

2019 IL App (1st) 173028-U

No. 1-17-3028

Order filed October 10, 2019

Fourth 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. 17 CR 3614
)	
RONNIE DRINKWATER,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for armed habitual criminal is affirmed where the trial court adequately admonished him and his jury waiver was valid.

¶ 2 Following a bench trial, defendant Ronnie Drinkwater was convicted of armed habitual criminal and sentenced to seven years' imprisonment. On appeal, defendant argues that the trial court erred by accepting his jury waiver without providing adequate admonishments. We affirm.¹

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

¶ 3 Defendant was charged by indictment with one count of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2016)), two counts of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2016)), and two counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(A); (a)(1), (a)(3)(C) (West 2016)), arising from an incident in Chicago on February 18, 2017.

¶ 4 On March 16, 2017, defendant appeared in court with private counsel and entered a plea of not guilty. On August 2, 2017, defendant and counsel again appeared, and counsel advised the court they were “ready to set this matter for trial.” The trial court asked “[b]ench or jury,” and counsel responded that he “believe[d] bench [is] indicated.”

¶ 5 On September 28, 2017, defendant was present in court with counsel and the following colloquy occurred:

“THE COURT: You have a right to a jury trial where 12 people will be selected to hear the evidence. All 12 would have to unanimously agree you’ve been proven guilty beyond a reasonable doubt before you can be found guilty.

If you did not want to have a jury trial, you can have a bench trial where I would hear the evidence myself and decide myself whether you’ve been proven guilty or not.

Do you want a bench or a jury trial, sir.

THE DEFENDANT: Bench.

THE COURT: I’m showing you a signed piece of paper your lawyer handed me. When you signed this, you’re telling me you do not want a jury trial?

THE DEFENDANT: Yes, sir.

THE COURT: Jury waived.”

¶ 6 Defendant's signed jury waiver, which is included in the record on appeal, states, "I, the undersigned, do hereby waive jury trial and submit the above entitled cause to the Court for hearing."

¶ 7 At trial, Chicago police officer Chaves Siler testified that around 3:15 a.m. on February 18, 2017, he and his partner, Officer Barreto,² responded to a call in the 3900 block of West Arthington Street regarding a man beating on a window and refusing to leave. When Siler arrived to the location, he observed four women in a vehicle parked illegally in front of a residence. Siler had them move the vehicle, and then observed a man emerge from a gangway. The man, whom Siler identified in court as defendant, was carrying what Siler thought was a "large stick." Defendant dropped the object, and Siler asked him to approach the police vehicle. Defendant told Siler that he had "two bags of weed." Siler placed defendant into custody and secured him in the back of the police vehicle. In the gangway, Siler found a loaded 12-gauge shotgun.

¶ 8 The State entered a stipulation that, if called, an employee of the Illinois State Police in the Firearm Services Bureau would testify that she checked the databases for Firearm Owner's Identification (FOID) card holders and concealed carry license holders, and that records did not show defendant had been issued a FOID card or a concealed carry license. The parties also stipulated that defendant had been convicted of possession of a controlled substance, a Class 1 felony, under case number 10 CR 9701, and manufacture and delivery of a controlled substance, a Class 2 felony, under case number 09 CR 5424.

² Officer Barreto's first name does not appear in the record.

¶ 9 The trial court found defendant guilty on all counts, and stated they would merge into the armed habitual criminal count. Defendant's motion for a new trial was denied. Defendant's presentence investigation (PSI) report, which counsel corrected at sentencing, noted his two felony narcotics convictions from 2009 and 2010. Defendant obtained his GED while incarcerated in 2009, and spent an additional 10 months in a post-GED program. Defendant worked at Boston Market from 2013 through 2017. He denied having psychological problems, but acknowledged using marijuana daily since age 10. The trial court sentenced defendant to a Class X term of seven years' imprisonment.

¶ 10 On appeal, defendant argues the trial court provided inadequate admonitions about his right to a jury trial and failed to ensure that he made a knowing and voluntary waiver.

¶ 11 Defendant acknowledges that he did not contest the validity of his jury waiver at trial or challenge it in a posttrial motion, and therefore forfeited the issue on appeal, but argues we may consider it under the plain-error doctrine. Generally, both a contemporaneous verbal objection and a written postsentencing motion are required to preserve an issue for review. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). However, violation of the right to a jury trial is subject to the second prong of the plain-error exception to the forfeiture rule because it implicates the integrity of the judicial process regardless of the closeness of the evidence. *People v. Bracey*, 213 Ill. 2d 265, 270 (2004); *People v. Gatlin*, 2017 IL App (1st) 143644, ¶ 12. Because there can be no plain error without error, our first inquiry is whether a clear and obvious error occurred. *People v. Eppinger*, 2013 IL 114121, ¶ 19.

¶ 12 The United States Constitution and Illinois Constitution both guarantee the fundamental right to a jury trial. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13. A defendant

can waive the right to a jury trial so long as the waiver is made “knowingly and understandingly.” *Bracey*, 213 Ill. 2d at 269; 725 ILCS 5/103-6 (West 2016)). The validity of a jury waiver depends on the facts and circumstances of each case. *People v. Bannister*, 232 Ill. 2d 52, 66 (2008). A written waiver is one way of establishing a defendant’s intent to waive his right, but it is not dispositive. *Bracey*, 213 Ill. 2d at 269-70. Other relevant factors include the defendant’s level of education (*People v. Frey*, 103 Ill. 2d 327, 333 (1984)), and familiarity with the criminal justice system as demonstrated by his criminal history (*Bannister*, 232 Ill. 2d at 71). However, the critical question is whether a defendant waived his right to a jury trial with the understanding that “the facts of the case will be determined by a judge and not a jury.” *Id.* at 69. When, as here, the facts are undisputed, the validity of a jury waiver is a question of law and our review is *de novo*. *Id.* at 66.

¶ 13 The record shows the trial court first referenced the issue of a jury trial versus a bench trial on August 2, 2017, when defendant appeared with counsel. The court asked “[b]ench or jury” trial, and counsel responded that he believed “bench [is] indicated.” On September 28, 2017, defendant again appeared with counsel, and the court admonished defendant regarding his right to a jury trial. The court explained that defendant had a right to have 12 people “selected to hear the evidence,” and that “[a]ll 12 would have to unanimously agree” he was “proven guilty beyond a reasonable doubt” before he could be found guilty. Further, the court stated that if defendant “did not want to have a jury trial,” he could “have a bench trial” where the judge would “hear the evidence myself and decide myself whether you’ve been proven guilty or not.” The court asked defendant whether he wanted “a bench or jury trial.” Defendant stated that he wanted a bench trial, and confirmed that he signed a jury waiver.

¶ 14 Based on this record, we find defendant's jury waiver was valid. Defendant did not object when his counsel initially requested a bench trial in open court. See *People v. Reed*, 2016 IL App (1st) 140498, ¶ 8 (jury waiver was valid where "[d]efense counsel indicated that he wished to proceed by way of bench trial *** in defendant's presence" and "[d]efendant did not object or ask any questions at any point"). Subsequently, defendant affirmed that he wanted a bench trial after the court advised him of the critical distinction between a jury trial and a bench trial, namely, that the judge and not the jury would determine defendant's guilt. See *People v. Clay*, 363 Ill. App. 3d 780, 791 (2006) (knowing waiver found where defendant acknowledged she understood the meaning of a jury trial and specifically stated she was giving up that right). Defendant's signed waiver form also evidences his intent to waive the jury trial. *Bracey*, 213 Ill. 2d at 269-70. Further, when the trial court asked defendant if he understood that by signing the jury waiver form, "you're telling me you do not want a jury trial," defendant answered "[y]es, sir."

¶ 15 Notwithstanding, defendant claims that the trial court failed to ascertain whether he understood how a jury is selected, or if he knew that during a jury trial, he could cross-examine witnesses, present witnesses, and present evidence in his own defense. Additionally, he submits the court did not confirm whether he understood that it is the State's burden to prove him guilty beyond a reasonable doubt in a jury or bench trial, and did not inquire if his jury waiver was the result of any threats or promises.

¶ 16 There is no specific admonition a trial court must give a defendant, and the validity of a jury waiver "depends on the facts and circumstances of each particular case." *Bannister*, 232 Ill. 2d at 66. Here, defendant completed his GED, participated in a post-GED program for almost

one year, held a job for four years, and reported no psychological ailments. Moreover, defendant has a background with the criminal justice system, as he had two prior felony convictions. Thus, defendant's background belies any claim that he did not understand the difference between a bench and jury trial, as well as the ramifications of waiving his right to a jury trial. See *Gatlin*, 2017 IL App (1st) 143644, ¶ 16 (the defendant's three felony convictions suggested a familiarity with the criminal justice system for purposes of understanding the ramifications of his jury waiver). These circumstances, taken together with the trial court's admonishments, show that defendant waived his right to a jury trial with the "pivotal knowledge *** that the facts of the case w[ould] be determined by a judge and not a jury." *Bannister*, 232 Ill. 2d at 69.

¶ 17 Here, defendant was present when his counsel initially requested a bench trial. Prior to trial, the court admonished defendant, and he tendered his jury waiver in counsel's presence. The record does not show that defendant verbally or physically displayed any response indicative of confusion. As such, nothing in the record supports a finding that defendant's jury waiver was not made knowingly and voluntarily. *People v. West*, 2017 IL App (1st) 143632, ¶ 12 (finding that trial court's failure to ask a defendant whether his jury waiver was the product of threats or promises "is an insufficient basis to determine his otherwise valid waiver"). Consequently, the trial court did not err in accepting his jury waiver. As there was no error, plain error analysis is unwarranted and we honor defendant's forfeiture of the jury waiver issue.

¶ 18 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 19 Affirmed.