

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH V. WASHINGTON,

Defendant-Appellant.

UNPUBLISHED

August 28, 2001

No. 223847

Wayne Circuit Court

LC No. 99-004230

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of breaking and entering a building, MCL 750.110. The trial court sentenced him as a fourth felony offender, MCL 769.12, to eight months' to ten years' imprisonment. Defendant appeals as of right and we affirm.

On appeal, defendant first contends that his waiver of his right to a jury trial was invalid because the trial court did not adequately address on the record whether defendant was voluntarily giving up the right and did not inquire whether any promises or threats were made to him. After reviewing the record, we conclude that the trial court's acceptance of defendant's waiver was proper. Defendant indicated on the record that he was requesting a bench trial and that it was his choice to be tried by the court. This is sufficient to satisfy the requirement of MCR 6.402(B) that the court ascertain that the waiver was voluntary. *People v Reddick*, 187 Mich App 547, 550; 468 NW2d 278 (1991); *People v Shields*, 200 Mich App 554, 560-561; 504 NW2d 711 (1993). Furthermore, the waiver was not rendered invalid by the trial court's failure to ask whether defendant was threatened or promised anything. *People v Leonard*, 224 Mich App 569, 595-596; 569 NW2d 663 (1997). Reversal on this basis is not required.

We also reject defendant's claim that he was denied a fair trial when the prosecutor introduced evidence of defendant's parole status and mentioned in closing argument that defendant was on parole. Where, as here, a defendant fails to object to an alleged prosecutorial impropriety, the defendant must demonstrate plain error that was outcome determinative to avoid forfeiture of the issue. *People v Aldrich*, ___ Mich App ___, ___ NW2d ___ (Docket No. 216402, issued 05/18/01), slip op 3-4; *People v Watson*, 245 Mich App 572; 586; ___ NW2d ___ (2001).

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

Generally, a prosecutor may not offer evidence of a defendant's parole status for the purpose of demonstrating the defendant's bad character. See *People v Sabin (After Remand)*, 463 Mich 43, 51, 71; 614 NW2d 888 (2000). In this case, however, the evidence was not offered to portray defendant as a bad man and it was not argued as such in the prosecution's closing. Instead, its purpose was to explain why defendant decided not to give a statement to the police. Furthermore, even if the evidence was improperly elicited or used by the prosecution, defendant has forfeited his claim of error because he has failed to demonstrate that it was outcome determinative. It was defendant's initial willingness to cooperate with the police in identifying his accomplice that the trial court found significant, not the fact that defendant was on parole.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage
/s/ Charles H. Miel