

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WAYNE ANTHONY EMERSON,

Defendant-Appellant.

UNPUBLISHED

April 26, 1996

No. 180243

LC No. 94-003651

Before: MacKenzie, P.J., and Cavanagh and T.L. Ludington*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of breaking and entering an occupied dwelling, MCL 750.110; MSA 28.305. He subsequently pleaded guilty to being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, and was sentenced to five to twenty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first claims that he was coerced into waiving his right to a jury trial by the assignment of his case to Recorder's Court Judge Geraldine Bledsoe Ford. Defendant cites no case law in support of the proposition that case assignment can constitute coercion. The issue is therefore waived. *People v Heard*, 178 Mich App 692, 697; 444 NW2d 542 (1989). Defendant also asserts that his waiver was improper because he was not permitted to consult with his lawyer prior to waiving his right to a jury trial. MCR 6.402. Here, the waiver occurred on the record, in court, with defense counsel present. Further, defendant signed a written waiver indicating that he had an opportunity to consult with his attorney. Under these circumstances, we decline to hold that the court rule was not complied with.

Defendant next contends that his conviction for breaking and entering must be reversed because the prosecution failed to prove that the building he entered was an occupied dwelling. We disagree. Contrary to defendant's assertion, the condition of the structure is not the determinative factor for determining whether a building is an occupied dwelling. *People v Traylor*, 100 Mich App 248, 252;

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

298 NW2d 719 (1980). Rather, the intent of the homeowner controls. *People v Traylor*, 100 Mich App 248, 252; 298 NW2d 719 (1980). Rather, the intent of the homeowner controls. *People v Noel*, 123 Mich App 478, 483-484; 332 NW2d 578 (1983). Here, the homeowner testified that while the house defendant entered was not the owner's principal residence, he and his family used it as a second home. Evidence also established that the home contained furniture, a stereo, and other personal items. Although the home was in disrepair and defendant may have believed it was abandoned, viewed in a light most favorable to the prosecution, the homeowner's testimony presented sufficient evidence from which a rational trier of fact could find that the house was an occupied dwelling. *People v Petrella*, 424 Mich 221; 380 NW2d 11 (1985). Reversal is not required.

Defendant's final claim is that he did not waive his right to a jury trial on his habitual offender charge. This claim is also without merit. A review of the record indicates that defendant was informed of his right to trial, and that he indicated that he nevertheless wished to plead guilty. This was sufficient to sustain his guilty plea. *Guilty Plea Cases*, 395 Mich 96; 235 NW2d 132 (1975).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Mark J. Cavanagh
/s/ Thomas L. Ludington