

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM MITCHELL KIMERLY,

Defendant-Appellant.

UNPUBLISHED

February 20, 1998

No. 199315

Leelanau Circuit Court

LC No. 96-000867 FH

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison*, JJ.

MEMORANDUM.

Defendant was convicted on his plea of guilty of felony nonsupport, MCL 750.161; MSA 28.358. He was initially placed on probation and, among the conditions thereof, ordered to pay restitution of \$5,727.07, plus costs, a fine, a payment to the Crime Victim's Rights Fund, and to reimburse the county for his attorney fees. On this appeal of right, he contends that the trial court erred in failing to reduce the amount of restitution by the \$200 which, during the plea taking, he claimed he had on a single occasion paid directly to one child for her support. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

It appears that subsequent to the commencement of defendant's probation, he was charged with violating probation by, inter alia, failing to report, failing to submit to testing for alcohol consumption, failing to maintain employment, failing to pay restitution, and a number of other technical and substantive infractions. As defendant seemed to be making no effort to pay restitution, the issue now presented would appear in any event to be moot, but assuming that it is not, it is without merit. The presentence report reflected a support arrearage of \$5,736.30. At sentencing, defendant and his counsel acknowledged the accuracy of the report in this respect, objecting to other aspects of the report. Accordingly, the issue presented is not cognizable on appeal, having been waived when defendant, in effect, conceded the accuracy of a higher restitution figure. *People v Grant*, 455 Mich 221; 565 NW2d 389 (1997).

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

Affirmed.

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison