

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFF VIJAY,

Defendant-Appellant.

UNPUBLISHED

July 1, 1997

No. 179117

Oakland Circuit Court

LC No. 94-131058

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFF VIJAY,

Defendant-Appellant.

No. 192434

Oakland Circuit Court

LC No. 94-131058

Before: Michael J. Kelly, P.J., and Wahls and Gage, JJ.

MEMORANDUM.

In this consolidated action, defendant appeals as of right in Docket No. 192434 the order of the lower court accepting his pleas of guilty to one count of misdemeanor stalking, MCL 750.411h; MSA 28.643(8), and one count of aggravated stalking, MCL 750.411i; MSA 28.643(9). Defendant was sentenced to five years' probation for his convictions. In Docket No. 179117, defendant appeals as of right the trial court's order sentencing him to two to five years' incarceration for violating the terms of his probation. We affirm.

Defendant first argues that the stalking statutes, MCL 750.411h; MSA 28.643(8) and MCL 750.411i; MSA 28.643(9), are unconstitutional because they are vague and impermissibly shift the burden of proof to the defendant to disprove an essential element of stalking. A panel of this Court has

already considered whether the stalking statutes are unconstitutionally vague and held that they are not. *People v White*, 212 Mich App 298, 308-315; 536 NW2d 876 (1995). Likewise, defendant's argument on burden shifting has been rejected by this Court. *People v Ballantyne*, 212 Mich App 628, 629; 538 NW2d 106 (1995).

Additionally, defendant argues that the stalking statutes are unconstitutional because they "invite" double jeopardy prosecutions. This argument is without merit. Stalking is a crime against the person that focuses on both the defendant's actions and the reactions of his victims. Therefore, one "unit of prosecution" arises whenever a defendant's repeated harassment gives rise to actual feelings of terror, fright, intimidation, and molestation in each separate victim, even if the same conduct is aimed at two people.

Next, defendant argues that the trial court abused its discretion by denying his motion to withdraw his guilty pleas, because there was an insufficient factual basis to support the trial court's finding of guilt. We disagree. In reviewing the adequacy of the factual basis for a plea, this Court examines whether the factfinder could properly convict on the facts elicited from the defendant at the plea proceedings. *People v Brownfield (After Remand)*, 216 Mich App 429, 431; 548 NW2d 248 (1996). Contrary to his argument on appeal, defendant's admissions supplied an adequate factual basis upon which his guilt of misdemeanor and aggravated stalking could be established. Accordingly, we hold that the trial court did not abuse its discretion in refusing to allow defendant to withdraw his guilty pleas.

Next, defendant argues that the trial court erred in finding him guilty of violating the terms of his probation, because there was insufficient evidence presented at his probation violation hearing to establish that he actually contacted or associated with his victims or otherwise violated the conditions of his probation. We disagree. While on probation, defendant moved into the apartment complex where his victims resided and where the stalking crimes had occurred. Although the evidence presented at his probation violation hearing was insufficient to demonstrate that he violated his probation by actually contacting or associating with his victims, defendant was also charged with violation of his probation by failing to establish an acceptable residence. By defendant's own testimony, he failed to establish alternate suitable housing by the deadline established by his probation supervisor, which was a direct violation of the probation term requiring defendant to "abide by all conditions of the [home confinement] program as directed." Accordingly, we reject defendant's argument that there was insufficient evidence to establish that he violated the terms of his probation.

Finally, defendant raises arguments concerning the propriety of his sentencing for violating his parole. Defendant has fully served his minimum two-year sentence of incarceration for his parole violation. Therefore, issues concerning his sentencing are moot. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994). Accordingly, we refuse to address these issues.

Affirmed.

/s/ Michael J. Kelly
/s/ Myron H. Wahls
/s/ Hilda R. Gage