

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK T. KLOS,

Defendant-Appellant.

UNPUBLISHED

March 27, 2001

No. 219220

Oakland Circuit Court

LC No. 98-161425-FH

Before: Doctoroff, P.J., and Holbrook, Jr., and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right a jury conviction of aggravated stalking, MCL 750.411i; MSA 28.643(9), involving a series of obscene letters and messages sent to the home and workplace of the victim. The trial court sentenced defendant to four years' probation, with the first year to be served in the county jail. We affirm.

We find no merit to defendant's claim that the aggravated stalking statute is unconstitutionally vague and violates his right to free speech. A criminal law may be invalidated for vagueness if it fails to provide "the kind of notice that will enable ordinary people to understand what conduct it prohibits," or if it authorizes "and even encourage[s] arbitrary and discriminatory enforcement." *Chicago v Morales*, 527 US 41, 56; 119 S Ct 1849; 144 L Ed 2d 67 (1999). This Court has repeatedly rejected challenges that Michigan's aggravated stalking statute is either vague or overbroad. *People v Coones*, 216 Mich App 721, 728; 550 NW2d 600 (1996); *People v White*, 212 Mich App 298, 308-315; 536 NW2d 876 (1995); *People v Ballantyne*, 212 Mich App 628, 628-629; 538 NW2d 106 (1995); see also *Staley v Jones*, ___ F3d ___; 2001 WL 91611 (CA 6, 2001). Contrary to defendant's claim, nothing in the reasoning of *Morales*, *supra*, requires a different result.

Defendant also claims that the entire Oakland Circuit Court bench should have been disqualified from hearing his case. We need not address this issue because defendant raised it in an interlocutory appeal, which was denied "for lack of merit in the grounds presented." *People v Hayden*, 132 Mich App 273, 297; 348 NW2d 672 (1984). In any event, we agree that this issue is without merit. Absent actual bias or prejudice, a judge will not be disqualified pursuant to MCR 2.003. *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996). "[T]he party who challenges a judge on the basis of bias or prejudice must overcome a heavy presumption of judicial impartiality." *Id.* at 497. Here, defendant makes no showing of personal

bias on the part of the Oakland Circuit Court judges. Defendant has not overcome, or even attempted to overcome, the presumption of judicial impartiality.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Donald E. Holbrook, Jr.

/s/ Joel P. Hoekstra