

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFERY MAURICE BAKER,

Defendant-Appellant.

UNPUBLISHED

December 19, 2006

No. 267087

Wayne Circuit Court

LC No. 85-003418-01

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of two counts of assault with intent to commit murder, MCL 750.83, and one count of possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

In 1985, defendant was charged with four counts of assault with intent to commit murder, and one count of felony-firearm. On January 13, 1986, defendant waived his right to a jury trial. Notes taken by the trial court indicate that a bench trial was held on January 13 and 15, 1986, and that defendant testified on his own behalf. The trial court convicted defendant of two counts of assault with intent to commit murder and one count of felony-firearm, but acquitted him of two counts of assault with intent to commit murder.

Sentencing was scheduled for February 12, 1986; however, defendant absconded and did not appear for sentencing. A bench warrant was issued for his arrest.

Defendant was arrested in 2005, and on November 30, 2005, appeared for sentencing in this case. He asserted that he never went to court and was not convicted of any crime. The trial court sentenced defendant to concurrent terms of one to three years in prison for assault with intent to commit murder, and to a consecutive two-year term for felony-firearm, with credit for 25 days.

The inability to obtain a transcript of a criminal proceeding may so impede a defendant's right to appeal that a new trial must be ordered. *People v Horton (After Remand)*, 105 Mich App 329, 331; 306 NW2d 500 (1981). However, the fact that a transcript is unavailable does not automatically require that a defendant's conviction be vacated. If the surviving record is sufficient to allow evaluation of a defendant's issues on appeal, the defendant's right to appeal is satisfied. *People v Audison*, 126 Mich App 829, 835; 338 NW2d 235 (1983). Whether the

record is sufficient depends on the questions asked of it. *People v Federico*, 146 Mich App 776, 799-800; 381 NW2d 819 (1985). Whether the unavailability of a transcript denies a defendant the due process right to proper appellate review is a constitutional issue subject to de novo review on appeal. *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000).

The claim of appeal filed in this case states that the reporter's notes for defendant's bench trial were destroyed pursuant to MCL 600.2137.¹ Defendant argues that his convictions must be reversed and this case must be remanded for a new trial because the unavailability of a trial transcript deprives him of due process in that he cannot obtain proper review on appeal.

We affirm. The reporter's notes for defendant's bench trial have been destroyed, and no transcript of that proceeding can be produced. However, that fact does not require that defendant's convictions be reversed. Defendant's assertion that he did not have a trial is belied by the presence of a waiver of the right to a jury trial in the lower court file, and by the trial court's notes indicating that defendant testified on his own behalf at his trial. Defendant has not specified what issues might be raised on appeal, and has not explained how the lack of a transcript prevents him from obtaining sufficient appellate review of those issues. Defendant simply has not established that the unavailability of a transcript of his trial denies him due process. *Audison, supra; Federico, supra*. Defendant is not entitled to relief.

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis

¹ This statute provides that reporter's notes for a felony case may be destroyed after 15 years. See MCL 600.2137(3).