

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN GREEN, a/k/a
STEVEN ROBERT FREDERICK,

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 189695

Emmet Circuit Court

LC Nos. 95-888-7-FH

95-889-7-FH

Before: Reilly, P.J., and MacKenzie and B. K. Zahra*, JJ.

PER CURIAM.

Defendant pleaded guilty to attempted false pretenses over \$100, MCL 750.218; MSA 28.415 and MCL 750.92; MSA 28.287, and failure to return rental property over \$100, MCL 750.362a; MSA 28.594(1). He was sentenced to two to five years' imprisonment and ordered to pay restitution of \$30,343.09 for the false pretenses conviction and zero to six months' concurrent imprisonment for the failure to return rental property conviction. Defendant appeals as of right. We affirm.

In April 1994, defendant and his girlfriend, Nancy Charest, opened a restaurant in Petoskey. They obtained a loan of \$26,890.87 for the purchase of restaurant equipment by presenting false information to Old Kent Bank. At the end of the summer, defendant and Charest closed the restaurant, moved the restaurant equipment into a storage facility in Flint, and left town without informing the bank of their whereabouts. A leased ice machine, valued at \$1,239.81 and for which the lease payments had not been made, was among the items removed and placed in storage without notice to the lessor. Defendant was located in Florida the following March and was charged with false pretenses over \$100 and larceny by conversion over \$100.

Pursuant to a plea agreement, defendant pleaded guilty to reduced charges of attempted false pretenses over \$100 and failure to return rental property over \$100. Defendant has not supplied this

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

Court a transcript of the plea taking, but the cover of his presentence investigation report states – and the People do not dispute – that in exchange, the prosecution promised that no other charges relating to the closure of defendant’s restaurant would be brought and that the prosecution would make a non-binding recommendation that defendant be sentenced within the sentencing guidelines.

We first address defendant’s claim that he must be resentenced because, at sentencing, the prosecutor did not recommend sentencing within the guidelines, but instead asked for a sentence that “reflect[s] the wrong that he has done in this case.” Assuming without deciding that the prosecution’s statement was an incorrect interpretation of the plea agreement, defendant acquiesced in the prosecutor’s interpretation by not objecting to the recommendation made by the prosecution at sentencing. *People v Swirles (After Remand)*, 218 Mich App 133, 137; 553 NW2d 357 (1996). Accordingly, we decline to order resentencing on this ground.

We also reject defendant’s claim that his sentence, which exceeded the guidelines’ recommended range of zero to six months’ imprisonment, was disproportionate. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). In exceeding the guidelines’ range, the trial court took into account the facts that (1) defendant’s plea bargain resulted in the dismissal of more serious charges, (2) the plea bargain resulted in an agreement not to pursue more charges arising out of defendant’s enterprise, (3) defendant victimized his girlfriend, as well as the various businesses he failed to pay, (4) defendant caused widespread financial losses throughout the community, and (5) defendant was a poor risk for making restitution and required substantial rehabilitation and punishment. Neither *Milbourn* nor the sentencing guidelines address the unique sentencing situation that is presented when, as here, a guilty plea is to a lesser offense, or when a defendant benefits from the dismissal of other charges. *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990). Under the circumstances of this case, we cannot say that defendant’s two-year minimum sentence constitutes an abuse of discretion. Defendant used false information to obtain a \$26,000 bank loan. His girlfriend lost a total of nearly \$68,000. Defendant bounced numerous checks in running the business. According to his presentence report, he owed money to or had property belonging to sixteen additional “potential victims,” including four advertisers who were owed a total of over \$13,000 and a credit union holding 29 bad checks totaling almost \$10,400. He attempted to sell equipment obtained with the fraudulently obtained money, and then left the state after the police got involved. We find the sentence to be neither excessively severe nor unfairly disparate, and accordingly find no violation of the principle of proportionality.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Barbara B. MacKenzie
/s/ Brian K. Zahra