

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN NOWAK,

Defendant-Appellant.

UNPUBLISHED

July 7, 2000

No. 219849

Kent Circuit Court

LC No. 98-002780-FH

Before: Jansen, P.J., and Hood and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of aggravated stalking, MCL 750.411i; MSA 28.643(9), entered after a jury trial. We affirm.

Complainant, defendant's former wife, testified that after she and defendant separated, defendant repeatedly contacted her by letter and telephone, and threatened to physically harm her and her family. The prosecution introduced evidence that a court order had been entered prohibiting defendant from contacting complainant. The jury convicted defendant as charged. The trial court sentenced defendant to two to five years in prison, with credit for three days. This sentence was consecutive to those imposed for unrelated offenses.

Aggravated stalking occurs when a person who has actual knowledge of a restraining order or injunction engages in a willful pattern of conduct consisting of a series of two or more separate, noncontinuous acts involving repeated or continuing unconsented contact with another person that would cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, or harassed, and that actually makes the victim experience such feelings. MCL 750.411i(2); MSA 28.643(9)(2); *People v Kieronski*, 214 Mich App 222, 223-224; 542 NW2d 339 (1995).

Defendant argues that the trial court abused its discretion by admitting the no contact order. He asserts that admission of the evidence violated MRE 404(b). We disagree. Evidence is not subject to an analysis under MRE 404(b) merely because it discloses a bad act. Evidence of a bad act of the defendant may be admitted if relevant to a matter at issue other than the propensity of the defendant to

commit the crime charged. *People v Crawford*, 458 Mich 376, 390; 582 NW2d 785 (1998). The prosecution was entitled to introduce the court order to establish that defendant engaged in a willful pattern of conduct in violation of the order. MCL 750.411i(2)(b); MSA 28.643(9)(2)(b). See also *People v White*, 212 Mich App 298, 308; 536 NW2d 876 (1995). No abuse of discretion occurred.

Defendant argues that his sentence is disproportionate to his circumstances and to those of the offense. We disagree. Contrary to defendant's assertion, his minimum term of two years was not the maximum allowed against the statutory maximum term of five years for a conviction of aggravated stalking. MCL 750.411i(3)(a); MSA 28.643(9)(3)(a); *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972). Because the sentencing guidelines did not apply to defendant's offense, we review the sentence for an abuse of discretion. *People v Compagnari*, 233 Mich App 233, 235-236; 590 NW2d 302 (1998). The court imposed the sentence because of defendant's repeated threats to physically harm complainant and her family, and defendant's complete lack of remorse for his actions. The court did not abuse its discretion.

Affirmed.

/s/ Kathleen Jansen

/s/ Harold Hood

/s/ Henry William Saad