

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

Court of Appeals No. 375854
Barry Circuit Court No. 2022-000412-FH

SCOTT MICHAEL LUPU,
Defendant-Appellant.

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BRIEF AMICUS CURIAE OF RITA WILLIAMS
IN SUPPORT OF DEFENDANT APPELLANT

ORAL ARGUMENT NOT REQUESTED

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Interest of Amicus Curiae

Rita Williams is the founder and editor of Clutch Justice, an independent Michigan investigative journalism platform covering sentencing practices, judicial accountability, and court record integrity. Amicus submits this brief in her individual capacity. Her reporting concerning Barry County supplies the institutional perspective offered here.¹

Amicus asks for rigorous review of the departure and presentence-report issues the Supreme Court returned to this Court. The public interest is concrete: a sentence should rest on reliable information, and the reasons supporting its length should be available for meaningful appellate review.

I have been writing about Judge Michael Schipper's courtroom for four years. Based on that sustained reporting, including the sentencing practices, record problems, and responses to appellate correction I have documented, I do not believe he is fit to serve as a judge. That is my assessment as a journalist and observer of this court. In this appeal, I ask for effective sentencing relief within this Court's authority, not a disciplinary determination.

Questions Addressed and Procedural Posture

This brief addresses whether the departure analysis must account meaningfully for the applicable guidelines and whether challenged presentence-report information requires findings and correction. It addresses those questions within Issues I-IV and VII-IX identified in the Supreme Court's January 30, 2026 order in *People v Lupu*, No. 168940. Amicus answers both questions yes. MCR 7.212(H)(3) limits the brief to the parties' issues.

The Supreme Court's remand directs merits review without establishing sentencing error. The docket lists the challenged order as February 23, 2024, an appellant's brief on March 9, 2026, a no-brief advisory on May 26, and supplemental authority on September 4. See Official Docket, entries 2, 9, 13, 20, and 26.

¹Pursuant to MCR 7.212(H)(4), no counsel for a party authored this brief in whole or in part; no party or counsel for a party contributed money intended to fund its preparation or submission; and no other person or entity contributed money intended for that purpose.

Summary of Argument

The question is not whether a judge may ever depart upward. The question is whether this departure survives the scrutiny Michigan law requires. A sentencing judge's preference for greater punishment cannot perform the work of an individualized proportionality analysis. Nor does a report become accurate merely because a court possesses it.

The issues returned for review belong together. If a disputed factual premise influenced the departure, the Court must examine that premise as well as the explanation for the sentence. Amicus requests relief to the extent Lupu's own record establishes error. The reporting discussed below explains the public importance of exacting review; it does not supply missing proof of his claims.

I Advisory guidelines require meaningful consideration

People v Lockridge, 498 Mich 358, 391-392; 870 NW2d 502 (2015), rendered the guidelines advisory while retaining the obligation to consult the applicable range, account for it, and justify the sentence. *People v Steanhouse*, 500 Mich 453, 459-460, 474-475; 902 NW2d 327 (2017), applies abuse-of-discretion review governed by proportionality to the circumstances of the offense and offender. A departure is not unlawful simply because it exceeds the range.

But advisory does not mean disposable. *People v Dixon-Bey*, 321 Mich App 490, 524-525; 909 NW2d 458 (2017), requires an explanation of why the selected sentence is more proportionate than a different sentence. Relevant considerations include circumstances omitted from the guidelines or inadequately weighted by them. MCR 6.425(C) and (D)(1)(e) require use of the guidelines as provided by law and reasons for the specific departure.

The Court should therefore examine the reasons actually given, the factual support for them, and their relationship to the length selected. A general objection to legislative sentencing policy supplies no answer to those questions. Judicial experience can inform a decision; it cannot relieve the court of explaining that decision in terms specific to the person being sentenced.

II A recommendation and an accurate record are distinct

A probation officer's recommended disposition, the guidelines minimum range, and the eventual minimum and maximum sentence are different things. Rejecting the recommendation does not itself show that the judge ignored the investigation. The essential inquiry is whether the sentence rests on accurate information and a lawful exercise of discretion.

People v Eason, 435 Mich 228, 233; 458 NW2d 17 (1990), recognizes the right to accurate sentencing information and an opportunity to challenge it. A sentence based on inaccurate information is invalid. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). The Court must assess the challenged information, the ruling, and its significance to sentencing, subject to applicable preservation and harmless-error principles.

MCR 6.425(A)(1) requires verification of material information. Under MCR 6.425(D)(2) (a), the parties must be heard on a challenge; the court must make a finding or determine that it will not rely on the disputed information. A meritorious challenge or a decision to disregard the information requires correction. The current rule also provides for counsel's review, certification of correction, and exclusion of superseded versions from classification, programming, and parole use.

The process should leave an identifiable result: which assertion was challenged, how it was resolved, and what remains in the operative report. A finding of nonreliance should not leave rejected information free to affect later decisions. Any corrective order should identify the version to be used and the correction required.

Clutch Justice reports that in *People v Williams* the PSIR recommended 90 days, the guidelines range was 12-20 months, and the original sentence was 10-20 years. CJ1. The meaningful guidelines comparison is the 120-month minimum against the reported 20-month upper limit, a sixfold difference. Those reported figures concern Williams, not Lupu. They illustrate why the recommendation, scored range, sentence, and explanation must be identified separately; they do not establish Lupu's sentence or prove his PSIR inaccurate.

In my February 20, 2023 article, “5 Ways the Barry County, Michigan Courts Cheat the System,” I wrote that Judge Schipper frequently ignores presentence reports, “rendering PSIRs useless entirely in Barry County.” CJ8. That criticism concerns whether the investigation

performs its intended role in an individualized sentencing decision. A court that fails to resolve material inaccuracies or meaningfully consider the report reduces the process to paperwork. The legal remedy must restore the report's function: reliable information, resolution of disputed assertions, and a sentence explained by reference to the individual record. The recommendation remains advisory; the duty to address material inaccuracies does not.

III Reported practices warrant precise scrutiny

Clutch Justice attributes to Judge Schipper the description of guidelines as “man-made” and the statement, “Prison doesn't work. People come out worse.” CJ1. These are quotations as reported by amicus, not quotations offered as part of Lupu's transcript. The concern they raise is whether a sentencing philosophy has displaced the required individual assessment.

Neither remark alone establishes an unlawful sentence. Skepticism about rehabilitation can coexist with legitimate punishment or incapacitation considerations. But those considerations still need a reasoned connection to the selected term. The fact that legislation is made by people does not diminish the force of the sentencing framework. A defendant is entitled to application of that framework even when the sentencing judge disagrees with its policy choices.

Amicus's reporting also describes disputed plea terms followed by a 10-to-20-year sentence in a separate Barry County matter. CJ2. That account is offered as reporting about the need for a clear contemporaneous record, not as a finding that a plea agreement existed or was breached in Lupu. This brief seeks no adjudication of the Williams plea controversy and adds no plea-withdrawal claim to this appeal.

Subsequent reporting describes another Barry County case in which resentencing was assigned away from Schipper after appellate review of departures. CJ3. That history helps explain amicus's interest in effective appellate remedies. It does not establish that every departure by the same judge is unreasonable, or that another upward departure after a remand necessarily violates the mandate.

Clutch Justice further reported Schipper's participation in a jail-planning committee in August 2025. CJ4. That report postdates the February 2024 order challenged here; it cannot establish the motivation for that earlier sentence. County jail planning and a state prison sentence

are also distinct. The relevant institutional concern is transparency and individualized decision-making, not an unsupported assertion that this sentence financed a jail or produced personal profit.

The Court should test the disputed assertions in Lupu's record through the governing procedures. Inclusion in an official document does not end that inquiry; criticism of another case does not decide it.

IV Repeated errors warrant scrutiny of future compliance

Disproportionality is an established finding in a relevant comparator. In *People v Velasquez*, unpublished per curiam opinion of the Court of Appeals, issued January 10, 2025 (Docket No. 368254), pp 2-5, the Court reproduced the description of guidelines as “clearly man-made, and clearly flawed in this instance.” It found the renewed departure disproportionate, explaining that the judge had again relied on general policy disagreement despite specific appellate instructions. The Court ordered resentencing before a different judge. This unpublished decision is cited for its specific procedural history and illustrative value, not as binding precedent.

That history gives the Court a concrete reason to scrutinize whether ordinary correction will secure faithful application of sentencing law. CJ3 reports the resulting reassignment. Amicus submits that a disposition resting on confidence in future compliance should confront the documented failure of a prior remand to produce it. Lupu remains entitled to an independent determination of his own appeal.

Clutch Justice reported an active JTC investigation in June 2026. CJ5. A separate August report describes Request for Investigation No. 2026-27270 as assigned for staff review, expressly without confirmation of a full investigation. CJ6. These reported procedural statuses are not disciplinary findings and do not establish knowledge of a complaint or deliberate defiance of investigators.

The August 16 reporting also relays an account of an August 12 sentence of 24-60 months against guidelines of 0-9 months, accompanied by a remark anticipating another appeal. CJ7. That later departure has not been established here to be unlawful. Nonetheless, amicus

contends that the reported continuation of the practice, alongside the demonstrated failure of correction in Velasquez, provides no demonstrated assurance that oversight alone has produced lasting compliance. The appropriate response is enforceable, case-specific relief, including reassignment where the record satisfies the governing factors, rather than an assumption that a pending complaint has resolved the concern.

V Relief must correct the error and secure compliance

If the record establishes an unreasonable departure, the remedy should require a new, lawful sentencing determination. If it establishes a report-correction error without a basis to disturb the sentence, relief should instead target the report. These remedies address different defects. The order should make clear which defect the Court found and what must occur to correct it.

Where resentencing is required, the Court should also consider whether reassignment is warranted. *People v Dixon-Bey*, 340 Mich App 292, 303-304; 985 NW2d 904 (2022), identifies the relevant considerations: the original judge's likely difficulty setting aside erroneous views or rejected evidence, preservation of the appearance of justice, and the waste or duplication reassignment would entail compared with its fairness benefit. That case concerned another judge; it supplies the standard, not a finding about Schipper.

Amicus requests application of those factors to Lupu's own proceedings if the Court reaches the remedy question. A different judge is not automatically required by critical reporting. Conversely, institutional familiarity with a case should not end the analysis if the record demonstrates that a fresh sentencing assessment is needed.

For any further sentencing proceeding, the Court should direct resolution of the disputed report matters, preparation and review of the corrected report under MCR 6.425(D)(2)(a), identification of the applicable guidelines range, and a specific explanation of any departure. The point of remand is a corrected process with a reviewable result. It should not leave the same factual dispute embedded in the report or the same legal defect obscured by a new description.

Conclusion and Relief Requested

Amicus respectfully requests that the Court resolve the remanded departure and PSIR issues through an individualized examination of the sentencing record; vacate the sentence and order resentencing if that record establishes reversible sentencing error; direct any required PSIR correction; and consider reassignment under Dixon-Bey if resentencing is ordered and the record supports it. Relief should remain within the issues returned by the Supreme Court. The sentence must rest on reliable facts and a sufficient explanation.

Respectfully submitted,

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Dated: September 13, 2026

Statement of Word Count

This brief contains no more than 2,363 words, including the disclosure footnote. This conservative count includes the cover, tables, headings, and signature block as well as the substantive text. It excludes this certificate, the source directory, and the attached opinion. The brief uses 12-point Times New Roman, 1.5-line body spacing, and one-inch margins and is within MCR 7.212(B).

Public Sources Cited

CJ1 — Rita Williams, Judge Michael Schipper and Sentencing Abuse: Michigan Court of Appeals Remands Raise Constitutional Concerns (June 23, 2024, as updated).

CJ2 — Rita Williams, Broken Plea Deals in Barry County Michigan — Judge Michael Schipper Case Timeline Analysis (February 28, 2023, as updated).

CJ3 — Rita Williams, Barry County Defendant Resentenced, Court of Appeals Decision Upheld (April 25, 2025).

CJ4 — Rita Williams, Barry County's Jail Board Is a Massive Conflict of Interest (August 28, 2025).

CJ5 — Rita Williams, Judge Schipper Disqualified Himself from Her Case. Then Sentenced Her Husband. (June 24, 2026).

CJ6 — Rita Williams, Judge Michael Schipper's Order Was Filed August 11. So Was a JTC Complaint About Him. (August 20, 2026).

CJ7 — Rita Williams, Clutch Justice Weekly, Issue 021 (August 16, 2026).

CJ8 — Rita Williams, 5 Ways the Barry County, Michigan Courts Cheat the System (February 20, 2023).

Opinion — People v Velasquez, unpublished opinion after remand, January 10, 2025, No. 368254.

Docket — Michigan Court of Appeals, People v Scott Michael Lupu, No. 375854.

Order — Michigan Supreme Court, People v Lupu, No. 168940, January 30, 2026.

The source titles above are hyperlinks. Public reporting is identified as such and is not offered as a substitute for the record in this appeal. Sources accessed September 13, 2026.

Appendix A: The attached January 10, 2025 unpublished opinion in People v Velasquez is supplied under MCR 7.215(C)(1). Its treatment of this judge's conduct following remand provides factual and procedural context not supplied by the published authorities cited for the governing standards.

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIO JAVIER VELASQUEZ,

Defendant-Appellant.

UNPUBLISHED

January 10, 2025

10:18 AM

No. 368254

Barry Circuit Court

LC No. 2023-000463-FH

AFTER REMAND

Before: N. P. HOOD, P.J., and O’BRIEN and REDFORD, JJ.

PER CURIAM.

Defendant, Mario Javier Velasquez, pleaded guilty to operating while intoxicated, third offense (OWI 3rd), MCL 257.625(9)(c). The trial court sentenced defendant above the recommended guidelines range to serve 36 to 60 months’ imprisonment. Defendant appealed to this Court, and a panel of this Court vacated defendant’s sentence and remanded for the trial court to articulate a basis for the upward departure or to resentence defendant. On remand, the trial court sentenced defendant above the recommended guidelines range to 396 days’ imprisonment with credit for 396 days of time served. The trial court also sentenced defendant to a two-year term of home detention. We vacate defendant’s sentence and remand to a different judge for proceedings consistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

In defendant’s previous appeal, we summarized the basic facts of this case as follows:

This case arises out of an incident in which defendant operated a motor vehicle and parked it on the side of a public road. Barry County Sheriff Deputies found defendant unresponsive in the motor vehicle with the engine running. Defendant was arrested, and his blood alcohol level was .24 grams per 100 milliliters of blood. Because defendant had two prior OWI misdemeanor convictions, defendant was charged with OWI 3rd, which is a felony. MCL 257.625(9)(c). He pleaded guilty pursuant to a plea agreement. [*People v*

Velasquez, unpublished per curiam opinion of the Court of Appeals, issued September 19, 2024 (Docket No. 368254), p 1.]

Defendant's recommended minimum sentence range was zero to six months' incarceration. At the original sentencing in September 2023, the trial court departed upward and sentenced defendant to 36 to 60 months' imprisonment. Before articulating its reasoning for the upward departure, the trial court compared defendant and his conviction with another defendant who was convicted of resisting and obstructing, MCL 750.81d, and had a prior retail fraud conviction, but had a higher recommended minimum sentence range than defendant. The trial court expressed its opinion that such an outcome showed that the sentencing guidelines were flawed. We concluded that, to the extent the trial court relied on a policy disagreement with the severity of punishment recommended by the sentencing guidelines for OWI 3rd, this was not a sufficient basis for an upward departure. The trial court also provided several other reasons to depart from the sentencing guidelines that we ultimately concluded either did not support an upward departure or the extent of the particular upward departure in this case. Accordingly, we remanded for the trial court to fully articulate its rationale for the upward departure and its reasons why a particular sentence is proportional, or, alternatively, to exercise its discretion to resentence defendant.

On remand, defendant's recommended minimum sentence range remained zero to six months. The trial court sentenced defendant to another upward-departure sentence of 396 days' imprisonment and a two-year term of home detention. The trial court provided the following explanation for the upward-departure sentence:

I will state for the record, that I'm amazed that the sentencing guidelines are zero to six. For someone with three drunk driving's [sic]. That's the typical guidelines for somebody with a first possession of methamphetamine charge. Every time he drinks and drives, he has the ability, not when you possess methamphetamine. But, he had the ability by driving a three[-]thousand, four[-]thousand[-]pound vehicle on the roadways. To kill people. The guidelines are clearly man-made, and clearly flawed in this instance. I think I have the ability to go above the guidelines in this case. I think under *Lockwood*,¹ I have the ability to under the guidelines for any reason whatsoever. And, the Court of Appeals does not have to like my reasons, or agree with my reasons, as long as I give a reason. That has changed over the last five years, and I think we're heading towards a situation where we're going to go back towards an unconstitutionally required guideline range.

This appeal followed.

¹ This is an apparent invocation of *People v Lockridge*, 498 Mich 358, 399; 870 NW2d 502 (2015), in which our Supreme Court held that the Michigan's sentencing guidelines are advisory, not mandatory.

II. ANALYSIS

After remand, we examine whether defendant's new out-of-guidelines sentence imposed by the trial court was unreasonable and disproportionate. We conclude that it is. The trial court abused its discretion by solely justifying its sentencing decision on its disagreement over the severity of punishment for OWI 3rd recommended by the sentencing guidelines.

Sentences that depart from the sentencing guidelines are reviewed for reasonableness. *People v Steanhouse*, 500 Mich 453, 459-460; 902 NW2d 327 (2017). "[T]he standard of review to be applied by appellate courts reviewing a sentence for reasonableness on appeal is abuse of discretion." *Id.* at 471. "[T]he proper inquiry when reviewing a sentence for reasonableness is whether the trial court abused its discretion by violating the 'principle of proportionality' set forth in *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Steanhouse*, 500 Mich at 459-460 (quotation marks omitted).

In *Lockridge*, our Supreme Court held that Michigan's sentencing guidelines are advisory, not mandatory. 498 Mich at 399. Although no longer mandatory, the sentencing guidelines "remain a highly relevant consideration in a trial court's exercise of sentencing discretion." *Id.* at 391. "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." *People v Dixon-Bey*, 321 Mich App 490, 524-525; 909 NW2d 458 (2017). To determine if an upward departure is more proportionate than a sentence within the sentencing guidelines, a trial court may consider factors including, but not limited to:

(1) the seriousness of the offense; (2) factors that were inadequately considered by the guidelines; and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation. [*People v Walden*, 319 Mich App 344, 352-353; 901 NW2d 142 (2017) (quotation marks and citation omitted).]

When a trial court imposes an out-of-guidelines sentence, it "must justify the sentence imposed in order to facilitate appellate review." *Dixon-Bey*, 321 Mich App at 525 (quotation marks and citation omitted). "This includes an explanation of why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been." *People v Smith*, 482 Mich 292, 311; 754 NW2d 284 (2008).

At the original sentencing, the trial court expressed its disagreement with the severity of punishment recommended by the sentencing guidelines for OWI 3rd before sentencing defendant. It was not apparent whether the trial court relied on this policy disagreement with the sentencing guidelines when sentencing defendant. We concluded that, to the extent the trial court did rely on its policy disagreement with the sentencing guidelines, such reasoning was insufficient to support an upward departure from the sentencing guidelines. The trial court provided several other reasons for its upward departure that we concluded either did not support an upward departure or the extent of the particular upward departure in this case.

On remand, the trial court did not expand on its reasoning in support of the sentence imposed. Instead, the trial court expressly and exclusively justified its sentencing decision on its previously-stated disagreement over the severity of punishment for OWI 3rd advised by the sentencing guidelines. Accordingly, the trial court sentenced defendant to an upward-departure sentence on the basis of the trial court's belief that the sentencing guidelines generally do not punish those convicted of OWI 3rd severely enough. This is not a proper basis for an upward departure. This reasoning does not consider anything particular about defendant or his offense as required under the principle of proportionality. See *Steanhouse*, 500 Mich at 459-460.

We are aware of no authority prohibiting a trial court from expressing disagreement with the sentencing guidelines imposed by the Legislature. Rather, the ability to express disagreement is apparent from the advisory nature of the sentencing guidelines. *Lockridge*, 498 Mich at 399. For example, a trial court necessarily expresses some degree of disagreement with the sentencing guidelines when it justifies an upward departure on the basis that a factor was inadequately considered or not considered at all by the sentencing guidelines. See *Walden*, 319 Mich App at 352-353. The distinction between these proper considerations and the trial court's general disagreement with the Legislature over the punishment of all OWI 3rd convictions is that these considerations are rooted in the inquiry into the seriousness of the circumstances surrounding the offense and the offender. *Steanhouse*, 500 Mich at 459-460. By solely justifying its sentencing decision on its disagreement over the severity of punishment for all OWI 3rd offenses, the trial court has failed to take into considerations the circumstances surrounding defendant and his offense. See *id.*

The trial court failed on remand, despite specific instructions from a panel of this Court, to explain how the departure sentence was proportional, by articulating how the circumstances of this offense and offender would result in a sentence of 396 days' imprisonment and a two-year term of home detention. Accordingly, the trial court abused its discretion. See *id.* at 471. Resentencing is warranted again.

When remanding for resentencing, this Court has the authority to sua sponte order that a different judge should carry out the resentencing on remand.² See *People v Rosen*, 201 Mich App 621, 623-624; 506 NW2d 609 (1993). We consider three factors to determine whether to reassign a case to a new judge on remand:

(1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness. [*People v Walker*,

² This authority does not derive from the court rules governing recusal and disqualification. See MCR 2.003. Rather, this authority is derived from this Court's power, "at any time, in addition to its general powers, in its discretion, and on the terms it deems just," to "enter any judgment or order or grant further or different relief as the case may require." MCR 7.216(A)(7).

504 Mich 267, 285-286; 934 NW2d 727 (2019) (quotation marks and citation omitted).]

Applying these factors, we conclude that remand to a different judge is necessary for resentencing. The trial court has twice now sentenced defendant. In both sentencing hearings, the trial court expressed its disagreement with the sentencing guidelines. In the first sentencing hearing, it was not apparent whether the trial court relied on its policy disagreement with the Legislature to sentence defendant. However, at the second sentencing hearing, the trial court plainly and exclusively relied on that policy disagreement with the Legislature in contravention of the principle of proportionality and specific instruction from this Court. It is, therefore, unreasonable to expect the original judge to be able to put previously-expressed subjective views out of mind without substantial difficulty were we to remand this case to that judge for a third time. Reassignment of this matter to a different judge solely for the purpose of resentencing in this case involving a plea for OWI 3rd will not “entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.” *Id.* Therefore, we remand for resentencing before a different judge.

Vacated and remanded to a different judge for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Noah P. Hood
/s/ Colleen A. O’Brien
/s/ James Robert Redford