

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY ROBERT CALDWELL,

Defendant-Appellant.

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UNPUBLISHED

December 20, 1996

No. 184990

LC No. 94-029983-FH

Before: Hood, P.J., and Neff and M.A. Chrzanowski, JJ.

PER CURIAM.

Defendant was convicted by a jury of aggravated stalking, MCL 750.411i; MSA 28.643(9). The trial court sentenced him to three to five years' imprisonment. He appeals as of right, and we affirm.

On appeal, defendant challenges only his sentence. He asserts that the trial court abused its discretion in sentencing him to a disproportionate term. We disagree.

A sentence must be proportionate to the seriousness of the circumstances of the offense and the background of the defendant. *People v Milbourn*, 435 Mich 630, 635; 461 NW2d 1 (1990). We review a trial court's sentencing of a defendant for an abuse of discretion. *Id.*

The jury found defendant guilty of aggravated stalking based on violation of a bond condition requiring defendant to have no contact with the victim, his now former wife, and violating a probation condition prohibiting defendant from engaging in threatening or harassing conduct. In January 1994, the victim was injured in a domestic dispute. A bond was issued, prohibiting defendant from making contact with his wife. The parties had consensual contact following the bond, during which they discussed defendant's visitation with their daughter and reconciliation of their marriage.

In March 1994, defendant moved back into the marital home. Approximately two weeks later, after attempts at reconciliation began to fail, defendant locked himself, his wife and their four-year-old daughter in their home. While in the presence of his wife and daughter, defendant placed a shotgun

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

barrel in his mouth and threatened to kill himself. During the time defendant kept his family locked in their home, he followed his wife around with the shotgun, but apparently never verbally threatened her or their child. The following morning, defendant's wife and child left the house, but defendant remained inside. Attempts by police to encourage defendant to leave the house were unfruitful. That evening, nearly twenty-four hours after the incident began and after they heard a shot fired from in the house, police entered the house and arrested defendant without incident.

Defendant remained on bond and was not permitted to have contact with his wife. She moved away and told defendant she wanted no more contact with him, although he was permitted to remain in contact with their daughter. Defendant made numerous telephone calls to his wife, some of which she did not consent to. Defendant also visited his wife's place of employment. She asked defendant to leave, and he was told by her employer to leave.

Defendant pleaded guilty to reckless use of a firearm and sentenced to thirty days in jail. Defendant's wife filed for divorce while he was in jail. Upon his release, he was placed on probation, a condition of which was that he not to engage in assaultive, harassing or intimidating behavior. The morning following defendant's release, he traveled to his wife's home to visit his daughter. The victim testified that defendant told her that there would be no divorce because she would be a widow and that he was there to say his final goodbye to his daughter. She also testified that she agreed to talk to him about their child to arrange visitation.

The trial court, in sentencing defendant, reflected on the full course of events between January and June 1994. The record indicates that defendant was, as the trial court noted, extremely frustrated with the circumstances, particularly as they affected his opportunities to visit his daughter. The court noted that, although there were concerns about possible harm to defendant's daughter, visitation between defendant and his daughter was arranged during one of his periods in jail. These visits apparently went well, although his wife stated otherwise. However, the court also reflected on the incident in which defendant locked his family in the home and threatened to kill himself while in their presence. This conduct was rightly found to be inconsistent with defendant's professed love for his child. Defendant emphasizes that he never pointed the gun at his wife or child or threatened to harm them, however the conduct in which he engaged was not harmless to them. There was evidence that defendant told his probation officer, following his release on the firearms conviction, that he wanted to commit suicide and "off" his wife.

The trial court was concerned with defendant's past conduct and his continued course of conduct. It believed that society needed to be protected from defendant. It also stated that in part it was concerned with deterring others from committing similar offenses. Based on the circumstances of this offense and defendant's background, particularly his emotional and mental state during the course of these events, we conclude that the sentence defendant received was proportionate. The trial court did not abuse its discretion in sentencing defendant.

Affirmed.

/s/ Harold Hood  
/s/ Janet T. Neff  
/s/ Mary A. Chrzanowski