

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TOD FRIEDMAN,

Defendant-Appellant.

UNPUBLISHED

October 8, 1996

No. 185688

LC No. 94-001006-FC

Before: Corrigan, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Following a jury trial in the Macomb Circuit Court, defendant was convicted of solicitation to commit murder, MCL 750.157b; MSA 28.354(2), and subsequently pleaded guilty to being an habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to thirty-nine to sixty years in prison. Defendant appeals as of right and we affirm.

Defendant first argues that the prosecution failed to produce sufficient evidence to support his conviction for solicitation to commit murder. When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Taken in a light most favorable to the prosecution, there was sufficient evidence presented to find the essential elements of solicitation to commit murder. Tony Berry, who was an inmate with defendant while defendant was incarcerated for another conviction, testified that defendant offered to give him money and an airline ticket to Alaska in exchange for killing Vicki Hall, a prosecution witness in the case in which defendant had been convicted. According to Berry, defendant wanted Hall abducted, tortured, and sodomized before she was killed. Eventually, Berry received a list from defendant which he alleged contained the names of the intended victims, including Hall and five other persons. At trial,

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

defense counsel stipulated that the list was written by defendant. During a recorded conversation, defendant indicated to Berry that Hall “better be dead before I get out.” Hall testified that defendant had previously threatened to cut her throat. This evidence is sufficient to establish the essential elements of solicitation to commit murder beyond a reasonable doubt. *People v Vanderlinder*, 192 Mich App 447, 450-451; 481 NW2d 787 (1992).

Defendant next argues that the trial court abused its discretion in allowing Hall to testify regarding threats made by defendant in a prior proceeding. We find no abuse of discretion because Hall’s testimony was relevant to defendant’s motive and intent. MRE 401, 402; *People v Miller(After Remand)*, 211 Mich App 30, 38-40; 535 NW2d 518 (1995); *Vandelinder, supra*, pp 453-454.

Defendant next argues that because solicitation to commit murder is not included within the sentencing guidelines, he was denied the right to equal protection and due process. The sentencing guidelines do not convey substantive rights to a defendant. *People v Fisher*, 442 Mich 560, 581; 503 NW2d 50 (1993). Defendant was not denied equal protection and due process where his sentence for solicitation to commit murder is not included in the sentencing guidelines. *People v Weathersby*, 204 Mich App 98, 114; 514 NW2d 493 (1994).

Last, defendant next argues that his sentence of thirty-nine to sixty years is disproportionate. We disagree. Defendant wanted Berry to abduct, torture, and sodomize Hall before killing her. At sentencing, Hall indicated that she was “extremely scared” of defendant and that she suffered nightmares as a result of defendant’s conduct. At the time he committed the instant offense, defendant was in prison serving a two to twenty year sentence for three counts of pandering. Under these circumstances, we conclude that defendant’s thirty-nine- to sixty-year sentence, enhanced by a second felony offender conviction, was proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Cervantes*, 448 Mich 620; 532 NW2d 831 (1995); *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996) (an appellate court’s review of an habitual offender sentence is limited to considering whether the sentence violates the principle of proportionality without reference to the guidelines). Finally, defendant’s sentence does not constitute cruel and/or unusual punishment. *People v Williams (After Remand)*, 198 Mich App 537, 543; 499 NW2d 404 (1993).

Affirmed.

/s/ Maura D. Corrigan
/s/ Kathleen Jansen
/s/ Meyer Warshawsky