

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL DONALD VINCENT,

Defendant-Appellant.

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UNPUBLISHED

August 2, 1996

No. 185974

LC No. 90-031778-FH

Before: Michael J. Kelly, P.J., and Young and N.O. Holowka,\* JJ.

PER CURIAM.

Defendant pleaded guilty of violating the terms of his probation for embezzlement over \$100, MCL 750.174; MSA 28.371. He was sentenced to 2-1/2 to 10 years in prison, and appeals as of right. We affirm.

While employed as a cashier, defendant embezzled \$23,327 from his employer. He was sentenced to five years' probation with the first year to be served in jail. The terms of probation required defendant to pay \$23,327 in restitution, costs of \$750, and \$150 for the cost of his public defender. During his nearly five years of probation, defendant paid only \$975 toward the restitution.

Defendant argues his sentence is disproportionate under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990) because the most serious sentences must be reserved for the worst offenders. While defendant's premise is true, we must point out that defendant did not receive the most serious sentence possible. Under *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972), the most serious minimum sentence for this ten-year offense would have been 80 months. Defendant's argument therefore fails.

In light of the amount of money embezzled and the defendant's failure to comply with the terms of probation, we cannot say that the circuit court abused its sentencing discretion under *Milbourn*.

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- Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Nick O. Holowka