

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL THEODORE ATTALA,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 180942

LC No. 93-061543-FH

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

Pursuant to a plea and sentence agreement, defendant pleaded guilty to larceny by false pretenses over \$100, MCL 750.218; MSA 28.415, and was sentenced to five years' probation, with the first year to be spent in jail. As a condition of his probation defendant was ordered to pay restitution of \$44,450. He appeals as of right. We affirm defendant's conviction but vacate the order of restitution and remand for a hearing in accordance with MCL 780.767; MSA 28.1287(767). This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The record reveals that defendant's guilty plea was voluntary and unconditional, and that he waived any claim of being denied the right to a speedy trial. *People v Eaton*, 184 Mich App 649; 459 NW2d 86 (1990).

Next, defendant has not shown that he was denied the effective assistance of trial counsel. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

Finally, once defendant disputed the amount of restitution owed and his ability to pay, the trial court was required to conduct an evidentiary hearing to determine the proper amount of restitution. MCL 780.767(4); MSA 28.1287(767)(4); *People v Avignone*, 198 Mich App 419; 499 NW2d 376 (1993). The court's failure to do this requires us to vacate the order of restitution and remand the matter for an evidentiary hearing on the amount of restitution owed and defendant's ability to pay.

Defendant's conviction is affirmed. The order of restitution is vacated and the case remanded to the trial court for an evidentiary hearing to determine the proper amount of restitution in accordance with MCL 780.767(4); MSA 28.1287(767)(4). We do not retain jurisdiction.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.