

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WASIM WADIE,

Defendant-Appellant.

UNPUBLISHED

December 20, 2005

No. 255803

Oakland Circuit Court

LC No. 1998-164107-FC

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of criminal sexual conduct in the first degree, MCL 750.520b, for which he was sentenced to eight to twenty years in prison. On appeal, this Court remanded for a nunc pro tunc competency hearing. *People v Wadie*, unpublished opinion per curiam of the Court of Appeals, issued February 25, 2003 (Docket No. 230350). Following the hearing, the trial court determined that defendant had been competent to stand trial. Defendant again appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

“Findings of fact by the trial court may not be set aside unless clearly erroneous. In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” MCR 2.613(C). “A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *In re Forfeiture of \$19,250*, 209 Mich App 20, 29; 530 NW2d 759 (1995). Issues of law and the trial court’s ultimate disposition are reviewed de novo. *Frericks v Highland Twp*, 228 Mich App 575, 583; 579 NW2d 441 (1998); *Edwards v Edwards*, 192 Mich App 559, 562; 481 NW2d 769 (1992).

“[A] criminal defendant’s mental condition at the time of trial must be such as to assure that he understands the charges against him and can knowingly assist in his defense.” *People v McSwain*, 259 Mich App 654, 692; 676 NW2d 236 (2003). “The conviction of an individual when legally incompetent violates due process of law.” *In re Carey*, 241 Mich App 222, 227; 615 NW2d 742 (2000). A defendant is presumed competent to stand trial unless a mental condition prevents him from understanding the nature and object of the proceedings against him or assisting in his defense in a rational manner. MCL 330.2020(1). “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.” *People v Mette*, 243 Mich

App 318, 331; 621 NW2d 713 (2000). “Evidence substantiating incompetency-in-fact must establish that there was a violation of rights before a new trial will be ordered.” *People v Vokes*, 134 Mich App 62, 64; 349 NW2d 819 (1984).

The evidence showed that prior to trial, defendant had been diagnosed with paranoid schizophrenia for which he was prescribed medication. While there was some dispute whether that diagnosis was correct, the expert witnesses agreed that at the time of trial defendant had some sort of mental disorder from which he was recovering, and was symptomatic to some extent. Defendant’s trial attorney described him as inattentive and unable to discuss the facts of his defense in detail. Defendant’s behavior was such that defense counsel felt that he could not testify at trial, and defendant’s expert witness concurred with this conclusion. The witnesses could not agree if defendant was actually incapable of assisting in his defense due to his mental disorder or was unwilling to assist in his defense due to other factors such as immaturity, anger and/or denial. While defendant’s expert stated that defendant’s mental disorder made it less likely that he was competent, he nonetheless was unable to make a determination that defendant was in fact incompetent at the time of trial. The prosecutor’s experts, on the other hand, were able to make a determination and concluded that defendant was competent at the time of trial. Based on the evidence presented, the trial court did not err in finding defendant competent to stand trial. *Vokes, supra* at 64-65.

Affirmed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood