

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH FERGUSON,

Defendant-Appellant.

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UNPUBLISHED

May 24, 1996

No. 181569

LC No. 94-001621-FH

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

MEMORANDUM.

Pursuant to an agreement, defendant pleaded guilty to false pretenses over \$100, MCL 750.218; MSA 28.415, and was sentenced to 6-1/2 to 10 years' imprisonment. He now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

The order of restitution is not subject to modification based on defendant's untimely claim that he lacks the ability to pay. MCL 780.766(13); MSA 28.1287(766)(13); *People v Hart*, 211 Mich App 703, 706-709; 536 NW2d 605 (1995). Given defendant's agreement to pay restitution as part of his plea agreement, and the presumption of an ability to pay created by this agreement, there was no basis for the trial court to conduct a hearing to consider his ability to pay. *People v Music*, 428 Mich 356, 361-363; 408 NW2d 795 (1987). The trial court did not improperly resolve defendant's challenge to the amount of restitution imposed. Compare *People v Orweller*, 197 Mich App 136, 141; 494 NW2d 753 (1992); *People v Tyler*, 188 Mich App 83, 89; 468 NW2d 537 (1991). There was nothing improper in the trial court's order conditioning defendant's parole on the payment of restitution. MCL 780.766(14); MSA 28.1287(766)(14).

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\*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.

The trial court did not err in scoring Offense Variable 9 of the sentencing guidelines. *People v Reddish*, 181 Mich App 625, 628; 450 NW2d 16 (1989).

Affirmed.

/s/ Thomas G. Kavanagh  
/s/ Robert B. Burns  
/s/ Glenn S. Allen, Jr.