

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

WILLIAM A. SIZER,

Defendant-Appellee.

UNPUBLISHED
February 21, 1997

No. 191833
Ingham County
LC No. 95-69064

Before: Young, P.J., and O'Connell and W.J. Nykamp,* JJ.

PER CURIAM.

Defendant pleaded guilty to five counts of embezzlement over \$100.00. MCL 750.174; MSA 28.731. The trial court sentenced defendant to five years of probation, with the first year to be served in the county jail, and ordered defendant to pay oversight fees and full restitution. Plaintiff appeals defendant's sentence as of right, and argues that the sentence imposed, though within the sentencing guidelines, is disproportionately lenient. We affirm the order of restitution but remand for resentencing.

Defendant pleaded guilty to embezzling \$479,000.00. Yet, the charges reflect approximately half of the total amount embezzled.¹ Defendant, in fact, embezzled approximately \$100,000 from his employer, Penn Mutual Life Insurance Company, *each and every year* from 1984 to 1993. All told, he embezzled just under one million dollars. The money was originally tendered as payment for premiums of retirement annuities, paid by the Lansing Catholic Diocese. The circuit court, considering the interest that would have accrued on the funds, ordered defendant to pay approximately \$1,500,000 in restitution.

Plaintiff argues that the trial court should have exceeded the recommended guidelines' range of zero to twelve months due to the excessive amount of money embezzled. We agree. The amount embezzled was not adequately reflected in the offense variables of the sentencing guidelines. Under the circumstances, we hold that the trial court abused its discretion in

* Circuit judge, sitting on the Court of Appeals by assignment.

sentencing defendant to five years' probation, with one year to be served in jail. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v Lankey (After Remand)*, 198 Mich App 187; 497 NW2d 571 (1993).

The order of restitution is affirmed, but defendant's one year jail sentence and probation is vacated and the matter is remanded for resentencing. We do not retain jurisdiction.

/s/ Robert P. Young, Jr.

/s/ Peter D. O'Connell

/s/ Wesley J. Nykamp

¹ The restitution order reflects the total amount embezzled.