

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JONSTON STEVEN MARLAND,

Defendant-Appellant.

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UNPUBLISHED  
November 7, 2006

No. 262683  
Wayne Circuit Court  
LC No. 05-001182-01

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

MEMORANDUM.

Defendant Jonston Steven Marland appeals as of right from his bench-trial convictions of first-degree home invasion,<sup>1</sup> and unarmed robbery.<sup>2</sup> Marland also pleaded no contest to unlawful driving away of the automobile of another (UDAA),<sup>3</sup> and third-degree fleeing and eluding a police officer.<sup>4</sup> The trial court sentenced Marland as a fourth habitual offender,<sup>5</sup> to concurrent prison terms of 12 to 30 years' imprisonment for first-degree home invasion and unarmed robbery, and 1 to 5 years' imprisonment for UDAA and fleeing and eluding a police officer. We affirm.

Marland argues that his waiver of his right to a jury trial was involuntary because it was based on defense counsel's unfulfilled promise of leniency.<sup>6</sup> However, this illusory promise of leniency is contrary to the record made in open court.<sup>7</sup> Marland unequivocally testified on

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<sup>1</sup> MCL 750.110a(2).

<sup>2</sup> MCL 750.530.

<sup>3</sup> MCL 750.413.

<sup>4</sup> MCL 750.479a(3).

<sup>5</sup> MCL 769.12.

<sup>6</sup> See MCR 6.401 ("The defendant has the right to be tried by a jury, or may, with the consent of the prosecutor and approval by the court, elect to waive that right and be tried before the court without a jury.").

<sup>7</sup> See *People v Gist*, 188 Mich App 610, 611-612; 470 NW2d 475 (1991).

record that his waiver was not based on any threats or promises. Further, this Court has concluded that a defendant's waiver of his constitutional right to jury trial is not rendered involuntary because it was purportedly based on defense counsel's representation to him that he would receive a harsher sentence if he proceeded with a jury trial.<sup>8</sup> Thus, we conclude that the trial court did not clearly err<sup>9</sup> in finding that Marland's waiver of his right to a jury trial was made voluntarily, knowingly, and understandingly in open court.<sup>10</sup>

Affirmed.

/s/ William C. Whitbeck  
/s/ Henry William Saad  
/s/ Bill Schuette

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<sup>8</sup> *People v Godbold*, 230 Mich App 508, 512; 585 NW2d 13 (1998).

<sup>9</sup> *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997).

<sup>10</sup> See *Godbold*, *supra* at 512.