

2018 IL App (1st) 163051-U

No. 1-16-3051

Order filed May 18, 2018

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County,
)	
v.)	No. 15 CR 2762
)	
WILLIAM SIMMONS,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's jury waiver, made orally and in writing, was sufficient.

¶ 2 Following a bench trial, defendant William Simmons was convicted of possession of a controlled substance (less than 15 grams of heroin) and sentenced to two years' imprisonment. On appeal, defendant contends that we must remand this case for a new trial because he never waived his right to a jury trial in open court. For the reasons stated below, we affirm.

¶ 3 Defendant was charged with possession of a controlled substance with intent to deliver for possessing more than 3 grams but less than 15 grams of heroin on or about January 15, 2015.

¶ 4 On May 14, 2015, defendant told the court that he wanted to proceed *pro se* and immediately demanded trial. In the course of considering the requests and admonishing defendant of the consequences of acting *pro se* and demanding immediate trial, the court told defendant: “If you are ready today, we can see whether or not we can get a jury today or a bench trial.” Defendant reiterated that he was ready for trial that day. The court asked defendant if he wanted a bench or jury trial, and he answered “Bench.” The court noted that one of the consequences of acting *pro se* was “you might not make effective use of such rights as the *voir dire* of jurors.” After lengthy admonishments and examination of defendant, the court granted his request to proceed *pro se*. The case was continued to provide defendant redacted discovery.

¶ 5 On May 29, 2015, the court noted that defendant had demanded trial and again asked him “Bench or jury?” Defendant replied “Bench.” The court set the case for bench trial on June 22. After discussion of various matters concerning trial, the State asked the court “bench or jury,” and defendant answered “Bench.”

¶ 6 The bench trial commenced on June 22, 2015. The record does not include a discussion that day of defendant’s jury waiver but includes a written jury waiver dated June 22, 2015, and signed by defendant. Following the trial, the court found defendant guilty of possession of a controlled substance. Defendant filed no posttrial motion, and the case proceeded to sentencing.

¶ 7 The presentencing investigation report shows that defendant has prior criminal convictions including armed robbery with a six-year prison sentence and a controlled substance

offense with a one-year prison sentence. Following a sentencing hearing, the court sentenced defendant to two years' imprisonment.

¶ 8 On appeal, defendant contends that we must remand this case for a new trial because he never waived his right to a jury trial in open court.

¶ 9 The right to a jury trial is fundamental but can be knowingly and voluntarily waived. *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). The trial court must ensure that a defendant waives his right to a jury trial expressly and understandingly. *Id.* at 66. However, the court need not give any specific admonition or advice for a defendant to make a valid jury waiver, and the determination of whether a jury waiver was valid cannot rest on any precise formula. *Id.* Instead, whether a jury waiver was valid depends on the facts and circumstances of the particular case, which may include the defendant's prior interactions with the criminal justice system and that he remained silent while counsel requested a bench trial. *Bannister* at 66; *People v. Parker*, 2016 IL App (1st) 141597, ¶ 47. A written jury waiver is insufficient by itself to constitute a valid waiver but weighs in favor of finding a valid waiver. *Parker*, ¶ 50. For a defendant to validly waive his right to a jury trial, he must understand that the facts of his case will be determined by a judge and not a jury. *Bannister* at 69. Therefore, it is preferable but not required that the court admonish a defendant of his right to a jury trial. *Parker*, ¶ 47. A defendant challenging a jury waiver bears the burden of establishing that the waiver was invalid. *Id.*

¶ 10 Here, defendant notes correctly that he did not orally waive his right to a jury trial on the day trial commenced. He argues at length that we should discount that he personally and expressly elected a bench trial over a jury trial in two pretrial court sessions, in addition to signing a jury waiver form on the day trial commenced. Both times, the court asked him if he

wanted a bench *or* jury trial, and both times he – not counsel, as he was *pro se* – answered “bench.” Thus, he was apprised twice that his options for trial included a jury, which (as stated above) is the key information that must be conveyed to a defendant. Also, these were not mere “references” to jury trial made by the court or counsel in defendant’s presence but questions addressed directly to him and answered directly by him.

¶ 11 Defendant argues that his two elections of a bench trial are not valid jury waivers due to “the absence of any discussion about the right to a jury trial, the difference between a jury trial and a bench trial, and the consequences of waiving a jury.” However, as stated above, the trial court is not required to admonish a defendant of the right to a jury trial. Defendant also argues that his elections “arose during discussions about his desire to proceed *pro se*” rather than of his right to a jury trial. However, he made two related requests in the May 2015 proceedings – to proceed *pro se* and commence trial immediately – and the court examined and admonished defendant at length regarding both decisions. Thus, the pretrial proceeding where he elected a bench trial concerned at least in part whether he was going to trial and what sort of trial that would be, and was not only a discussion of whether he would represent himself. We conclude that defendant has failed to show that his elections of a bench trial over a jury trial, orally and in writing, were not valid jury waivers. Accordingly, the judgment of the circuit court is affirmed.

¶ 12 Affirmed.