

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALVIN LEE WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

November 19, 1999

No. 212353

Berrien Circuit Court

LC No. 96-002746 FC

Before: McDonald, P.J., and Kelly and Cavanagh, JJ.

PER CURIAM.

Defendant was convicted after a bench trial of conspiring to possess 650 grams or more of a mixture containing cocaine with intent to deliver, MCL 750.157a; MSA 28.354(1) and MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i). Defendant was sentenced to life imprisonment and now appeals as of right. We affirm.

Defendant first argues that the trial court failed to find on the record that he knowingly, voluntarily and understandingly waived his right to a jury trial. Our review of the record discloses that the trial court (1) was assured by defense counsel that defendant wished to waive a jury trial, (2) witnessed defendant sign a written jury waiver in open court, (3) stated that defendant had an opportunity to discuss this matter with his attorney, and (4) obtained defendant's affirmative response to the court's inquiry regarding whether defendant understood that "you have a right to a jury trial and you are freely and voluntarily waiving that right and agreeing to be tried by a judge without a jury." These facts satisfy the requirements of MCR 6.402(B) and comply with applicable case law. *People v Shields*, 200 Mich App 554, 560; 504 NW2d 711 (1993); *People v Reddick*, 187 Mich App 547, 549-550; 468 NW2d 278 (1991).

Defendant next contends that the trial court erred by failing to disqualify his retained trial attorney due to a conflict of interest deriving from counsel's representation of multiple defendants. Plaintiff moved before trial to disqualify defendant's counsel due to his prior or present joint representation of multiple codefendants and a prospective prosecution witness. During an extensive colloquy, the court recognized the applicability of MCR 6.005(F), MRPC 1.7 and *People v Villarreal*, 100 Mich App 379; 298 NW2d 738 (1980). After defense counsel assured the court that the

codefendants had previously waived any conflict issues and were willing to do so again, the court advised the codefendants that joint representation meant that they were foregoing their right to be represented by an attorney whose exclusive loyalty would be to them alone, that with respect to particular trial decisions what was in one defendant's best interest might not be in the others' best interest, and that counsel might be hampered in carrying out his duties to one client by his duties to another. The court then elicited individual waivers of conflict of interest from defendant and his codefendants and, although finding "a huge amount of conflict," declined to disqualify defense counsel.

"In order for ineffective assistance of counsel to result from shared counsel by codefendants, there must be a showing of actual prejudice" *Villarreal, supra* at 389. In *People v Crawford*, 147 Mich App 244, 250; 383 NW2d 172 (1985), this Court quoted with favor from *United States v Reese*, 699 F2d 803, 805 (CA 6, 1983), as follows:

Furthermore, even if an actual conflict of interests or a strong likelihood of conflict is demonstrated the defendant must be given an opportunity to waive his constitutional right to conflict-free representation. A voluntary waiver of this constitutional right, knowingly and intelligently made, must be honored by the court in the absence of compelling circumstances.

Because defendant knowingly and intelligently waived his right to conflict-free representation and expressly wished to proceed despite his attorney's representation of others, no error necessitating reversal occurred.

Defendant further maintains that the trial court failed to accurately state the elements of the crime and that the evidence adduced at trial was insufficient to sustain his conviction. We disagree. To be convicted of conspiracy to possess with intent to deliver a controlled substance, the prosecution must prove that "(1) the defendant possessed the specific intent to deliver the statutory minimum as charged, (2) his coconspirators possessed the specific intent to deliver the statutory minimum as charged, and (3) the defendant and his coconspirators possessed the specific intent to combine to deliver the statutory minimum as charged to a third person." *People v Justice (After Remand)*, 454 Mich 334, 349; 562 NW2d 652 (1997). Although defendant's trial concluded before *Justice* was decided, the trial court's recitation of the elements of the crime reasonably comports with *Justice*. Furthermore, viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

As his final allegation of error, defendant argues that the trial court based his conviction on the court's finding of a preexisting conspiracy involving individuals not charged as coconspirators or codefendants. We find no prejudicial error in light of the existence of other evidence sufficient to support defendant's conviction. *Wolfe, supra*.

Affirmed.

/s/ Gary R. McDonald

/s/ Michael J. Kelly

/s/ Mark J. Cavanagh