his hand behind his back. Appellant's Appendix at 63a:5-7, Appellant's Appendix at 122a:18-22. As Mr. Armogeda reached Mr. Wickizer, Mr. Wickizer hit Mr. Armogeda as Mr. Armogeda made physical contact with Mr. Wickizer's torso. Appellant's Appendix at 113a:17-22. Mr. Wickizer thought at first that Mr. Armogeda was trying to shove him, but he soon felt himself bleeding from his chest (Appellant's Appendix at 113a:23-114a:1, Appellant's Appendix. at 60a:18-24) and told everyone he was stabbed and walked into the house (Appellant's Appendix at 114a:10-13).

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Law enforcement was quickly called (Appellant's Appendix at 94a:21-23) and arrived at Ms. O'Connor's home and provided medical care until emergency medical personnel arrived. Appellant's Appendix at 47a:21-48a:3, Appellant's Appendix at 50a:3-6, Appellant's Appendix at 52a:12-15, Appellant's Appendix at 55a:22-56a:7. At the hospital, an exploratory laparotomy was performed, and it was discovered that there was no damage to the organs and no damage to the peritoneum, but that there was an injury to the muscle. Appellant's Appendix at 100a:17-25, Appellant's Appendix at 103a:25-104a:1, Appellant's Appendix at 104a:5-8. Since he did not have a severe injury to his organs, Mr. Wickizer was simply stitched up and stapled shut. Appellant's Appendix at 105a:14-24. Mr. Wickizer was discharged from the hospital after four days following the exploratory laparotomy. Appellant's Appendix at 106a:17-18.

After law enforcement was called, multiple officers sought to locate Mr. Armogeda and eventually located a vehicle and person matching the description given. Appellant's Appendix at 66a:17-24. The vehicle sped up rapidly through the parking lot (Appellant's Appendix at 66a:17-24), did not originally stop when an officially marked police vehicle initiated its overhead lights and sirens (Appellant's Appendix at 69a:5-19), and turned off its lights and went into the opposite lane of travel (Appellant's Appendix at 75a:13-76a:7). Mr. Armogeda eventually stopped the vehicle and complied with verbal commands to exit the vehicle and get on the ground before being arrested without incident. Appellant's Appendix at 72a:3-11, Appellant's Appendix at 72a:18-73a:15.

Mr. Armogeda was convicted at trial as charged. Appellant's Appendix at 3a.

Sentencing and PRV 2 Issues

Mr. Armogeda's sentencing guidelines were calculated by the Michigan Department of Corrections as 270-450 months/Life for the AWIM, 22-38 months for the CWUI, and 12-

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24 months for the F&E. Appendix D. Based on the articulated guidelines, Mr. Armogeda was sentenced to 360-600 months (30-50 years) on his AWIM conviction, 22-60 months on his CWUI, and 12-60 months on his F&E convictions. Appellant's Appendix at 3a. This reflected the exact center of the guidelines on the AWIM conviction and the bottom of the guidelines on the CWUI and F&E convictions. Appellant's Appendix at 3a, Appellant's Appendix at 31a-33a.

Motion to Correct an Invalid Sentence

Undersigned Defense Counsel filed a timely Motion to Correct an Invalid Sentence. Appendix C. At the Motions hearing, the parties disagreed about the proper guidelines but agreed that the guidelines were different than what was used to sentence Mr. Armogeda previously. Appellant's Appendix at 126a:16-20, 129a:4-131:3. The Defense asserted that because the applicable guidelines changed, pursuant to *People v Francisco*, 474 Mich 82, 711 NW2d 44 (2006), Mr. Armogeda was entitled to resentencing. Appellant's Appendix at 129a:4-130a:25. The Trial Court denied resentencing because: (1) the sentencing guidelines are advisable; and (2) even if the guidelines were lower, the Trial Court indicated that 360 months is the lowest that it felt was appropriate. Appellant's Appendix at 131a:12-133a:11.

The Trial Court did not justify a basis for the upward departure from the guidelines or the extent of the departure simply stating:

> "regardless of these scores, I'm just not able to go any lower than that on the minimum. […] It's nothing scientific, honestly, It's just not a scientific thing. It's because there was a – there was a video that probably got played several times in the car. And – but for just the confluence of a lot of fortuitous circumstances, the victim wouldn't have been at the trial to testify, because he would have been dead. […] I'm sure sure [sic] it's a little comfort to Defendant and Defense counsel. But there's no mechanical guidelines scoring that could controvert the severity of this crime, and impact on the victim to lead to any lower number than what I did."

Appellant's Appendix at 132a:4-133a:8.

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The Trial Court minimally discussed the circumstances of the offense and did not discuss the circumstances of the offender at all in its justification of the same sentence.

Court of Appeals Decision and Remand

The Court of Appeals denied the Appeal on all three grounds (only one of which was granted oral argument by this Court) but remanded to the Trial Court for calculation of the proper Michigan Sentencing Guidelines. Appellant's Appendix at 42a. By stipulation and order, the parties agreed that Mr. Armogeda did not have any prior low severity felonies under Michigan law and that the proper guidelines on the AWIM were as alleged by the Defense at the Motion hearing by the Defense (171-285 months). This made the 360 months a significantly outside of guidelines sentence. Appellant's Appendix at 43a-44a.

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ARGUMENT

I. Resentencing is required when the scoring guidelines change - despite the Trial Court clearly stating that it would have imposed the same sentence regardless of the scoring errors - because: (1) that statement was made without knowing the properly scored guidelines; (2) the proper guidelines must be considered by the Trial Court prior to sentencing for the same reasons set forth in *Francisco*; and (3) especially because the sentence does not fall within the appropriate guidelines range, a proportionality justification is necessary.

Issue Preservation

Sentencing guidelines scoring is properly preserved for appeal if it is raised at issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the Court of Appeals. MCR 6.429(C). A Motion to Correct Invalid Sentence/Resentencing was filed in the Trial Court and denied by the Trial Court. Appellant's Appendix at 4a-6a.

Standard of Review

Sentencing issues are reviewed by the Court of Appeals for an abuse of discretion by the trial court. *People v Sabin*, 242 Mich App 656, 660; 620 NW2d 19 (2000). A trial court abuses its discretion when it selects an outcome outside the range of reasonable and principled outcomes. *Id.* When a Court makes an error of law, it necessarily abuses its discretion. *People v Waterstone*, 296 Mich App 121, 132; 818 NW2d 432 (2012).

Discussion

In its May 2, 2025 Order, this Court stated, "The parties shall file supplemental briefs in accordance with MCR 7.312(E), addressing whether resentencing is required where the trial court has clearly indicated that it would have imposed the same sentence regardless of the scoring error, but the sentence does not fall within the appropriate guidelines range as amended." This Brief is submitted in conformity with this Court's order.

In *People v Francisco*, 474 Mich 82, 711 NW2d 44 (2006), this Court held that when there is a scoring error that changes the guidelines, the defendant is entitled to resentencing.

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Francisco, 474 Mich at 91. This decision was based on MCL 769.34(10) which states in relevant part, "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." (emphasis added) This Court also relied upon a defendant's right to be sentenced based on accurate information. *Francisco*, 474 Mich at 90 (citing *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997)).

In *People v Posey*, 512 Mich 317; 1 NW3d 101 (2023), this Court held that MCL 769.34(10) was unconstitutional because *People v Lockridge*, 498 Mich 358, 870 NW2d 502 (2015) had struck down any portion of the guidelines that referred to them as mandatory – which (10) did. Because defendants have the long-standing right to be sentenced based on accurate information and because of the importance of the sentencing guidelines, individuals whose guidelines change must be resentenced – especially those with out-of-guidelines sentences – and even if the trial court indicates that it will impose the same sentence.

It is useful to examine the historical origins and purpose of the Michigan Sentencing Guidelines, explore the reasoning of *Francisco* in the framework where MCL 769.34(10) has been found unconstitutional, and explore the importance of the Michigan Sentencing Guidelines in the context of individualized, but consistent, sentences across Michigan. Finally, this Brief will address *People v Latham* and the practical challenges of holding to the contrary that a trial court may essentially insulate a sentence from appellate review with regards to proportionality.

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Historical Origins and Purpose of the Sentencing Guidelines

MCR 6.425(C) states, "The court must use the sentencing guidelines, as provided by law." Since their creation in 1983, the Michigan Sentencing Guidelines have attempted to

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remove unnecessary disparities and provide more consistent sentences across the Courts of this State. Since the passage of the legislative sentencing guidelines in 1998, there has been an additional intent to limit judicial discretion to that permitted by the legislature. If this Court holds that a judge may refuse to properly calculate the sentencing guidelines, instead summarily stating that the original sentence was appropriate without justifying a departure sentence **and** the extent of the departure without resentencing, it will significantly thwart the legislative intent of the Michigan Sentencing Guidelines and decades of this Court's precedent.

Michigan's Sentencing Guidelines find their origins constitutionally in the powers of the Michigan Legislature and this Court's decision in *People v Coles*, 417 Mich 523, 339 NW2d 440 (1983). Article 4, Section 45 of the Michigan Constitution of 1963 states, "The legislature may provide for indeterminate sentences as punishment for crime and for the detention and release of persons imprisoned or detained under such sentences." Const 1963, art 4, §45. It was not until *Coles* that this Court determined that appellate review of sentences was not limited to only whether a sentence was within the confines of the law but also extended review to whether the judge properly executed their sentencing discretion. *Coles*, 417 Mich at 550. That same year, this Court used an administrative order to implement judicial sentencing guidelines. *Posey*, 512 Mich at 344. The purpose of the judicial sentencing guidelines was "to provide sentencing norms, to promote judicial consistency, and to minimize sentencing disparities without altogether eliminating the court's exercise of judgment." *Lockridge*, 498 Mich at 414-415 n 8 (MARKMAN, J., dissenting).

Because the citizens of Michigan "were apparently still dissatisfied with remaining sentencing disparities," in 1998, the Legislature enacted statutory sentencing guidelines. *Id.* These are now found at MCL 777.1 et. seq. The purpose of the legislative sentencing guidelines was to reduce "disparities based on factors other than offense characteristics and offender

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characteristics and ensure that offenders with similar offense and offender characteristics receive substantially similar sentences." *People v Babcock*, 469 Mich 247, 267 n 21; 666 NW2d 231 (2003) (quoting from 1994 PA 445, Section 33(1)(e)(iv)).

As this Court observed in *People v Hegwood*, 465 Mich 432, 636 NW2d 127 (2001), "the very premise of the guidelines is that judicial discretion will be restricted to a certain degree." *Hegwood*, 465 Mich at 438. This Court also stated, "[b]ecause the new guidelines were the product of legislative intent, a judge's discretion to depart from the range stated in the legislative guidelines is limited to those circumstances in which such a departure is allowed by the Legislature." *Hegwood*, 465 Mich at 439. Arguing against adopting a higher standard for appellate review to only cases of passion or bias, the Court observed that if deviation from the legislative guidelines was that simple, "the Legislature's intent to reduce unjustified disparities in sentencing will be significantly thwarted." *Babcock*, 469 Mich at 267 n 21.

As written, the legislative sentencing guidelines were mandatory and required substantial and compelling reasons to deviate from the guidelines, but this Court found such unconstitutional in *Lockridge*, 498 Mich 358. To remedy the unconstitutionality of the mandatory guidelines, this Court made the guidelines advisory only and removed the requirement that a court must articulate substantial and compelling reasons for the departure. *Lockridge*, 498 Mich 358 at 391. Although advisory, the scoring of the guidelines themselves remains mandatory. *People v Geddert*, 500 Mich 859, 884 NW2d 575 (2016) (memorandum). The *Lockridge* Court held that the guidelines "remain a highly relevant consideration in a trial court's exercise of sentencing discretion." *Lockridge*, 498 Mich at 391. The Court also held that trial courts, "must consult those Guidelines and take them into account when sentencing." *Id.* (quoting *US* v *Booker*, 543 US 220, 264; 125 S Ct 738, 160 L Ed 2d 621 (2005)). Trial Courts must "justify the sentence imposed in order to facilitate appellate review." *Lockridge*, 498 Mich

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at 392 (citing *Coles*, 417 Mich at 549, overruled in part on other grounds by *People v Milbourn*, 435 Mich 630, 644; 461 NW2d 1 (1990)).

Regarding departures, MCR 6.425(D)(1)(e) requires the court articulate the reasons "justifying that specific departure" if the sentence imposed is not within the guidelines range. MCL 769.34(3) states, "A court may depart from the appropriate sentence range established under the sentencing guidelines set forth in chapter XVII if the departure is reasonable and the court states on the record the reasons for departure." (as amended post-*Lockridge* after being found unconstitutional). MCL 769.34(3)(b) prohibits a departure from being based on an offense or offender characteristic already taken into account in determining the appropriate sentence range unless it has been given inadequate weight or disproportionate weight.

In *People v Steanhouse*, 500 Mich 453, 902 NW2d 327 (2017), this Court articulated that the proper test to evaluate whether a sentence is lawful is the *Milbourn* proportionality test that takes "into account the nature of the offense and the background of the offender." *Steanhouse*, 500 Mich at 472 (quoting from *Milbourn*, 435 Mich at 651 (abrogated on other grounds)). The purpose of the proportionality test was, in part, to "effectively combat unjustified disparity in sentencing." *People v Dixon-Bey*, 321 Mich App 490, 524; 909 NW2d 458 (2017) (internal quotations omitted) (citing *Milbourn*, 435 Mich at 647 (abrogated on other grounds)). "Because the guidelines embody the principle of proportionality and trial courts must consult them when sentencing, it follows that they continue to serve as a useful tool or guideposts for effectively combating disparity in sentencing." *Dixon-Bey*, 321 Mich App at 524-525 (internal quotations omitted).

This Court in *Milbourn* observed that, "A departure from the recommended range in the absence of factors not adequately reflected in the guidelines should alert the appellate court to the possibility that the trial court has violated the principle of proportionality and thus

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abused its sentencing discretion." *Milbourn*, 435 Mich at 660 (abrogated on other grounds). The Court continued stating that the principle of proportionality requires that "[e]ven where some departure appears to be appropriate, the extent of the departure (rather than the fact of the departure itself) may embody a violation of the principle of proportionality." *Id.* (emphasis added).

In *Posey*, 512 Mich 317, this Court found MCL 769.34(10) unconstitutional and clarified that even in-guidelines sentences are subject to a proportionality challenge on appellate review. *Posey*, 512 Mich at 349. Furthermore, this Court held that within-guidelines sentences enjoy a presumption that the sentence is proportional that may be rebutted by a defendant establishing that the sentence is unreasonable or disproportionate. *Posey*, 512 Mich at 359. Out-of-guideline sentences do not enjoy a presumption of proportionality. *Posey*, 512 Mich at 360. The requirement that the Trial Court must calculate the guidelines (*Geddert*, 500 Mich 859 (memorandum)) and "that the guidelines remain a highly relevant consideration in a trial court's exercise of sentencing discretion that trial courts must consult and take into account when sentencing" remains in place. *Posey*, 512 Mich at 348.

If this Court were to overrule *Francisco* and rule that a trial court may insulate itself from appellate review (despite not calculating the proper sentencing guidelines prior to sentencing) by insisting it would institute the same sentence with some set of unknown lower guidelines, this Court would be significantly thwarting the legislative intent of the guidelines to limit judicial discretion. It would also be negating decades of this Court's precedent requiring: (1) the guidelines be calculated; (2) strongly considered; (3) taken into account; and (4) if a sentence shall fall outside the presumptively proportional guideline range, the trial court must justify not only why a departure is necessary, but that the extent of the departure must be justified for appellate review.

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People v Francisco

According to *Francisco*, if a minimum sentence falls within the appropriate guidelines range, a defendant is not entitled to be resentenced unless there has been a scoring error or inaccurate information has been relied upon. *Francisco*, 474 Mich at 88 (citing MCL 769.34(10)). A sentence is invalid if it is based on inaccurate information. *Francisco*, 474 Mich at 89. When the appropriate guideline range changes upon proper calculation of the guidelines, the defendant is entitled to resentencing – even if the original sentence was within the new guidelines range. *Francisco*, 474 Mich at 91-92 (emphasis added).

In *Posey*, this Court found MCL 769.34(10) unconstitutional as a violation of *Killebrew*'s holding invalidating any mandatory portion of the Michigan Sentencing Guidelines. This decision does not upset the holding in *Francisco* because this Court did not rely entirely on MCL 769.34(10) to justify its holding. This Court in *Francisco* stated, "MCL 769.34(10) makes clear that the Legislature intended to have defendants sentenced according to accurately scored guidelines and in reliance on accurate information (although this Court might have presumed the same absent such express language). Moreover, we have held that a sentence is invalid if it is based on inaccurate information." *Francisco*, 474 Mich at 89 (citing *Miles*, 454 Mich at 96) (emphasis added).

As observed by the dicta quoted above in *Francisco*, it is common sense (and common law) that an individual is entitled to be sentenced upon accurate information to achieve an individualized sentence (*People v Eason*, 435 Mich 228, 239; 458 NW2d 17 (1990)). In *Miles*, this Court stated, "A sentence is invalid when it is beyond statutory limits, when it is based upon constitutionally impermissible grounds, improper assumptions of guilt, a misconception of law, or when it conforms to local sentencing policy rather than individualized facts. This Court has also repeatedly held that a sentence is invalid if it is based on inaccurate information."

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Miles, 454 Mich at 96 (citations omitted) (emphasis added). The Court cited *People v Triplett*, 407 Mich 510, 287 NW2d 165 (1980); *People v Whalen*, 412 Mich 166, 312 NW2d 638 (1981); and *Eason*, 435 Mich 228 for this proposition – but it did not cite MCL 769.34(10). This Court has held that, under the Fourteenth Amendment to the United States Constitution, due process at sentencing is "the right to be sentenced on the basis of accurate information." *Eason*, 435 Mich at 239. The Court of Appeals in *People v Malkowski*, 385 Mich 244, 188 NW2d 559 (1971) stated, "It is vitally important to the defendant and to the ends of justice that the sentence be based upon accurate information." *Malkowski*, 385 Mich at 249. The United States Supreme Court concluded the same in *US v Tucker*, 404 Mich 443, 92 S Ct 589, 30 L Ed 2d 592 (1972).

While not every piece of inaccurate information necessitates resentencing, the case law is clear that the Michigan Sentencing Guidelines remain a highly relevant consideration that must be considered by the Trial Court as indicated above. MCR 6.425(D)(2) requires the correction or removal of inaccurate or unnecessary information in the presentence report – often which is less important to consistent sentencing than the Michigan Sentencing Guidelines. To not require accurate scoring of the Michigan Sentencing Guidelines would be a violation of long-time precedent that due process requires a sentence to be based on accurate information to be valid. The Michigan Sentencing Guidelines are too ingrained in our criminal justice system to not require the accurate scoring of such prior to issuing an individualized sentence that seeks to be consistent with outcomes for comparable cases across Michigan.

Addressing *People v Latham*

The Trial Court did not rely on any case law in denying resentencing - despite being confronted with *Francisco*. The Court of Appeals ruled against Mr. Armogeda based on *People v Latham*, 334 Mich App 501, 965 NW2d 248 (2020). In *Latham*, the defendant filed a timely

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Motion to Correct Invalid Sentence and the Trial Court held that the guideline range was in fact different, but that the Court would have sentenced the defendant to the same sentence as it originally did so it declined to resentence him. *Latham*, 334 Mich App at 504. The Court of Appeals in *Latham* did not order resentencing because "the trial court has clearly indicated that it would have imposed the same sentence regardless of the scoring error and the sentence falls within the appropriate guidelines range." *Latham*, 334 Mich App at 506 (emphasis added). *Latham* is not applicable here.

Unlike in *Latham*, the Trial Court did not resolve the factual issue of what the proper guidelines were and simply declined to resentence because the Trial Court stated that 360 months is the lowest minimum sentence that the Court felt was appropriate. Because the Trial Court refused to determine the applicable guidelines range, it was unknown at the time if the original sentence of 360 months would have been in the appropriate range and *Latham* is not applicable. *Francisco* controls these circumstances. Furthermore, based on the agreement of the parties and the Court after remand, we now know that the sentence of 360 months was 5 years exceeding the maximum minimum sentence under the applicable guidelines range. The Court of Appeals did not state any justification for extending *Latham*, already an exception to the general rule of this Court's rule in *Francisco*, to this case where: (1) the minimum guidelines were known to be wrong by the Trial Court, but the exact guidelines (a highly relevant consideration) were not known or considered by the Trial Court; (2) the Trial Court's sentence was a sentence exceeding the maximum minimum within-guidelines sentence; and (3) the Trial Court did not engage in a proper proportionality analysis required under *Steanhouse* to justify appellate review.

In the Trial Court's justification of its 360-month sentence regardless of the sentencing guidelines at the Motion, the Trial Court focused only on that the victim could have died due

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to his injuries. This was a factor already considered by the Michigan Sentencing Guidelines – particularly OV 3 which was scored 25 points for "Life threatening or permanent incapacitating injury occurred to a victim." Appendix D. The Trial Court did not indicate why this factor was inadequately accounted for in the guidelines and such is an unacceptable justification for a departure sentence. Furthermore, justification of the sentence under sharply reduced guidelines according to the *Milbourn* proportionality test, required for both in-guidelines and out-of-guidelines sentences, did not occur.

Unlike in *Latham*, the Trial Court did not engage in a proportionality analysis - instead stating that a sentence was "nothing scientific" and that the victim could have died if not for "the confluence of a lot of fortuitous circumstances." Appellant's Appendix at 132a:9-15. This is not an explanation of why the original sentence of 30 years, the mathematical center of the prior guidelines, was more proportional to the offense **and** Mr. Armogeda than a sentence of 19 years, the mathematical center of the proper guidelines - or some other sentence.

Practical Effects of a Holding Contrary to *Francisco* in this Case

Eliminating the requirements of the accurate calculation of and strong consideration of the guidelines as well as requiring a justification of any out-of-guidelines presumptively nonproportional sentence would be to fulfill the warnings of this Court in *Babcock* - "the Legislature's intent to reduce unjustified disparities in sentencing will be significantly thwarted." *Babcock*, 469 Mich at 267 n 21. If this Court were to hold that, contrary to *Francisco*, a Trial Court could immunize any sentence from judicial review due to inaccurate guidelines by summarily stating that it would have instituted the same sentence no matter what, the proper calculation of the guidelines prior to sentencing becomes meaningless.

Especially in a case like this where the Trial Court Judge did not know the actual guidelines prior to asserting the same sentence would be levied, to not provide relief to Mr.

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Armogeda would be to eliminate the requirement that not only a deviation from the guidelines to be articulated to facilitate appellate review, but it would also eliminate the requirement that the extent of the departure also be justified. Simply put – it is impossible to justify the extent of something when you do not know the extent of something. Here, the Trial Court did not attempt to do so because such is impossible. Under the Trial Court's reasoning, whether the guidelines had a maximum minimum sentence of 50 months or 50 years, a minimum sentence of 30 years was justifiable no matter the extent of the deviation – minute or tremendous.

Furthermore, by denying resentencing, the Trial Court deprived Mr. Armogeda of a manner in which to appeal the Trial Court's attempted justification of the unknown departure. As indicated above, the Trial Court tried to justify a 30-year minimum sentence because the victim almost died. While this is going to be true in many assault with intent to murder cases, this is also a factor already considered by the guidelines in scoring Mr. Armogeda 25 points for OV 3 for life-threatening or permanent incapacitating injury occurred to a victim. If this had been stated as the original justification for a departure sentence (instead of a presumably proportionate within-guidelines sentence), Mr. Armogeda would have had a right to appeal. However, since this language was stated in denying a Motion to Correct an Invalid Sentence, Mr. Armogeda's ability to appeal the proportionality itself based on this new justification is practically eliminated or reduced as: (1) no new judgment of sentence was issued; (2) the original judgment of sentence was no longer timely appealable; and (3) the arguments regarding the appropriateness of such by the parties were not preserved in the Trial Court arguably denying them ripeness for appeal.

This Court should remand Mr. Armogeda's case to the Trial Court and order for Mr. Armogeda to be resentenced upon accurate information. While it is understandable that this Court may have concerns that the Trial Court Judge will simply fulfill his previous promise,

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such is not possible in this matter. As the Trial Court Judge who denied the Motion to Correct Invalid Sentence was a temporary visiting judge and given that such Trial Court Judge is no longer presiding in Ingham County over the seat that would sentence Mr. Armogeda (and given that such seat will likely expire at the end of 2025), a different judge entirely will be sentencing Mr. Armogeda. That judge will fulfill their constitutional duty to accurately calculate the Michigan Sentencing Guidelines, consider them as a highly relevant factor, and likely sentence Mr. Armogeda to a within guidelines sentence. If the resentencing judge does in fact consider that the facts and circumstances dictate the mathematical center of the guidelines - as the Trial Court did originally in this case – it will be an 11-year reduced sentence for Mr. Armogeda. Even a top-of-guidelines sentence reflects over a 6-year reduction.

Relief Requested

Mr. Armogeda requests that this Court order that he be resentenced because the parties agree that the Trial Court relied upon inaccurate sentencing guidelines when it sentenced him the first time. The Trial Court abused its discretion in not ordering resentencing when the parties agreed that the guidelines calculated were incorrect and resentencing was required pursuant to *Francisco*. *Francisco* remains good law because its holding that an individual is entitled to be sentenced based on accurate information did not rely only on MCL 769.34(10) (which was deemed unconstitutional by *Posey*), but has longstanding roots in Due Process under both the Michigan and United States Constitutions. This is especially true when the sentence that would be upheld is an out-of-guidelines sentence that is not entitled to the presumption of proportionality and when the Trial Court did not engage in a proper proportionality or justification and instead relied on inappropriate factors to justify the presumed disproportionate sentence.

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Respectfully Submitted,

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