

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN DANIEL ASHFORD,

Defendant-Appellant.

UNPUBLISHED

October 30, 1998

No. 202472

Genessee Circuit Court

LC No. 96-054943 FC

Before: Talbot, P.J., and McDonald and Neff, JJ.

MEMORANDUM

Defendant appeals as of right from his jury trial convictions of three counts of armed robbery, MCL 750.529; MSA 28.797, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to fifteen to twenty years' imprisonment for each armed robbery conviction, and to two years' imprisonment for the felony-firearm conviction. We affirm.

On appeal, defendant contends that the trial court erred in failing to instruct the jury regarding defendant's sleeping disorder, thus denying him a fair trial. We disagree.

Defendant suffers from the sleeping disorder of narcolepsy. This condition allegedly caused him to fall asleep in the presence of the jury during voir dire and again during the parties' opening statements. At the first opportunity away from the jury, defense counsel informed the trial court about defendant's condition and expressed his concern regarding what the jury might think. However, contrary to defendant's assertion on appeal, defense counsel never requested a jury instruction about defendant's narcolepsy. Therefore, this Court's review is limited to the question whether relief is necessary to avoid manifest injustice. *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997).

Defendant argues that as a result of his falling asleep in front of the jury, some of the jurors might have incorrectly harbored the prejudicial belief that he was disinterested in his own defense. We believe that defendant's fears of unfair prejudice are overstated. Although there was no formal instruction, the jury was made aware of defendant's narcoleptic condition, and its effects on defendant, by way of

defendant's trial testimony. Accordingly, we conclude that relief is not necessary to avoid manifest injustice.

Affirmed.

/s/ Michael J. Talbot
/s/ Gary R. McDonald
/s/ Janet T. Neff