

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PERRINNE GARGILL,*

Defendant-Appellant.

UNPUBLISHED

December 20, 1996

No. 181024

LC No. 94-003901

Before: MacKenzie, P.J., and Wahls and Markey, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to serve eight to twenty years' imprisonment for the assault conviction after the completion of two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant's sole issue on appeal is whether he is entitled to a new trial due to the invalid waiver of his right to a jury trial. The prosecutor agrees that defendant's claim is meritorious thereby requiring a reversal of the conviction and remand of this matter for a retrial. Both the prosecution and defendant acknowledge that MCR 6.402(B) requires a trial court to "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." These requirements ensure that the waiver is knowing, voluntary, and made with the requisite understanding of the rights involved. *People v Shields*, 200 Mich App 554, 560-561; 504 NW2d 711 (1993); *People v Reddick*, 187 Mich App 547, 548-550; 468 NW2d 278 (1991).

Our review of the record shows that at a March 1994 hearing before Judge Robert L. Evans, the court discussed defendant's written waiver of jury trial, as follows:

* The lower court record shows defendant's last name as both "Cargill" and "Gargill." Because the judgment of sentence reflects the spelling as Gargill, we will use that spelling for purposes of this appeal.

THE COURT: Mr. Cargill, you just signed this paper called Waiver of Trial By Jury?

DEFENDANT CARGILL: Yes.

THE COURT: When you signed it, did you intend to give up your right to a jury trial?

DEFENDANT CARGILL: Yes.

THE COURT: Your co-defendant wants a jury trial. Are you sure you don't want a jury trial, sir? Do you want to think about it?

DEFENDANT CARGILL: I don't want no jury trial.

THE COURT: The Court finds defendant understands his right to a jury trial and wants to waive it. The Court accepts the waiver.

Furthermore, at the conclusion of defendant's April 1994 waiver trial involving other criminal charges of which defendant was found guilty, defendant and his counsel again informed Judge Evans during the final pretrial conference that defendant had no objection to the court trying this case. The court asked defendant whether he wanted another judge to hear this case and whether he had any objections to Judge Evans hearing the other case, and defendant answered no. This case was eventually transferred, however, to Judge Townsend, who presided over the bench trial. Our de novo review of the record convinces us that "it would be unreasonable to believe that defendant did not understand that he had a right to a jury trial and did not voluntarily waive that right." *Reddick, supra* at 550. We believe that defendant received multiple warnings regarding his constitutional right to a jury trial, he signed the waiver of jury trial form which repeatedly states that defendant intends to waive this constitutional right, and that Judge Evans' questioning exceeded the mandates of MCR 6.402(B). Consequently, we find no error requiring reversal. *Id.*

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Myron H. Wahls

/s/ Jane E. Markey