

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DALE WAYNE HOMAN,

Defendant-Appellant.

UNPUBLISHED

October 7, 1997

No. 187098

Macomb Circuit Court

LC No. 95-000028 FH

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

Defendant pleaded guilty on an amended information to attempted first-degree retail fraud, MCL 750.92(3); MSA 28.287(3); MCL 750.356c; MSA 28.588(3), and was sentenced to time served. Defendant appeals as of right. We affirm.

Defendant has failed to demonstrate on the instant record that trial counsel rendered ineffective assistance. *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997); *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987). Defendant's claims of ineffective assistance of counsel are premised on a belief that defendant's drug addiction rendered him mentally ill or otherwise incompetent. Although the record indicates that defendant has a serious and long-term drug addiction, the record is devoid of any suggestion that defendant's addiction, in and of itself, rendered defendant incapable of forming the requisite intent for retail fraud or unable to tender a plea voluntarily and understandingly. In fact, the record demonstrates the contrary to be true. Absent record evidence to rebut the presumption of competency, *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990), defense counsel's failure to investigate defendant's competency did not deprive defendant of a substantial defense, *People v Kelly*, 186 Mich App 524, 526-527; 465 NW2d 569 (1990), or render defendant's plea and sentencing invalid.

Similarly, the trial court did not err by failing to sua sponte inquire into the competency of defendant. A trial court has a duty to raise the issue of the defendant's competency only if facts are presented which raise a bona fide doubt with regard to the defendant's capacity to stand trial. *People v*

Garfield, 166 Mich App 66, 74; 420 NW2d 124 (1988). No such facts were present in the instant case.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Henry W. Saad