DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRADLEY ROBERTS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-2139

December 7, 2022

Appeal from the County Court for Hillsborough County; Margaret R. Taylor, Judge.

Howard L. Dimmig, II, Public Defender, and William L. Sharwell, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Donna Koch, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

The trial court held a bench trial on Bradley Roberts' criminal charge without obtaining an effective waiver of Roberts' right to a

jury trial. Therefore, we must reverse Roberts' conviction and sentence and remand for a new trial.[1]

Roberts was charged with committing a first-degree misdemeanor battery in May 2020, in violation of sections 784.03(1) and 741.28, Florida Statutes (2020). At a pretrial conference, for which Roberts was not present, Roberts' counsel requested a bench trial. Following a bench trial in June 2021, Roberts was adjudicated guilty and sentenced to 270 days in jail. This timely appeal followed.

A defendant's right to a jury trial is constitutionally protected. *See State v. Upton*, 658 So. 2d 86, 87 (Fla. 1995) (first citing amend. VI, U.S. Const.; then citing art. I, § 22, Fla. Const.). A waiver of that right must be knowing, voluntary, and intelligent and requires either a written waiver signed by the defendant or an oral waiver

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[1] The State has properly conceded error but suggests that rather than remanding for a new trial, we should remand for the trial court to conduct a colloquy with Roberts to ensure that proceeding with the bench trial was knowing, voluntary, and intelligent. We reject this suggestion. *See State v. Upton*, 658 So. 2d 86, 88 (Fla. 1995) ("We reject the State's alternative contention that the case should be remanded for an evidentiary hearing to determine whether Upton agreed with his attorney's waiver of a jury trial." (citing *Williams v. State*, 440 So. 2d 1290, 1291 (Fla. 4th DCA 1983))).

after a proper colloquy with the trial judge. *See Johnson v. State*, 994 So. 2d 960, 963–64 (Fla. 2008); *see also* Fla. R. Crim. P. 3.260. To ensure that a waiver is knowing, voluntary, and intelligent, "[a]n appropriate oral colloquy will focus a defendant's attention on the value of a jury trial and should make a defendant aware of the likely consequences of the waiver." *Tucker v. State*, 559 So. 2d 218, 220 (Fla. 1990).

Here, the record indicates that Roberts' trial counsel orally requested a bench trial at a pretrial conference, for which Roberts was not present. But counsel's waiver on a defendant's behalf, whether written or oral, is insufficient, without more, to constitute a proper waiver of the defendant's rights. *See Upton*, 658 So. 2d at 88; *Walker v. State*, 149 So. 3d 170, 171 (Fla. 4th DCA 2014). The trial judge never subsequently conducted a colloquy with Roberts to ensure that he agreed to the waiver, and the record does not contain a written waiver of Roberts' right to a jury trial. *See Upton*, 658 So. 2d at 87 ("A defendant may waive the right to a jury trial, provided that the waiver appears on the record." (citing *Tucker*, 559 So. 2d at 220)). Accordingly, we must reverse Roberts' conviction

and sentence and remand for a new trial. *See Smith v. State*, 9 So. 3d 702, 704 (Fla. 2d DCA 2009).

Reversed and remanded for a new trial.

KHOUZAM, BLACK, and ATKINSON, JJ., Concur.

Opinion subject to revision prior to official publication.