

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRAD PATRICK BALLARD,

Defendant-Appellant.

UNPUBLISHED

November 21, 1997

No. 197431

Lapeer Circuit Court

LC No. 94-005242 FH

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

Defendant pleaded guilty to violating the terms of his probation and was sentenced on his two underlying convictions of drawing checks upon a bank without a bank account, MCL 750.131a; MSA 28.326(1), to concurrent terms of imprisonment of sixteen to twenty-four months. Defendant was also ordered to pay restitution in the amount of \$173,707. We affirm.

We reject defendant's argument that the trial court failed to set the amount of restitution in conformity with MCL 780.767(1); MSA 28.1287(767)(1). Although the trial court refused at sentencing to set a specific amount of restitution, instead noting only that the amount of restitution was well in excess of \$100,000, the judgment of sentence requires defendant to pay restitution in the amount of \$173,707. This latter figure is identical to the amount of restitution recommended in the presentence investigation report (PSIR). Defendant did not challenge the validity of this figure or offer evidence to support any other figure. Accordingly, the trial court was entitled to rely on this figure when setting the amount of restitution to be paid. *People v Grant*, 455 Mich 221, 223-224; 565 NW2d 389 (1997). Moreover, the court was not required to make findings on the record concerning the amount of restitution to be paid, defendant having failed to contest the amount of restitution and, thereby, having failed to create a dispute as to the accuracy of the figure. *Id.*, p 235.

We similarly reject defendant's claim that the court failed to inquire into defendant's ability to pay restitution. Defendant equivocated at sentencing with regard to whether he lacked an ability to pay restitution. Under these circumstances, no hearing or statement of findings on the record with regard to defendant's ability to pay were required. *Id.*, pp 235, 243-244. Moreover, the trial court implicitly

considered defendant's ability to pay in light of defendant's failure to rebut the strong presumption that defendant has or will have the financial ability to pay restitution created by the plea agreement used to secure defendant's guilty pleas to the underlying offense, pursuant to which defendant agreed to pay restitution in an amount over \$115,000, *Id.*, pp 237-238, 243-244, in light of the court's consideration of the unchallenged information contained in the PSIR and in light of the fact that the unchallenged contents of the PSIR establish that defendant has skills that would aid in his search for employment and that his failure to pay restitution to date is the result of his unwillingness to make restitution, not his lack of earning capacity. *Id.*, pp 225, 235-236, 242-244.

We also reject defendant's claim that the court could not consider new claims for restitution made by victims since the imposition of the underlying probationary sentence. Upon the revocation of a probation order, the court may sentence a defendant in the same manner and to the same penalty as the court might have done if probation had never existed. MCL 771.4; MSA 28.1134; *People v Burks*, 220 Mich App 253, 258; 559 NW2d 357 (1996). Restitution encompasses those losses which are easily ascertained and measured and are a direct result of the defendant's criminal acts. *People v Tyler*, 188 Mich App 83, 89; 468 NW2d 537 (1991). Accordingly, the trial court correctly included in the restitution amount those losses ascertainable at the time of sentencing, including those claims for restitution coming to light during the preparation for sentencing as a consequence of the probation violations.

The PSIR indicates that defendant's former parents-in-law requested restitution for a "funeral home payment." Defendant did not challenge below the inclusion of this payment in the restitution amount. The PSIR also indicates that the documentation supporting the request was attached to the report. The PSIR supplied to this Court does not have appended to it this supporting documentation. Defendant has not supplied us with any specific information regarding the nature of this claim. Defendant only advances a vague challenge to the inclusion of this payment in the restitution amount. Under these circumstances, defendant has waived appellate consideration of his challenge to the inclusion of this payment in the restitution amount. *People v Sims*, 62 Mich App 550, 555; 233 NW2d 645 (1975).

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.