STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK DEWAYNE DRALLETTE,

Defendant-Appellant.

UNPUBLISHED
March 25, 1997

No. 184591
Kalamazoo Circuit Court
LC No. 93-000374-FH

Before: Hoekstra, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Defendant was convicted of aggravated stalking, MCL 750.411i; MSA 28.643(9), and sentenced to ten years' probation. He appeals as of right. We affirm.

Defendant first claims that the trial court should have recognized his legal incompetence in representing himself at trial and should have sua sponte replaced defendant with appointed counsel to ensure that he would not be denied a fair trial. We conclude that defendant was not denied a fair trial and the trial court did not abuse its discretion by allowing defendant to represent himself at trial. *People v Adkins*, 452 Mich 702, 721 n 16; 551 NW2d 108 (1996). The trial court complied with the requirements for waiver of counsel set forth in *People v Anderson*, 398 Mich 361, 366-367; 247 NW2d 857 (1976), and MCR 6.005(D), as recently reaffirmed in *Adkins*. The trial court repeatedly warned defendant both at the hearing on self-representation and at the start of trial of the risks attendant to self-representation. We agree with the trial court that defendant's decision to represent himself was made knowingly, understandingly, voluntarily and unequivocally, and defendant does not argue otherwise on appeal. He argues only that he lacked legal skill. During trial, defendant was generally mindful of the court's rulings and consulted with standby counsel on various matters. Defendant cross-examined the prosecution's witnesses, challenged evidence, and presented witnesses and evidence on his behalf. Although defendant's cross-examination of the witnesses often resulted in damaging evidence coming in, we do not believe that is reason enough to declare that he was deprived of a fair trial by self-representation. Although a defendant's competence is a pertinent consideration in whether he should be allowed to represent himself, his competence as to legal skills is not the determinative factor. *Anderson, supra* at 368; *People v Morton*, 175 Mich App 1, 7-9; 437 NW2d 284 (1989). Where defendant repeatedly advised the court of his desire to represent himself and presented a

defense on his behalf, the trial court did not abuse its discretion by failing to sua sponte "thrust counsel upon [defendant], against his considered wish." See *Adkins, supra* at 720; *Morton, supra*. Defendant is not entitled to use his failed attempt at self-representation as an appellate parachute. *Adkins, supra* at 724-725.

Defendant next claims that he was denied a fair trial by prosecutorial misconduct. In reviewing claims of prosecutorial misconduct, this Court examines the remarks in context to determine whether they denied defendant a fair trial. *People v Bahoda,* 448 Mich 261, 266-267; 531 NW2d 659 (1995). After reviewing the challenged remarks in context, we conclude that the prosecutor's remarks were proper responses to issues raised and arguments presented by defendant or fair comments based on testimony at trial. *Id.*, 282-283; *People v Duncan,* 402 Mich 1, 16; 260 NW2d 58 (1977). The comments were either proper or, if erroneous, did not rise to the level of error requiring reversal. *People v Mezy,* 453 Mich 269, 286; 551 NW2d 389 (1996); *Bahoda, supra* at 285-288.

Next, defendant claims that he is entitled to resentencing on the basis of an inaccurate statement made by the sentencing court regarding lifetime probation. Although the court may have misspoke when it stated that it believed that lifetime probation was permissible punishment under the aggravated stalking statute, there is no indication on the record that the court did not appropriately exercise its discretion in sentencing defendant to ten years' probation such that the resulting sentence is invalid. *In re Dana Jenkins,* 438 Mich 364; 475 NW2d 279 (1991). Cf., *People v Whalen,* 412 Mich 166, 169-170; 312 NW2d 638 (1981); *People v Green,* 205 Mich App 342, 346; 517 NW2d 782 (1994), and cases cited therein. The misstatement was harmless error. *People v Thomas,* 447 Mich 390, 393; 523 NW2d 215 (1994). Defendant is not entitled to resentencing.

Finally, defendant claims that his sentence of ten years' probation is harsh and disproportionate in light of his personal circumstances and as compared to other defendants with aggravated stalking convictions. We disagree. There are no sentencing guidelines for the offense of aggravated stalking; however, all sentences are subject to appellate review under the proportionality standard. *People v Potts,* 436 Mich 295, 302; 461 NW2d 647 (1990). This case is distinguishable from *People v White,* 212 Mich App 298; 536 NW2d 876 (1995), where the defendant in *White* pleaded guilty to the offense of *attempted* aggravated stalking, not aggravated stalking. When compared to a possible term of imprisonment, or jail time plus probation, the term of probation imposed on defendant does indeed seem modest, as suggested by the trial court. The length of the probation, the main thrust of which precludes contact by defendant with the complainant and her new husband and which orders mental health treatment, is justified in light of the continuous harassment in which defendant had engaged and in light of his apparent inability to comprehend wrongdoing or inappropriate behavior on his part. The sentence of ten years' probation imposed on defendant is proportionate. *People v Milbourn,* 435 Mich 630, 635-636; 461 NW2d 1 (1990).

Affirmed.

/s/ Joel P. Hoekstra
/s/ William B. Murphy
/s/ Michael R. Smolenski