

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK WILLIAM MILLER,

Defendant-Appellant.

UNPUBLISHED

June 21, 1996

No. 180696

LC Nos. 94-000631-FC;

94-000795-FH

Before: O'Connell, P.J., and Sawyer and G.R. Corsiglia,* JJ.

PER CURIAM.

Defendant was convicted by a jury on two counts of criminal sexual conduct in the third degree, MCL 750.520d; MSA 28.788(4), one count of CSC in the second degree, MCL 750.520c; MSA 28.788(3), one count of CSC in the first degree, MCL 750.520b; MSA 28.788(2), felonious assault, MCL 750.82; MSA 28.277, and aggravated stalking, MCL 750.411i; MSA 28.643(9). He pleaded guilty to a second habitual offender charge, MCL 769.12; MSA 28.1084. Defendant was sentenced to twenty-five to seventy-five years for first-degree CSC, concurrent to sentences for the other convictions, which are shorter. He appeals as of right. We affirm.

Defendant challenges the constitutionality of the stalking statute on void-for-vagueness grounds. The constitutionality of the statute was upheld by this Court in *People v White*, 212 Mich App 298; 536 NW2d 876 (1995). Defendant presents no argument to convince this Court to overrule that decision. Therefore, we also decline to address defendant's argument that if we find that the statute is unconstitutional, he should be granted a new trial on his other charges.

Defendant contends that trial counsel was ineffective by failing to allow him to testify. To succeed on a claim of ineffective assistance of counsel, defendant must first show that counsel's performance was below an objective standard of reasonableness under the prevailing professional norms. *People v LaVearn*, 448 Mich 207, 212-213; 528 NW2d 721 (1995), citing *Strickland v*

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

Washington, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674, reh den 467 US 1267 (1984), and *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). We have reviewed the record and conclude that it does not support defendant's claim. The trial court properly found that defendant had agreed that he would not testify.

Affirmed.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ George R. Corsiglia