

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

June 21, 1996

Plaintiff-Appellee,

v

No. 174609

LC No. 93-013223

WILLIAM EUGENE FORD,

Defendant-Appellant.

Before: Cavanagh, P. J. and Hood and J. J. McDonald*, JJ.

PER CURIAM.

Defendant was charged with aggravated stalking, MCL 750.411; MSA 28.643(9). He was convicted, following a bench trial, of misdemeanor stalking, MCL 750.411h; MSA 28.643(8),¹ and sentenced to one year in jail. He appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction. We disagree.

Defendant and complainant had a relationship of 8 ½ years and had two children together. After the relationship ended, complainant obtained a restraining order against defendant, which he did not honor. The evidence at trial revealed that there were two or more separate noncontinuous acts, evidencing a continuity of purpose. See MCL 750.411h(1) (a); MSA 28.643(8)(1)(a). The complainant testified that defendant assaulted her on at least three separate occasions. As a result of the first attack, the complainant had defendant arrested and obtained the restraining order. The evidence indicated that defendant's contact with the complainant was clearly unconsented, or in disregard of her desire, expressed in the restraining order, that the contact be avoided or discontinued. See MCL 750.411h(1)(e); MSA 28.643 (8)(1)(e). Lastly, as testified to by the complainant, she actually felt terrorized and threatened by defendant and his conduct. See MCL 750.411h(1)(d); MSA 28.643(8)(1)(d). The testimony of the complainant's boyfriend that defendant was constantly around the complainant's house, either in person or in his car, was indicative of defendant's obsession and would lead a reasonable person to feel threatened and terrorized. See *Id.* Hence, viewed in the light

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

most favorable to the prosecution, there was sufficient evidence to support his conviction of misdemeanor stalking. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985); *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

Defendant also contends that the stalking statute is unconstitutionally vague and overbroad thereby denying him his due process rights. We disagree. Defendant's claim has been conclusively rejected by this Court. *People v White*, 212 Mich App 298, 310-313; 536 NW2d 876 (1995).

Lastly, defendant asserts that he was denied the effective assistance of counsel because trial counsel failed to subpoena crucial witnesses for trial and failed to secure a copy of an ex parte order which would have impeached the complainant's testimony. We disagree.

To establish ineffective assistance of counsel, defendant must first show that counsel's error was serious under an objective standard of reasonableness and that the deficient performance prejudiced the defense so that the error may have affected the outcome; defendant must overcome the presumption that the challenged action might be considered sound trial strategy. *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721(1995); *People v Hurst*, 205 Mich App 634, 640-641; 517 NW2d 858 (1994). Because defendant did not have an evidentiary hearing in the trial court,² appellate review of this issue is limited to the record. *People v Armendarez*, 188 Mich App 61, 73-74; 468 NW2d 893 (1991).

A review of the record reveals that trial counsel did in fact attempt to serve defendant's live-in companion with a subpoena and requested the court's assistance in securing her presence. However, trial counsel informed the court that he and defendant no longer wished to call her as a witness. As to the other witnesses that defendant wanted to subpoena, there was no offer of proof concerning their testimony and it is unascertainable why counsel did not call them to testify. We therefore cannot say that defendant was denied a substantial defense. *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995).

Further, the ex parte order, which gave custody of the children to defendant, was issued after the assaults occurred and hence, was irrelevant. Also, in reviewing the comments made by the trial court during sentencing including references to defendant's fourteen previous felonies, we conclude that its decision regarding sentence length was not based on whether defendant had a right to see his children. So, although the order may have impeached the complainant's credibility, because she denied that defendant ever received custody of the children, we are not

convinced that it would have made a difference in the outcome. *LaVearn, supra*, p 213; *Hurst, supra*, pp 640-641.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Harold Hood

/s/ John J. McDonald

¹ Defendant was originally charged with aggravated stalking. MCL 750.411I; MSA 28.643(9).

² *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).