

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE DARRLE MORRIS,

Defendant-Appellant.

UNPUBLISHED

December 18, 1998

No. 203765

Recorder's Court

LC No. 96-004255

Before: Murphy, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and was sentenced to a prison term of five to ten years. He appeals as of right. We affirm.

Defendant's sole claim on appeal is that the trial court failed to establish a knowing and intelligent waiver of his right to a jury trial and falsely informed him that he would be tried before the same judge who presided over his waiver hearing. We disagree.

A criminal defendant has a constitutional right to trial by jury. US Const, Ams VI, XIV; Mich Const 1963, art I, § 20. A defendant may, however, with prosecutor and court consent, be given the option of waiving this right. MCL 763.3; MSA 28.856. To assure that the right to a jury trial is properly protected, MCR 6.402(B) requires the court to advise the defendant in open court of the constitutional right to trial by jury and to 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. The rule does not require the trial court to ask any specific and particular questions of a defendant. Rather, it is within the court's discretion as to how to establish a sufficient record which illustrates that the defendant properly waived his right to a jury trial. *People v James (Aft Rem)*, 192 Mich App 568, 570-571; 481 NW2d 715 (1992).

Here, defendant signed a waiver form indicating that he understood he had a constitutional right to a trial by jury, and defendant's counsel signed the waiver form indicating that he advised defendant of this constitutional right. Defendant acknowledged in open court that he signed the waiver form with the

intention of giving up his right to a jury trial, that it was his choice to do so, and that he wanted a bench trial. The record developed in this case is substantially similar to records which were found by this Court to be sufficient to establish that the defendants knowingly, intelligently, and voluntarily waived their right to jury trials. See, e.g., *People v Shields*, 200 Mich App 554, 560; 504 NW2d 711(1993); *People v Reddick*, 187 Mich App 547, 550; 468 NW2d 278 (1991). Consequently, we conclude that defendant understood his right to have a jury trial and that he knowingly, intelligently, and voluntarily waived the right.

Defendant now claims, however, that his waiver was tainted because he was allegedly falsely informed that Judge Evans, the judge who accepted his waiver, would preside over the bench trial. However, defendant has not alleged that his decision to waive his right to trial by jury was prompted or predicated on the fact that he believed that Judge Evans would be hearing his case.¹ Hence, defendant has failed to establish that the fact that defendant was tried by a different judge, as permitted by MCL 763.4; MSA 28.857, affected the knowing and intelligent nature of defendant's waiver of his right to trial by jury.

Affirmed.

/s/ William B. Murphy

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

¹ Indeed, defendant did not object to the proceedings before a different judge, did not attempt to withdraw his waiver, and did not move for a new trial on the ground that he did not voluntarily waive his right to a jury trial.