

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHERRY MARGARET NUCKOLLS,

Defendant-Appellant.

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UNPUBLISHED

July 13, 2001

No. 223558

Genesee Circuit Court

LC No. 99-004393-FH

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

MEMORANDUM.

Defendant appeals as of right from a plea-based conviction of attempted uttering and publishing, MCL 750.92; MCL 750.249. Defendant was sentenced to thirty to sixty months in prison. We affirm.

Defendant's sole issue on appeal is that the trial court erred in failing to sua sponte order a competency examination prior to accepting her guilty plea. We disagree. "A claim of incompetency to stand trial, and the right to a competency determination, implicates constitutional due process considerations. Issues of constitutional law are reviewed de novo." *In re Carey*, 241 Mich App 222, 225-226; 615 NW2d 742 (2000) (citations omitted).

"A defendant must be competent in order to plead guilty." *People v Whyte*, 165 Mich App 409, 411; 418 NW2d 484 (1988). "The conviction of an individual when legally incompetent violates due process of law." *Carey, supra* at 227. "[A] defendant is presumed competent to stand trial unless his mental condition prevents him from understanding the nature and object of the proceedings against him or the court determines he is unable to assist in his defense." *People v Mette*, 243 Mich App 318, 331; 621 NW2d 713 (2000). Where the defendant does not raise the issue, the trial court does not have a duty to sua sponte order a competency hearing, *People v Inman*, 54 Mich App 5, 12; 220 NW2d 165 (1974), unless facts are brought to the trial court's attention which raise a "bona fide doubt" as to the defendant's competence. *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990).

The only information before the court showed that defendant had suffered a closed head injury which affected her memory and that she was taking antidepressant medications. "A defendant is not considered incompetent to stand trial if he is or has been prescribed psychotropic drugs or other medication without which he might be incompetent to stand trial." *Mette, supra* at

331. A lack of memory regarding the circumstances of the offense such that a defendant is unable to consult meaningfully with his lawyer may render the defendant incompetent. *People v Stolze*, 100 Mich App 511, 515; 299 NW2d 61 (1980). In this case, however, there was no evidence that defendant was unable to recall the events of the crime. To the contrary, her testimony showed that she recalled sufficient facts to enable her to provide a factual basis for her plea. Because the evidence before the court did not raise a bona fide doubt as to defendant's competence and defendant did not request a competency hearing or indicate that she was unable to understand the proceedings or assist counsel, the court did not err in failing to order a hearing. *Inman, supra*.

Affirmed.

/s/ Henry William Saad  
/s/ Donald E. Holbrook, Jr.  
/s/ William B. Murphy