

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN MICHAEL HERBERT,

Defendant-Appellant.

UNPUBLISHED

September 10, 2002

No. 233148

Macomb Circuit Court

LC No. 99-001329-FH

Before: White, P.J., and Neff and Jansen, JJ.

MEMORANDUM.

Defendant appeals as of right from a conviction of escape from jail (assault on a prison employee), MCL 750.197c, for which he was sentenced to twenty to forty-eight months in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In reviewing a nonjury criminal case, this Court “is required to review the entire record to determine whether the trial judge clearly erred.” *People v Rush*, 48 Mich App 478, 482; 210 NW2d 467 (1973). The trial court’s factual findings are reviewed for clear error but its conclusions of law are reviewed de novo. *Lamp v Reynolds*, 249 Mich App 591, 595; 645 NW2d 311 (2002).

Defendant contends the trial court erred in concluding he was lawfully confined at the time he assaulted a prison employee. The evidence showed that defendant was lawfully confined in prison on convictions of murder and prison escape. He was paroled but imprisoned again for violation of the conditions of his parole following a hearing as provided by law. The fact that defendant was incarcerated in state prison for violation of parole was sufficient to prove that he was lawfully confined. *People v Neal*, 232 Mich App 801, 805-806; 592 NW2d 92 (1998), aff’d 233 Mich App 649; 592 NW2d 95 (1992). While defendant contends that the department of corrections violated the statutory procedures governing violation of parole hearings, that is not a valid defense to an escape charge. *Neal, supra*, 232 Mich App at 806 n 4; *People v Mullreed*, 15 Mich App 538, 539; 166 NW2d 820 (1969). Further, defendant’s arguments in this regard were rejected in prior litigation.

Affirmed.

/s/ Helene N. White

/s/ Janet T. Neff

/s/ Kathleen Jansen