

STATE OF MICHIGAN
COURT OF APPEALS

In re Contempt of DAVID KUTEK.

UNPUBLISHED

CLARENCE KING,

August 9, 1996

Plaintiff–Appellee,

v

No. 178167

LC No. 00159635

DAVID KUTEK,

Defendant–Appellant,

and

REDFORD POLICE DEPARTMENT,

Defendant.

Before: Wahls, P.J., and Murphy and C.D. Corwin,* JJ.

PER CURIAM.

Defendant appeals by right his bench trial conviction of contempt of court for failing to comply with a writ of habeas corpus. We reverse.

Defendant first contends that the trial court lacked authority to issue the writ and that the writ did not comply with the court rules. This argument is without merit. The trial court had authority to issue the writ pursuant to MCL 600.4304; MSA 27A.4304. The form of the writ substantially complied with the court rule, MCR 3.303, and no formal complaint was required. MCR 3.303(F)(1)(a).

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant next argues that the evidence was insufficient to convict him of contempt of court. To sustain a conviction of criminal contempt, the prosecution must prove two elements: that the individual willfully disobeyed or disregarded a court order, and that the contempt shown is unequivocal and clear. *In re Contempt of O'Neil*, 154 Mich App 245, 247; 397 NW2d 191 (1986).

The evidence at the bench trial showed that defendant contacted the prosecutor's office, advised a prosecutor that plaintiff was in his custody, that he had been served with a writ of habeas corpus from Recorder's Court and that federal agents were at the police department seeking custody of plaintiff. Defendant asked the prosecutor's advice, and was told to turn plaintiff over to the federal agents. The prosecutor also told defendant that the prosecutor assigned to the issuing court had been advised, so defendant did not think it was necessary to contact the court directly. This Court has recognized that when an individual relies, in good faith, upon his attorney's advice, he cannot be guilty of criminal contempt because the element of intentional violation of a court order has not been satisfied. *In re Contempt of Rapanos*, 143 Mich App 483, 495; 372 NW2d 598 (1985). We conclude that the evidence was insufficient to convict defendant of criminal contempt beyond a reasonable doubt.

Because we hold that the evidence was insufficient to convict defendant, we need not address the other issues which defendant has raised.

Reversed.

/s/ Myron H. Wahls
/s/ William B. Murphy
/s/ Charles D. Corwin