

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NICOLE RENEE OTIZ-FEHLMAN,

Defendant-Appellant.

UNPUBLISHED

March 28, 1997

No. 188748

Macomb Circuit Court

LC Nos. 94-002499-FH;

94-002850-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to embezzlement over \$100, MCL 750.174; MSA 28.371, and uttering and publishing, MCL 750.249; MSA 28.446. For those respective convictions, he was sentenced to concurrent terms of three to ten years' imprisonment and one to fourteen years' imprisonment. Defendant appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court was not required to complete or consider a sentencing information report for the conviction of embezzlement of \$100 because it had a lesser statutory maximum than the conviction of uttering and publishing. *People v Eberhardt*, 205 Mich App 587, 590; 518 NW2d 511 (1994); *People v Gonzales*, 197 Mich App 385, 401; 496 NW2d 312 (1992); Michigan Sentencing Guidelines (2d ed), p 1. Further, the three-year minimum sentence for the embezzlement conviction is proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Merriweather*, 447 Mich 799, 806; 527 NW2d 460 (1994); *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Defendant's second issue is not properly before us because it lacks citation to supporting authority. *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). In any event, we note that a trial court speaks only through its orders and judgments. *People v Collier*, 105 Mich App 46, 52; 306 NW2d 387 (1981). In view thereof and considering the information in the plea and sentencing record on the issue of restitution, we find that, even if the trial court should have articulated at sentencing that it was ordering restitution, defendant's position that this articulation deficiency should be remedied by removing restitution from the judgments of sentence is unpersuasive.

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar