

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BARBARA JEAN INGRAM,

Defendant-Appellant.

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UNPUBLISHED

January 28, 2000

No. 222247

Berrien Circuit Court

LC No. 96-002453-FH

Before: O’Connell, P.J., and Meter and T.G. Hicks\*, JJ.

MEMORANDUM.

Defendant appeals as of right from the sentence of two to ten years’ imprisonment imposed on her plea-based conviction of embezzlement by agent or trustee over \$100, MCL 750.174; MSA 28.371. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant embezzled over \$58,000 from her employer, Buchanan Community Schools. The monies embezzled were funds raised by students and were intended for programs designed to benefit the student body as a whole. Defendant used the funds to post bond for her children, to protect her children from narcotics dealers, and for her own purposes. The sentencing guidelines recommended a minimum sentence range of zero to twelve months. The trial court sentenced defendant to two to ten years in prison, with credit for one day, and ordered her to make restitution. The court acknowledged that defendant had no prior criminal record and that she had overcome substantial obstacles in her life. Nevertheless, the court stated that departure from the guidelines was necessary because they did not allow for adequate scoring to take into account the large amount of money embezzled. In addition, the court noted that defendant had failed to keep a promise to use available funds to make partial restitution.

Defendant argues that her minimum sentence of two years is disproportionate because the trial court’s stated reasons for exceeding the guidelines are already accounted for in the guidelines. We disagree and affirm. Sentence length is reviewed pursuant to the principle of proportionality. A sentence must be “proportionate to the seriousness of the circumstances surrounding the offense and the

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

offender.” *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). A court may justify a sentence that exceeds the guidelines by referring to factors which are not adequately weighed in the guidelines, as well as to factors that are not considered by the guidelines. *People v Castillo*, 230 Mich App 442, 448; 584 NW2d 606 (1998). Here, while the departure from the guidelines was significant, the guidelines did not contemplate an embezzlement scheme of the size and duration committed by defendant. Defendant embezzled funds raised by children. The guidelines did not account for defendant’s failure to use funds available to her to make partial restitution as promised. The court adequately explained its reasons for departing from the guidelines. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987); MCR 6.425(D)(2)(e).

Affirmed.

/s/ Peter D. O’Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks