

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

TIMOTHY EARL DOWNUM,

Defendant-Appellant.

UNPUBLISHED

June 20, 2006

No. 258580

Washtenaw Circuit Court

LC No. 02-002141-FC

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

MEMORANDUM.

Defendant appeals as of right from his bench trial conviction for second-degree murder. Defendant admits killing his cellmate, but challenges the trial court's finding that he was not legally insane at the time. We affirm.

The findings of fact by a trial court sitting without a jury is reviewed under the clearly erroneous standard. *People v Boykin*, 31 Mich App 681, 683; 188 NW2d 100 (1971). "Legal insanity is an affirmative defense requiring proof that, as a result of mental illness or being mentally retarded as defined in the mental health code, the defendant lacked 'substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or conform his or her conduct to the requirements of the law.'" *People v Carpenter*, 464 Mich 223, 230-231; 627 NW2d 276 (2001); MCL 768.21a(1). "The defendant has the burden of proving the defense of insanity by a preponderance of the evidence." MCL 768.21a(3).

The parties do not dispute the trial court's finding that defendant was mentally ill at the time of the murder. However, defendant argues that he presented sufficient evidence to meet his burden of proving that he was legally insane. We disagree.

At trial, two experts testified as to their opinions of defendant's sanity at the time of the murder. The trial court found that plaintiff's expert was more credible and therefore found that defendant was not insane at the time of the murder. Given that when a trial court's findings are based on witness credibility, as they were here, special deference is given to those findings, *People v Sherman-Huffman*, 241 Mich App 264, 267; 615 NW2d 776 (2000), we cannot hold that the trial court's findings were clearly erroneous. Plaintiff's expert testified that, in her opinion, defendant's claims of hallucinations on the day of the murder did not ring true because of defendant's very specific description of the demon he had seen. She also testified that several of defendant's actions after the murder indicated that he was aware of the wrongfulness of his

actions. Therefore, we cannot conclude that the trial court's finding that defendant was not legally insane at the time of the murder was clearly erroneous.

Although not raised by the parties, we note that the judgment of sentence indicates that defendant was found guilty of second degree murder, rather than guilty of second degree murder but mentally ill. We remand so that defendant's judgment of sentence may be amended to conform to the trial court's findings and allow defendant to receive mandatory services pursuant to MCL 768.36(3).¹

Affirmed and remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra

¹ See *People v Darden*, 132 Mich App 154, 158; 346 NW2d 915 (1984) (“ . . . a prisoner found guilty but mentally ill is automatically entitled to evaluation and treatment . . . ”); See also *Carpenter, supra* at 231-232 (noting that if a defendant is incarcerated after being found guilty but mentally ill, MCL 768.36 requires that the defendant must “undergo further evaluation and be given such treatment as is psychiatrically indicated for his mental illness or retardation”).