

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PHILLIP DOTSON, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

UNPUBLISHED
September 25, 2007

v

PHILLIP DOTSON,

Respondent-Appellant.

No. 273097
Wayne Circuit Court
Family Division
LC No. 05-449496-DL

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right from an order of disposition entered following delinquency proceedings in which the court accepted respondent's no contest plea to second-degree criminal sexual conduct, MCL 750.520c(1)(a), and gross indecency, MCL 750.338b. We affirm but remand for correction of the order of disposition. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent first contends that the trial court erred in accepting his plea because his mental health issues rendered the plea unintelligent. This issue has not been preserved for appeal because it was not raised below. *People v Hogan*, 225 Mich App 431, 438; 571 NW2d 737 (1997). Therefore, review is precluded unless respondent shows a plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

The trial court may accept a plea of admission or no contest if it is satisfied that the plea is understanding, voluntary, and accurate. MCR 3.941(A). The plea is understandingly made if the respondent is advised of and understands the rights set forth in MCR 3.941(C)(1). The plea is voluntary if the terms of any plea agreement are disclosed and the plea is the respondent's own choice, i.e., it is not tendered under threat or duress. MCR 3.941(C)(2). The plea is accurate if there is "support for a finding that the juvenile committed the offense." MCR 3.941(C)(3). In the absence of a procedural error in receiving the plea, a respondent must establish a fair and just reason for withdrawal of the plea. *People v Harris*, 224 Mich App 130, 131; 568 NW2d 149 (1997); *People v Jackson*, 203 Mich App 607, 611; 513 NW2d 206 (1994).

Respondent does not contend that the trial court failed to comply with the requirements of the court rule. Rather, he tacitly claims that he was incompetent to tender a plea because of

mental health issues. Mental Health Code provisions regarding competency applicable to criminal defendants “provide a useful guide to trial courts” for the adjudication of competency determinations in juvenile cases. See *In re Carey*, 241 Mich App 222, 233-234; 615 NW2d 742 (2000).

A defendant must be competent in order to tender a plea. *People v Whyte*, 165 Mich App 409, 411; 418 NW2d 484 (1988). “The conviction of an individual when legally incompetent violates due process of law.” *In re Carey*, *supra* at 227. “[A] defendant is presumed competent to stand trial unless his mental condition prevents him from understanding the nature and object of the proceedings against him or the court determines he is unable to assist in his defense.” *People v Mette*, 243 Mich App 318, 331; 621 NW2d 713 (2000). Where a defendant does not raise the issue, “the trial court ha[s] no duty to *sua sponte* order a competency hearing,” *People v Inman*, 54 Mich App 5, 12; 220 NW2d 165 (1974), unless facts are brought to the trial court’s “attention which raise a ‘bona fide doubt’ as to the defendant’s competence.” *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990).

There is nothing in the record at the plea proceeding to suggest that respondent was incompetent. Respondent did not assert any lack of comprehension during the proceeding and he answered questions in a cogent and appropriate manner. The information placed on the record at the dispositional hearing indicated that respondent was a troubled youth who was enrolled in school as a special education student. He was “under the care of a psychiatrist” and, according to his mother, had been diagnosed with oppositional defiance disorder and ADHD for which he was taking medication. However, respondent’s circumstances, standing alone, do not indicate that his mental condition was such that he was unable to understand the nature and object of the proceedings against him and his statements to the court at the plea proceeding indicate a sufficient level of comprehension. Further, a “defendant is not considered incompetent to stand trial if he is or has been prescribed psychotropic drugs or other medication without which he might be incompetent to stand trial.” *Mette*, *supra* at 331. Accordingly, we conclude that respondent has failed to establish plain error.

Respondent next contends that he was denied the effective assistance of counsel. Because respondent failed to raise this claim below in a motion for a new trial or an evidentiary hearing, our review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

To prevail on a claim of ineffective assistance of counsel, defendant must show that his counsel’s performance was objectively unreasonable and the representation was so prejudicial that he was deprived of a fair trial. To demonstrate prejudice, the defendant must show that, but for counsel’s error, there was a reasonable probability that the result of the proceedings would have been different. This Court presumes that counsel’s conduct fell within a wide range of reasonable professional assistance, and the defendant bears a heavy burden to overcome this presumption. [*People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001) (citations omitted).]

Respondent first contends that counsel was ineffective for failing to raise the issue of competency or to have respondent’s competency evaluated before permitting him to enter a plea. However, there is nothing in the record to show that respondent was incompetent at the time he

tendered his plea. Further, there is nothing in the record to show that up until the time respondent tendered his plea, facts were brought to defense counsel's attention that raised a "bona fide doubt" with respect to respondent's competence and that defense counsel ignored or otherwise failed to act upon these facts. Therefore, respondent has not shown that a reasonable probability exists, had counsel referred him for a competency evaluation, that the outcome of the proceedings would have been different. *Watkins, supra* at 30-31.

Respondent next contends that counsel was ineffective for failing to advise him of the meaning of a no contest plea. The record shows that the trial court asked respondent if his attorney had discussed the matter with him and respondent answered, "No." However, the trial court promptly explained it to respondent, who indicated that he understood. Therefore, even if counsel was deficient for failing to explain to respondent that a no contest plea operated as an adjudication of guilt without respondent having to admit guilt by giving a factual basis for the plea, respondent has failed to demonstrate that he was prejudiced by this deficiency.

Finally, respondent contends that counsel was ineffective for failing to file any post-disposition motions. We would note that there is nothing in the record to indicate that respondent had a valid basis for submission of a motion to withdraw his plea. In addition, respondent has failed to identify the type or subject matter of any other motions counsel should have filed. Respondent has thus failed to show that counsel was ineffective.

As noted, respondent entered a plea to second-degree criminal sexual conduct and gross indecency. However, the order of disposition erroneously indicates the trial court also accepted a plea to a charge of indecent exposure, MCL 750.335a. The record discloses that this charge was dismissed as part of a plea agreement. Accordingly, we remand for correction of this error.

Affirmed and remanded for correction of the order of disposition. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood