

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JULIUS SIMMONS,

Defendant-Appellant.

---

UNPUBLISHED  
October 31, 2000

No. 215838  
Wayne Circuit Court  
LC No. 98-005768

Before: Griffin, P.J., and Cavanagh and Gage

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for possession with intent to deliver less than 50 grams of heroin. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). We affirm.

On appeal, defendant argues that the trial court failed to obtain a proper waiver of the right to a jury trial before conducting a bench trial. Defendant signed a written waiver of a jury trial. He testified that he was 46-years-old and had a GED. Defendant acknowledged that he was giving up his right to trial by jury, and that he wished to have a bench trial. No threats were made to induce the decision, and defendant stated that he made the decision freely and voluntarily.

MCR 6.402(B) provides:

(B) Before accepting a waiver, the court must 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.

The trial court's determination that a defendant validly waived his right to jury trial is reviewed for clear error. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997). The record must show that the defendant understood that he had a right to a jury trial, and voluntarily waived that right. *People v Reddick*, 187 Mich App 547, 550; 468 NW2d 278 (1991). Where the court

informed defendant of his constitutional right to a jury trial, and determined that the waiver was voluntarily exercised, there is no showing that the court erred in finding that the right to a jury trial was validly waived. *People v Shields*, 200 Mich App 554, 560; 504 NW2d 711 (1993).

Defendant was not denied the effective assistance of counsel by counsel's remarks in closing argument. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's assistance constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defense counsel's comments were a matter of reasonable trial strategy, given defendant's testimony that he knew that drug transactions were going on. Counsel acknowledged the obvious where defendant was facing a fourth time habitual offender charge. These comments did not affect the outcome of the case.

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage