

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRYAN SCOTT SHEPHERD,

Defendant-Appellant.

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UNPUBLISHED

October 4, 1996

No. 191075

LC No. 95-000633-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.\*

MEMORANDUM.

Defendant pleaded nolo contendere to larceny from a motor vehicle, MCL 750.356a; MSA 28.588(1), and was sentenced to two to five years' imprisonment and ordered to pay restitution of \$398.77. He appeals as of right. We affirm in part, and reverse and remand in part. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant's two-year minimum sentence does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). There is no need to reverse or modify the Judgment of Sentence since it did not order that defendant's consecutive sentence begin to run in accordance with *People v Young*, 206 Mich App 144; 521 NW2d 340 (1994), rev'd sub nom *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569; 548 NW2d 900 (1996). Defendant did not move to withdraw his plea or otherwise challenge its factual adequacy before the trial court and so has not preserved this issue for review. *People v Kaczorowski*, 190 Mich App 165; 475 NW2d 861 (1991).

However, the trial court erred in imposing the restitution award without first conducting a hearing to establish the actual amount of the victim's loss. We therefore vacate the restitution award and remand the case to the trial court for an evidentiary hearing regarding the appropriate amount of

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

restitution. MCL 780.767(4); MSA 28.1287(767)(4); *People v White*, 212 Mich App 298; 536 NW2d 876 (1995).

Defendant's conviction and prison sentence affirmed, but the award of restitution is reversed and the matter is remanded for an evidentiary hearing regarding the appropriate amount of restitution. We do not retain jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan