

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON MICHAEL CONRAD,

Defendant-Appellant.

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UNPUBLISHED

May 26, 2009

No. 284796

Isabella Circuit Court

LC No. 05-001353-FH

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant pleaded no contest to embezzlement of over \$1,000 but less than \$20,000, MCL 750.174(4)(a). He was sentenced defendant to one year in jail and was also ordered to pay \$22,575.71 in restitution. Defendant appeals by delayed leave granted. We affirm defendant's conviction and sentence, but remand for correction of the judgment of sentence consistent with this opinion.

On appeal, defendant, who embezzled a number of retail items from his employer, maintains that the trial court erred in ordering restitution based on the retail value of the items than rather than their replacement cost to his employer. We disagree.

Defendant raises this argument for the first time on appeal; thus, we review defendant's claim for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Defendant has the burden of persuasion and must show that "(1) error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected a substantial right of the defendant." *People v Pipes*, 475 Mich 267, 279; 715 NW2d 290 (2006).

A statement regarding the amount of the loss to the victims was provided in the presentence investigation report (PSIR). The trial court relied on this claim of loss during sentencing when it determined the restitution amount. Although the trial court informed defendant that he had a right to challenge the amount of restitution in a restitution hearing, defendant chose not to seek such a hearing. In *People v Gubachy*, 272 Mich App 706, 708; 728 NW2d 891 (2006), this Court opined:

Crime victims have a constitutional right to restitution. Const 1963, art 1, § 24. Black's Law Dictionary (7th ed) defines "restitution" as "[c]ompensation or reparation for the loss caused to another." Further, crime victims have a statutory

right to restitution under the Crime Victim's Rights Act (CVRA), MCL 780.751 *et seq.* The CVRA provides that if a felony (or a misdemeanor punishable by imprisonment for more than one year) results in the loss of a victim's property, the trial court may order the defendant to pay to the victim, as restitution, the value of the property that was lost. MCL 780.766(3). Restitution encompasses only those losses that are easily ascertained and are a direct result of a defendant's criminal conduct. *People v Orweller*, 197 Mich App 136, 140; 494 NW2d 753 (1992). The prosecution must prove the amount of the victim's loss by a preponderance of the evidence. MCL 780.767(4).

But unless there is a dispute, a court is not required to make express findings regarding the amount of restitution. The court can instead rely on the information in the PSIR in determining the amount of restitution. *People v Grant*, 455 Mich 221, 235; 565 NW2d 389 (1997). Here, because defendant did not contest the amount of loss, he did not effectively challenge the accuracy of the statement regarding the amount of the loss to the victims that was provided in the PSIR. Therefore, the trial court did not plainly err in using the figures provided in the PSIR.

In addition, defendant's contention that the amount stated as a loss in the PSIR represented a "retail inventory value" of the property he converted is not clearly supported by the PSIR. The agent's description of the offense states only that the officer received an inventory of missing items totaling \$19,786.90 plus a claim that defendant took an employee's personal CD collection valued at \$2,739.71. Defendant presents nothing to support his claim that the losses his employer reported represented the retail value of the items. Thus, even were we to agree with defendant's assertion that a trial court should use wholesale values to determine the amount of defendant's restitution under these circumstances, defendant cannot show plain error in the trial court's valuation of the missing items. Defendant has not shown that he is entitled to relief.

We do note, however, that defendant's judgment of sentence contains an apparent error. Defendant pleaded no contest to embezzlement of over \$1000 but less than \$20,000, MCL 750.174(4)(a), and was apparently sentenced on that charge as reflected in his order of probation. But the judgment of sentence indicates that defendant was convicted of embezzlement over \$20,000, MCL 750.174(5)(a). While defendant does not raise this discrepancy on appeal, we nevertheless remand for correction of defendant's judgment of sentence to reflect defendant's actual conviction.

We affirm defendant's conviction and sentence, but remand for correction of defendant's judgment of sentence consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Joel P. Hoekstra  
/s/ Jane E. Markey