

# Order

Michigan Supreme Court  
Lansing, Michigan

October 30, 2015

Robert P. Young, Jr.,  
Chief Justice

150119

Stephen J. Markman  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 150119  
COA: 317054  
Ingham CC: 13-000161-FH

FATEEN ROHN MUHAMMAD,  
Defendant-Appellant.

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On October 15, 2015, the Court heard oral argument on the application for leave to appeal the July 29, 2014 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we VACATE the Court of Appeals judgment and REMAND this case to that court for reconsideration. The Court of Appeals erred by applying harmless error analysis without first determining whether the trial court's order dismissing the habitual offender notice was erroneous. See MCR 2.613(A) (stating that a judgment or order of the court may not be vacated, modified, or otherwise disturbed "unless refusal to take this action appears to the court inconsistent with substantial justice"). The prosecutor has conceded that it did not timely serve the habitual offender notice under MCL 769.13. On remand, we direct the Court of Appeals to determine whether the trial court erred by concluding that the proper remedy for the prosecutor's statutory violation was dismissal of the habitual offender notice. See *In re Forfeiture of Bail Bond*, 496 Mich 320 (2014).

We do not retain jurisdiction.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 30, 2015

  
Clerk