

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

PATRICK NEAL HOWARD,

Defendant-Appellee.

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UNPUBLISHED

February 17, 1998

No. 201922

Oakland Circuit Court

LC No. 96-148812 FH

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

The Oakland County Prosecutor appeals by right the quashing of an information charging defendant with larceny by conversion over \$100, MCL 750.362; MSA 28.594. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant, a building contractor, accepted a down payment from a customer for work to be performed. He neither completed nor even commenced the work, and he failed to refund the down payment. Even granting that, as a building contractor, defendant accepted the down payment in the capacity of a trustee, pursuant to the Building Contract Fund Act. MCL 570.151; MSA 26.331, it was clearly never contemplated that the precise dollars comprising the down payment, which was paid by check, would be refunded if the work were not performed. Hence, the circuit court correctly concluded that, on these facts, a charge of larceny by conversion may not be maintained. *People v Christenson*, 412 Mich 81, 89-90; 312 NW2d 618 (1981). The circuit court therefore properly dismissed the prosecution, *id*, such dismissal is without prejudice to the pursuit of any other criminal charges which may properly apply on these facts, e.g., MCL 570.152; MSA 26.332.

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski