

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN O. REED,

Defendant-Appellant.

UNPUBLISHED

July 7, 1998

No. 192196

Bay Circuit Court

LC No. 94-001222 FC

94-001266 FC

Before: MacKenzie, P.J., and Whitbeck and G.S. Allen, Jr.*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3). He was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to seven and one-half to twenty years' imprisonment and now appeals as of right. We affirm.

Defendant first argues that he was denied the right to a jury trial when the court improperly accepted his involuntary waiver. We disagree. Although he was entitled to a jury trial, defendant elected to waive this right and have his case tried before the court. MCR 6.401. Before accepting defendant's waiver, the trial court properly advised defendant of his right to a trial by jury, of the charges and potential penalties against him, and ascertained that he understood those rights before accepting same. MCR 6.401; *People v Leonard*, 224 Mich App 569, 595-596; 569 NW2d 663 (1997). The trial court's determination that defendant validly waived his right to a jury trial was not clearly erroneous because he specifically stated that he did not want a jury, acknowledged his wish to waive his right to a jury, acknowledged his wish to be tried by the court, and signed a statement reflecting these desires. *Id.* See also *People v Reddick*, 187 Mich App 547, 548-550; 468 NW2d 278 (1991).

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

Defendant next argues that the trial court erred by sua sponte determining that evidence of one charged offense was admissible in the trial of the other charged offense as “similar acts” evidence, MRE 404(b). The trial court’s determination that the similar acts testimony would be admissible in separate trials was not plain error, MRE 103(d), because the testimony falls squarely within the res gestae exception. *People v Smith*, 119 Mich App 431, 436; 326 NW2d 533 (1982). This exception provides that acts, conduct, and demeanor of a person charged with a crime, shortly before or after another offense has been committed, may be shown as part of the res gestae of the crime charged. *Id.* Because the two charged offenses occurred four hours apart, were interrelated regarding defendant’s identification, and occurred approximately four miles apart, the similar acts evidence of defendant’s offenses would have been admissible under the res gestae exception. Although the trial court concluded that this evidence was admissible under MRE 404(b), we may affirm a trial court’s correct conclusion on other grounds. *People v Brake*, 208 Mich App 233, 242, n 2; 527 NW2d 56 (1994). Accordingly, the trial court’s sua sponte ruling is affirmed based on the res gestae exception. *Smith, supra*.

Defendant next argues that his right to severance of his offenses for trial was violated. Because defendant failed to object to joinder of his offenses or file a motion for severance pursuant to MCR 6.120, *People v Thompson*, 410 Mich 66, 71; 299 NW2d 343 (1980), reversal is not required unless the alleged error could have been decisive to the outcome of the case. *People v Grant*, 445 Mich 535, 552-553; 520 NW2d 123 (1994). Given that “similar acts” testimony admitted during his joint trial would have been admissible in separate trials, *Smith, supra*, joinder of same did not affect the outcome of the trial. *Grant, supra*. Furthermore, the charges against defendant were tried and decided by the trial judge, not a jury, which reduced the risk of any prejudice associated with two charges being decided during a single trial.

Finally, defendant sets forth numerous alleged instances of ineffective assistance of counsel. We have thoroughly reviewed the record and find these arguments to be without merit. *People v Mitchell*, 454 Mich 145, 157-158; 560 NW2d 600 (1997).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ William C. Whitbeck
/s/ Glenn S. Allen, Jr.