

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID LEE GREEN,

Defendant-Appellant.

UNPUBLISHED

June 12, 1998

No. 199266

Kent Circuit Court

LC No. 96-000069 FH

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of obtaining by false pretenses property valued over \$100, MCL 750.218; MSA 28.415, and habitual offender fourth, MCL 769.12; MSA 28.1084. He was sentenced to four to fifteen years' imprisonment and ordered to pay restitution in the amount of \$6,328.41. He appeals as of right. We affirm.

Defendant first argues that the prosecution failed to prove all of the elements required under the false pretenses statute. Specifically, defendant claims that the evidence failed to establish that he had the intent to defraud because he believed he still had charging privileges with Windemuller Electric. We disagree. When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985); *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Intent may be inferred from the facts and circumstances of a case. *In re People v Jory*, 443 Mich 403, 419; 505 NW2d 228 (1993). Here, the prosecution presented evidence that defendant was informed both at the time he was terminated from his employment and afterwards that he had to pay his charge account balance. The prosecution also presented evidence that defendant failed to make any payments on the account after the termination of his employment. This evidence was sufficient to establish that defendant possessed the intent to defraud.

Defendant next argues that the trial court erred in ordering him to pay restitution without considering his ability to pay restitution as required by MCL 780.767(3); MSA 28.1287(767)(3). We

disagree. Defendant, having failed to request an evidentiary hearing to determine his ability to

pay restitution, has not properly raised this issue for our review. See *People v Griffis*, 218 Mich App 95, 103-104; 553 NW2d 642 (1996). The statute does not require the trial judge to make a separate factual inquiry and individual findings on the record. *People v Grant*, 455 Mich 221, 243; 565 NW2d 389 (1997). Instead, a judge is entitled to rely on the information in the presentence report, which is presumed to be accurate unless the defendant effectively challenges the accuracy of the factual information. *Id.* at 233-234. Here, defendant's presentence investigation report stated that defendant had a GED, was in good health, and was able to maintain employment. Nothing in the report indicated that defendant would not be able to obtain employment upon his release and pay the restitution ordered by the trial court. Defendant and his attorney reviewed the report, and defendant's attorney stated that they had no objections to the information contained in the report. On these facts, we find no error.

Affirmed.

/s/ Maura D. Corrigan

/s/ Joel P. Hoekstra

/s/ Robert P. Young, Jr.