

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES PAUL HIERHOLZER,

Defendant-Appellant.

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UNPUBLISHED

May 4, 1999

No. 205318

Washtenaw Circuit Court

LC No. 95-005485 FH

Before: Kelly, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his plea based conviction for embezzlement, MCL 750.174; MSA 28.371. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court improperly determined the amount of restitution required to be paid under MCL 780.767(1); MSA 28.1287(767)(1). At the time of sentencing, the question of restitution was left for a later hearing. At the hearing, defendant's employer testified regarding the items missing from his antiques business, and he established their value at \$30,000 through reference to two industry price guides. He recovered property worth \$15,000. Defendant acknowledged that he received between \$800 and \$1,000 for the items. The trial court ordered restitution of \$15,000 as a condition for parole. This finding is supported by the evidence presented at the hearing, and is not clearly erroneous. *People v Guajardo*, 213 Mich App 198, 202; 539 NW2d 570 (1995).

Defendant also argues that the trial court failed to consider his ability to pay restitution. This argument is without merit. The trial court considered defendant's employment history and obligations, and found that defendant was capable of earning money. Defendant agreed to make restitution in his plea agreement, and has failed to overcome the presumption that he had the ability to pay. *People v Grant*, 455 Mich 221, 237; 565 NW2d 389 (1997). Should defendant be faced with a situation where he is imperiled with further incarceration because of his financial inability to comply with the order of restitution, he may request relief at that time. *Guajardo, supra*, 202.

Affirmed.

/s/ Michael J. Kelly

/s/ Janet T. Neff

/s/ Michael R. Smolenski