

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER CHAPERON,

Defendant-Appellant.

UNPUBLISHED
November 4, 1997

No. 197667
Recorder's Court
LC No. 94-011536

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Defendant appeals by right from his adjudication of six counts of probation violation and resulting sentence of two to five years in prison, based on an underlying plea of nolo contendere to aggravated stalking.

An express conditions of defendant's probation was that he have no contact with the victim, his then estranged and now former wife. At the original probation hearing, the court directly addressed defendant, advising him that the condition prohibiting contact with the victim was meant to be taken literally, and defendant expressed his understanding. Despite such admonition, defendant was then charged with having seven contacts with the victim; one such contact was, however, with the prior approval of defendant's probation officer, and in that respect defendant was acquitted of the probation violation charge. The other contacts were all admitted by defendant, who claimed, however, that each was innocuous, and that some were indirect. The trial court, however, which might well have viewed several of these contacts at least as having a more sinister connotation given the prior relationship between defendant and the victim, nonetheless concluded that defendant had contacted the victim in violation of the express condition of his probation.

Defendant first contends that the probationary condition prohibiting any contact with the victim was unconstitutionally vague, in violation of his due process rights. Given the nature of the offense, notwithstanding defendant's parental obligations, the prohibition of all contact with the victim during the term of probation was valid and enforceable. *People v Loretta Miller*, 182 Mich App 711, 713-714; 452 NW2d 890 (1990). Where as here the trial court discussed the condition with defendant at the

time the probationary sentence was imposed, explained unmistakably the trial court's intent in imposing the condition, and defendant indicated his understanding on the record, we conclude that for present purposes the condition was not unconstitutionally vague. *People v Bruce*, 102 Mich App 573, 579-580; 302 NW2d 238 (1980).

Contrary to defendant's argument, there was sufficient evidence to justify a rational trier of fact in finding defendant guilty of the six charged violations by a preponderance of the evidence. The trial judge, sitting as trier of fact, was not required to accept defendant's testimony in whole or in part, and having found that testimony lacking in credibility its findings were based on sufficient evidence. *People v Jackson*, 390 Mich 621, 625 n 2; 212 NW2d 918 (1973).

During the probation violation hearing, it was brought to the trial court's attention, and defendant admitted, two uncharged violations consisting of conduct in breach of the criminal law. The trial court, in making its findings of fact, stated that it was not considering these uncharged violations, and its pertinent findings verify this assertion. There is, accordingly, no record support for defendant's contention that his due process rights were violated because his probation was revoked on the basis of uncharged violations. See *People v Hunter*, 106 Mich App 821, 824-827; 308 NW2d 694 (1981).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs