

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY N. CARTA,

Defendant-Appellant.

UNPUBLISHED

October 8, 1999

No. 211617

Oakland Circuit Court

LC No. 97-150220 FH

Before: Griffin, P.J., and Zahra and Pavlich*, JJ.

MEMORANDUM.

Defendant pleaded guilty to embezzlement by an agent or trustee over \$100, MCL 750.174; MSA 28.371, and was sentenced to five to ten years' imprisonment. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Although defendant's sentence constitutes a departure from the sentencing guidelines recommendation of zero to twelve months, we find no abuse of discretion because the sentence is proportionate to the seriousness of the offense and to the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The sentencing court identified a number of reasons why the recommended range was inadequate, including the amount of funds taken, the especial vulnerability of the victims and the lack of responsibility shown by defendant toward the victims over the nearly six-year period since the offense. We reject defendant's contention that the sentencing court failed to give due consideration to mitigation and policy factors. Cf. *People v Girardin*, 165 Mich App 264, 267-268; 418 NW2d 453 (1987).

Defendant was sentenced in accordance with the terms of the plea agreement, which only required a sentence of probation if defendant paid \$30,000 in restitution by the sentencing date. Because that precondition was not met, the plea agreement allowed the sentencing court to impose a sentence other than probation. Accordingly, the sentencing court was not obliged to allow defendant to withdraw his guilty plea.

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

Affirmed.

/s/ Richard Allen Griffin

/s/ Brian K. Zahra

/s/ Scott L. Pavlich