

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BENNY G. BURTON,

Defendant-Appellant.

UNPUBLISHED

March 18, 2003

No. 237023

Wayne Circuit Court

LC No. 00-013497-01

Before: Griffin, P.J., and Neff and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions for assault with intent to commit great bodily harm less than murder, MCL 750.84, carrying a concealed weapon, MCL 750.227, assault and battery, MCL 750.81, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The sole issue on appeal is a claim of error concerning the trial court's acceptance of defendant's waiver of his right to a jury trial. Defendant maintains that the trial court failed to establish that he made the waiver knowingly, intelligently and voluntarily.

Defendant's argument is without merit. A trial court's determination that a defendant validly waived his right to a jury trial is reviewed for clear error. *People v Leonard*, 224 Mich App 569, 596; 569 NW2d 663 (1997). A criminal defendant has a statutory right to waive a trial by jury and elect a bench trial. MCL 763.3; *People v Kirby*, 440 Mich 485, 492; 487 NW2d 404 (1992). A defendant's waiver of his constitutional right to a trial by jury must be voluntary, MCR 6.402(B), and shall be in writing signed by the defendant, filed in the case, and made a part of the record. MCL 763.3.

The procedure required to achieve a successful waiver of jury trial is set forth in MCR 6.402(B), which provides:

Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

In this case, defense counsel indicated that defendant was requesting to waive trial by jury. The trial court swore in defendant, and asked him whether he had signed the waiver form. Defendant replied that he had done so. The court asked defendant whether he understood that he had a right to trial by twelve jurors, and defendant replied that he did. The court then asked defendant whether he was waiving his rights because of threats or promises and defendant replied that he was not. The trial court further inquired of defendant whether his decision was made with his own free will, to which defendant responded affirmatively. A completed waiver form as prescribed by MCL 763.3 was signed and placed in the lower court record. These actions fully complied with the requirements of MCR 6.402. We therefore reject defendant's argument that his waiver of a jury trial was invalid.

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Hilda R. Gage