

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LANDON D. NEAL,

Defendant-Appellant.

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UNPUBLISHED

March 30, 2001

No. 220401

Wayne Circuit Court

LC No. 98-001269

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for assault with intent to murder, MCL 750.83; MSA 28.278, and assault with intent to do great bodily harm, MCL 750.84; MSA 28.279. Defendant was sentenced to fifteen to thirty years' imprisonment for the assault with intent to murder conviction, to be served concurrently with a sentence of six to ten years' imprisonment for the assault with intent to do great bodily harm conviction. We affirm.

Defendant argues on appeal that the trial court's findings of fact that defendant did not act in self-defense and was not suffering from diminished capacity were clearly erroneous. We disagree. In a bench trial, the trial court must make specific findings of fact and state separately its conclusions of law. MCR 6.403. The trial court's findings of fact may not be set aside unless clearly erroneous, after giving due regard to the special opportunity of the trial court to judge the credibility of the witnesses. MCR 2.613(C); MCR 6.001(D); *People v Ahumada*, 222 Mich App 612, 617; 564 NW2d 188 (1997). A finding of fact is clearly erroneous "if, after a review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Thenghkam*, 240 Mich App 29, 43; 610 NW2d 571 (2000), quoting *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). Further, factual findings are sufficient as long as it appears that the trial court was aware of the issues and correctly applied the law. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993).

Defendant first argues that the trial court did not properly consider defendant's claim of self-defense because it erroneously attributed remarks to defendant in its findings of facts to which defendant did not testify at trial. Although defendant testified at trial that he was attacked by the two victims, in statements made to police almost immediately after the incident defendant indicated that he was angry that the two victims were at his house when he arrived home,

initiated a heated confrontation with the victims, proceeded to fight with and strike several blows against both victims, one at a time, during a protracted exchange, and eventually doused one victim with gasoline and lit him on fire. In its recitation of findings, the trial court referred to the facts included in defendant's statements to police and acknowledged defendant's claim of self-defense but specifically chose to disbelieve and disregard it. See *People v Legg*, 197 Mich App 131, 134-135; 494 NW2d 797 (1992). It is clear that the trial judge weighed the competing evidence, considered the credibility of the witnesses, and made findings of fact that were supported by the evidence. *Id.* Accordingly, the finding of the trial court with regard to defendant's claim of self-defense was not clearly erroneous.

Defendant next argues that the trial court did not properly consider his diminished capacity defense because in its recitation of findings the trial court did not refer to the trial testimony of Dr. VanHorn who testified that defendant could not have formed the necessary intent because he was intoxicated. However, there was conflicting evidence presented with regard to defendant's mental capacity. Police officer Keith Dean, who interviewed defendant almost immediately after the incident, testified that defendant lied about his identity, did not appear drunk, and denied his involvement in the incident. In its recitation of findings, the trial court referred to these facts, acknowledged defendant's diminished capacity defense, noted defendant's detailed recall of the incident and ability to operate a cigarette lighter, and specifically rejected defendant's diminished capacity defense. It is evident from the record that the trial court was aware of the legal and factual issues in the case, considered the conflicting testimony, and resolved the conflict against a finding of diminished capacity. *Legg, supra*. Accordingly, the finding of the trial court with regard to defendant's diminished capacity defense was not clearly erroneous.

Finally, defendant argues that the trial court's sentencing decision was premised upon the incorrect fact that defendant's attack was unprovoked. Defendant's claim is without merit. Sentencing courts are required to articulate its reasons for the sentence imposed. MCR 6.425(D)(2)(e); *People v Rice (On Remand)*, 235 Mich App 429, 445-446; 597 NW2d 843 (1999). Although defendant testified at trial that his actions were provoked, as discussed *supra*, defendant's statements to police made almost immediately after the incident, and other evidence adduced at trial, contradicted defendant's trial testimony. Consequently, the trial court's sentencing decision was properly supported by the facts and evidence adduced at trial and defendant is not entitled to resentencing.

Affirmed.

/s/ Hilda R. Gage  
/s/ Mark J. Cavanagh  
/s/ Kurtis T. Wilder