

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

August 30, 1996

Plaintiff-Appellee,

v

No. 182152

LC No. 94-006504

DIOLISIO PEREZ,

Defendant-Appellant.

Before: Corrigan, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Following a bench trial in the Detroit Recorder's Court, defendant was convicted of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant was then sentenced to lifetime probation. He appeals as of right and we affirm.

Defendant raises three issues on appeal. He contends that the trial court's factual findings and conclusions were insufficient and that the verdict was inconsistent with its findings. Defendant also contends that his jury trial waiver was invalid. Last, he argues that he is entitled to resentencing because the trial court failed to appoint an interpreter and defendant was denied his right of allocution.

First, defendant argues that the trial court made insufficient findings of fact regarding the credibility of the witnesses which resulted in the trial court reaching a verdict inconsistent with its findings. Defendant was originally charged with delivery of less than fifty grams of cocaine and possession with intent to deliver less than fifty grams of cocaine. The trial court acquitted defendant of the possession with intent to deliver charge.

Conflicting testimony was presented at trial regarding the events surrounding the sale and purchase of the cocaine in question. In non-jury criminal trials, it is within the province of the trial court to determine the weight accorded conflicting testimony. *People v Ritzima*, 3 Mich App 637, 640; 143 NW2d 129 (1966); *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). The

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

testimony of the undercover officer involved in this drug purchase clearly established that he purchased the substance containing cocaine from defendant. The trial court expressly indicated that it based defendant's conviction of delivery on the officer's testimony; thus, the trial court implicitly found his testimony to be credible. Furthermore, in resolving issues of credibility, the trial court can choose to credit a portion of a witness' testimony without crediting all of the testimony. See *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980). Thus, although the trial court credited defense witness Simmons' testimony regarding defendant's possession of cocaine at the time of his arrest, the trial court was not required to credit her testimony indicating that defendant had not sold any drugs. As a result, the trial court's findings regarding the issue of credibility were consistent with its verdict and were sufficient to support defendant's conviction.

Next, defendant argues that his jury trial waiver was invalid because there was no interpreter at the waiver proceeding and the trial court did not inquire as to whether defendant's waiver was the result of any improper inducements; thus, his waiver was not knowingly and voluntarily made. We disagree. The procedures utilized at defendant's waiver hearing were consistent with those set forth in MCR 6.402. Although the trial court did not question defendant regarding whether he was given any inducements for his waiver, the trial court's inquiries were sufficient to establish that defendant understood and voluntarily gave up his right to a jury trial. *People v Shields*, 200 Mich App 554, 560-561; 504 NW2d 711 (1993). Moreover, based on the facts that defendant indicated he could speak English, that neither defendant nor his attorney requested an interpreter, and that defendant was able to communicate with the court at his waiver hearing and his subsequent trial and sentencing hearing, the evidence in the record indicates that defendant sufficiently understood the English language to knowingly waive his right to a jury trial. Thus, we find that the trial court did not clearly err in finding that defendant's waiver was knowingly and voluntarily made.

Lastly, defendant argues that he was denied his right to allocution because an interpreter was not appointed for him at his sentencing hearing. Pursuant to Michigan law, a judge is required to appoint an interpreter for an accused who is to be examined or tried when it appears that the person is incapable of adequately understanding the charge or presenting a defense. MCL 775.19a; MSA 28.1256(1). However, when the trial court asked defendant whether an interpreter was needed, both he and his attorney indicated that an interpreter was not necessary. Nothing in the record suggests that defendant could not adequately understand the charges or present a defense. Moreover, a defendant is given the right of allocution at sentencing in order to bring to the court's attention any circumstance which it should consider in imposing sentence. MCR 6.425(D)(2)(c); *People v Berry*, 409 Mich 774, 779; 298 NW2d 434 (1980). Defendant, who brought to the court's attention that he was gainfully employed, was able to exercise that right.

Affirmed.

/s/ Maura D. Corrigan
/s/ Kathleen Jansen
/s/ Meyer Warshawsky

