

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HENRY DALLAS MCKINNEY, III,

Defendant-Appellant.

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UNPUBLISHED

May 24, 1996

No. 183592

LC No. 94-001336 FH

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

MEMORANDUM.

Defendant pleaded guilty to false pretenses over \$100, MCL 750.218; MSA 28.415, and was sentenced to five to ten years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The prosecutor did not abuse his charging discretion when he charged defendant with false pretenses over \$100, rather than with no-account check, MCL 750.131a; MSA 28.326(1). Where a defendant may be charged under two statutes, one general and the other specific, the prosecutor has the discretion to charge under either statute if the statutes prohibit different crimes (e.g., an additional element is required to convict the defendant of one of the crimes, but not the other). *People v Ford*, 417 Mich 66, 79-80, 83; 331 NW2d 878 (1982); *People v Peach*, 174 Mich App 419, 423; 437 NW2d 9 (1989). The false pretenses statute and the no-account check statute prohibit different crimes. *Peach, supra*, 428. Moreover, the factual basis supplied by defendant for his plea established that defendant received property from the victim who relied on defendant's false pretense and, thereby, established the existence of an element necessary to prove false pretenses, but not necessary to prove

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\*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

\*\*Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

the offense of no-account check. *Peach, supra*. Accordingly, we find adequate justification for charging defendant with the greater offense.

Affirmed.

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