

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

August 20, 1996

Plaintiff-Appellee,

v

No. 178555

LC No. 94-000007-FH

JERRY LEE STALEY,

Defendant-Appellant.

Before: Gribbs, P.J., and Hoekstra and C. H. Stark,* JJ.

PER CURIAM.

Defendant was convicted by a jury of aggravated stalking, MCL 750.411i; MSA 28.643(9). He subsequently pled guilty to habitual offender-fourth, MCL 769.12; MSA 28.1084, and was sentenced to life imprisonment. We affirm defendant's convictions and remand for resentencing before a different judge.

There is no merit to defendant's claim that the stalking statute unconstitutionally shifts the burden of proof, and is unconstitutionally vague and violative of double jeopardy protections. *People v Cooner*, ___ Mich App ___; ___ NW2d ___ (1996)(#166114, rel'd 5-21-96); *People v White*, 212 Mich App 298; 536 NW2d 876 (1995); *People v Ballantyne*, 212 Mich App 628; 538 NW2d 106 (1995).

The trial court did not abuse its discretion in allowing the prosecution to amend the information. The original information charged defendant with aggravated stalking on or about December 19, 1993, felonious assault on or about December 16, 1993, felonious assault on or about November 15, 1993, and malicious destruction of property on or about November 15, 1993. The trial court permitted the prosecution to amend the information to extend the applicable time frame from December 19, 1993, backward to November 1, 1993. Defendant concedes that he had notice of all charges against him, and, although defendant contended at trial that the amendment resulted in surprise, defendant never

* Circuit judge, sitting on the Court of Appeals by assignment.

moved for a continuance. We find no abuse of discretion. *People v Stricklin*, 162 Mich App 623, 633; 413 NW2d 457 (1987).

Defendant also argues that he was entitled to a separate trial on the aggravated stalking charge. A criminal defendant is entitled to separate trials on unrelated offenses under MCR 6.120(B). For purposes of the rule, two charges are related if they are based on the same conduct, or a series of connected acts constituting part of a single scheme or plan. *People v Daughenbaugh*, 193 Mich App 506, 509; 484 NW2d 690 (1992), modified on oth grounds 441 867 (1992). As the trial court noted, the incidents charged here were integrally related as parts of a single scheme or plan. In any event, even assuming arguendo that severance was proper, defendant was not prejudiced by the joint trial. Defendant was acquitted on all charges except aggravated stalking, and the basic evidence supporting the other charges would have been admissible in a trial of the severance charge. Any error was harmless.

Finally, defendant argues that his sentence of life imprisonment is disproportionate. We reluctantly agree. Defendant has a history of abusive relationships and substance abuse. He has had repeated contact with the criminal justice system, and a lengthy sentence is clearly justified in this case. Nonetheless, his criminal history consists primarily of misdemeanor and property offenses. We are not convinced that a sentence of life imprisonment is proportionate to the offense and the offender in this case. *People v Milbourn*, 435 Mich 650; 461 NW2d 1(1990). Accordingly, we remand for resentencing before a different judge. *People v Williams*, 168 Mich App 150, 153; 424 NW2d 1 (1988).

Defendant's conviction is affirmed. Defendant's sentence is vacated and this matter is remanded for resentencing before a different judge.

/s/ Roman S. Gribbs

/s/ Joel P. Hoekstra

/s/ Charles H. Stark