

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

JAMES ROBERT RUTHERFORD n/k/a  
NAIM RASHEED JOHNSON,

Appellant.

No. 38484-1-II

UNPUBLISHED OPINION

Armstrong, J. — James Robert Rutherford, now known as Naim Rasheed Johnson,<sup>1</sup> appeals his Clark County conviction of failure to register as a sex offender, asserting that the record does not show that he knowingly, voluntarily, and intelligently waived his right to a jury trial. We affirm.<sup>2</sup>

**FACTS**

On January 23, 2007, Rutherford filed a petition in Clark County District Court to have his name changed to Naim Rasheed Johnson. The court granted the request on February 7, 2007.

Because of Rutherford's status as a sex offender, Washington law required him to submit

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<sup>1</sup> Because he was prosecuted primarily under the name Rutherford, we will continue to use that name in this opinion.

<sup>2</sup> A commissioner of this court considered the matter pursuant to RAP 18.14 and referred it to a panel of judges.

a copy of his application for name change to the Clark County Sheriff's office and the state patrol at least five days before the court granted his request. He was also required to provide a copy of the court's order within five days after it was entered. RCW 9A.44.130(8). He did not comply with either requirement, and the charge of failure to register followed.

On August 21, 2008, Rutherford signed a waiver of his right to a jury trial, stating:

COMES NOW the above named Defendant and hereby waives the right to have this cause tried by a jury. Defendant has discussed the right to a jury trial with his counsel and hereby waives his constitutional right to a jury trial to 12 jurors in this matter.

Clerk's Papers (CP) at 12. Rutherford's attorney explained that she had discussed his constitutional right to a jury trial with him. The judge asked him if he understood that he had a right to a jury trial before 12 jurors and if it was his position that he would prefer to waive that right. He answered affirmatively, and the court granted the request. After trial on August 25, 2008, the court found him guilty as charged, and this appeal followed.

#### ANALYSIS

Every criminal defendant has a right under both the state and federal constitutions to a jury trial. *State v. Ramirez-Dominguez*, 140 Wn. App. 233, 239, 165 P.3d 391 (2007). The accused may waive this right if he acts knowingly, intelligently, voluntarily, and free from improper influences. *State v. Stegall*, 124 Wn.2d 719, 724-25, 881 P.2d 979 (1994). The validity of a waiver, as well as the inquiry required to establish waiver, depends on the circumstances of each case, including the defendant's experience and capabilities. *State v. Ashue*, 145 Wn. App. 492, 502, 188 P.3d 522 (2008).

The burden of proving waiver rests with the State. *Stegall*, 124 Wn.2d at 730. Waiver of the right to a jury trial must either be in writing, or done orally on the record. *Ramirez-Dominguez*, 140 Wn. App. at 240. Written waiver is strong, but not conclusive evidence that the defendant effectively waived his right to a jury trial. *Ramirez-Dominguez*, 140 Wn. App. at 240.

In this case, Rutherford signaled a clear intention to waive his right to a jury trial, both in his written waiver and during colloquy. However, he argues that the record nevertheless fails to show an effective waiver because (1) his attorney did not specifically state that she advised him of his rights and (2) there is no evidence that he was aware of Washington's jury unanimity requirement.<sup>3</sup>

Contrary to the first complaint, Rutherford, himself, confirmed in his written waiver, that he had discussed his right to a jury with his attorney. She, too, told the court that they had had such a discussion. As to the second claim, a waiver is effective if the defendant is demonstrably aware of his right to a jury trial. An extensive colloquy on the record and advice regarding the consequences of waiver is not required. *See Stegall*, 124 Wn.2d at 725; *Ashue*, 145 Wn. App. at 502-03; *State v. Pierce*, 134 Wn. App. 763, 773, 142 P.3d 610 (2006). Rutherford was unquestionably aware that he had a right to a jury trial. We further note that he had considerable prior experience with the criminal justice system, having two prior convictions in Oregon and three in Washington. He had undoubtedly acquired information about the various aspects of his right to a jury trial in those previous prosecutions.

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<sup>3</sup> *See State v. Ortega-Martinez*, 124 Wn.2d 702, 707, 881 P.2d 231 (1994).

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The record in this case amply supports Rutherford's waiver as knowing, intelligent, and voluntary. The judgment is affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Armstrong, J.

We concur:

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Bridgewater, J.

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Van Deren, C.J.