

No. 1-17-0265

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. 12 CR 9939
)
 ROBERT JACK,) Honorable
) Geary W. Kull,
 Defendant-Appellant.) Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s convictions of aggravated battery and aggravated criminal sexual assault are affirmed where the record shows he was adequately admonished and understandingly waived his right to a jury trial.

¶ 2 Following a bench trial, defendant Robert Jack was convicted of aggravated battery and aggravated criminal sexual assault, and sentenced to consecutive prison terms of 15 years and 10 years. On appeal, Mr. Jack argues that the trial court erred in accepting his jury waiver. We reject this argument and affirm Mr. Jack’s convictions.

¶ 3

I. BACKGROUND

¶ 4 Mr. Jack was charged in a 31-count indictment that alleged a series of illegal acts at a hotel on April 19 and 20, 2012. The State nol-prossed several counts and proceeded to trial on charges that included attempted first-degree murder (720 ILCS 5/8-4(a) (West 2012); 720 ILCS 5/9-1(a)(1) (West 2012)), criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2012)), aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(2), (3), (4) (West Supp. 2011)), aggravated kidnapping (720 ILCS 5/10-2(a)(3) (West 2012)), and aggravated battery (720 ILCS 5/12-3.05(a)(1), (5) (West Supp. 2011)).

¶ 5 The court's first discussion of Mr. Jack's right to a jury was at a hearing on August 4, 2015. The court was addressing the State's motion to enter evidence of other crimes. The court explained to Mr. Jack that if he believed the State's proposed witnesses were lying, "then that is something that will be presented to whomever the Finder of Fact is. If it's myself, that's one thing. If it's a jury, that's another thing. That person will determine whether or not they are lying." On January 19, 2016, the court again explained to Mr. Jack that if he had a jury trial, the jury would determine the credibility of the State's witnesses. At hearings in June, July, September, and October 2016, defense counsel indicated, in Mr. Jack's presence, that the case was set for a jury trial.

¶ 6 On November 1, 2016, the day of trial, Mr. Jack appeared with counsel, who informed the trial court that Mr. Jack "indicated *** he was going to waive jury and *** have a bench trial," and stated that he had a jury waiver for Mr. Jack to sign. Mr. Jack then announced that he wanted to address the court "[b]efore I sign this." Counsel explained that Mr. Jack was addressing the court against his advice, and the court permitted Mr. Jack to speak. Mr. Jack told the court he had not obtained the evidence needed to refute allegations against him. In response,

the court said, “I’ve been sitting on this case *** since 2012. *** [T]here’s been more than enough time to obtain whatever evidence may or may not be relevant to this case. And so I’m going to deny any continuances.” The court added that prospective jurors were ready for a trial.

¶ 7 The following colloquy then occurred between the trial court and Mr. Jack:

“THE COURT: *** The only thing I really concern myself with right now is whether or not we’re going to have a bench trial or a jury trial. And that’s your call, because it’s your right.

[MR. JACK]: Absolutely a jury trial.

THE COURT: Pardon me?

[MR. JACK]: Absolutely a jury trial.

THE COURT: All right. Call down the 40 people. We’re picking today.

[MR. JACK]: Do you want me to sign this?

[DEFENSE COUNSEL]: No. This is for—this is if you’re having a jury.

THE COURT: Only if you want a bench trial. If you want a bench trial, you have to sign a jury waiver.

[MR. JACK]: No, no.”

¶ 8 When the court recalled the case later, Mr. Jack stated, “Your Honor, I said I would go with the judge,” and the following colloquy occurred:

“THE COURT: All right. So here’s the deal so I can explain to you. Obviously you have a right to a trial by jury.

A jury would be the 12 people picked by your lawyer and the State’s attorney and myself, [who] would *** listen to the facts of the case, and they would make a determination as to *** whether or not you are guilty of the charges against you. Do you

understand what a trial by jury is?

[MR. JACK]: Absolutely.

THE COURT: Okay. By signing the document I have in front of me, you indicate to me you wish to give up that right and have me try the case as a bench trial.

[MR. JACK]: Absolutely. Absolutely.

THE COURT: Is that your signature on the document?

[MR. JACK]: Yes, it is. That's my signature.

THE COURT: Did anybody force you, threaten you or promise you anything to get you to sign that document?

[MR. JACK]: Absolutely not. Absolutely not.

THE COURT: All right. You've done so of your own free will; is that correct?

[MR. JACK]: Absolutely.

THE COURT: Then I'll accept the jury waiver.

[MR. JACK]: I did it of my own free will.

[DEFENSE COUNSEL]: Your Honor, let the record reflect that before we left the bench we thought we were going to pick a jury. I didn't speak with Mr. Jack. He summoned me and indicated that you wanted to do a bench trial. So that's why—and he executed the form in my presence.

THE COURT: All right. That's his signature. We're all set.

[MR. JACK]: Okay.”

The record contains Mr. Jack's signed jury waiver form, dated November 1, 2016, which states, “I, the undersigned, do hereby waive jury trial and submit the above entitled cause to the Court for hearing.”

¶ 9 Because Mr. Jack's appeal concerns on the adequacy of his jury waiver, we discuss the evidence at trial only to the extent necessary to address this issue. At trial, the victim, K.A., testified that in the early morning of April 19, 2012, she took a cab with Mr. Jack to a hotel on Mannheim Road. They entered a room and consumed cocaine and heroin. Mr. Jack then put K.A. on the bed, tried to put his penis in her anus, and put his penis in her vagina. He grabbed her by the neck and repeatedly punched her in "[e]very part" of her body, including her eyes and ribs. K.A. testified that she never agreed to have sex with Mr. Jack. The State presented medical evidence that K.A. suffered injuries that included rib, scapular, and spinal fractures; facial swelling; neck abrasions; three missing teeth; and lacerations to her external vaginal and anal areas. After obtaining leave of court to introduce other-crimes evidence, the State called another woman who testified to a non-consensual sexual encounter with Mr. Jack in 2009.

¶ 10 Mr. Jack testified that on April 20, 2012, at 3 a.m., he and K.A. took a cab to a hotel, where they consumed crack cocaine and heroin and engaged in various sexual activities. Mr. Jack testified that he "didn't force any sex acts." Afterwards, K.A. entered the bathroom and slipped in the shower, and Mr. Jack noticed blood on her lips and chin. K.A. reentered the bathroom and exited holding "two or three black teeth in her hand." K.A. then consumed some of Mr. Jack's drugs, and Mr. Jack confirmed that he "punched [K.A.] a lot."

¶ 11 The trial court found Mr. Jack guilty of aggravated criminal sexual assault and aggravated battery. The presentence investigation report (PSI) showed that Mr. Jack had 35 felony and misdemeanor convictions from 1985 to 2010. The court sentenced Mr. Jack to consecutive terms of 10 years for aggravated criminal sexual assault and 15 years for aggravated battery.

¶ 12

II. JURISDICTION

¶ 13 Mr. Jack was sentenced on February 1, 2017, and filed his timely notice of appeal that same day. This court has jurisdiction pursuant to article VI, section 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6), and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Dec. 11, 2014)).

¶ 14

III. ANALYSIS

¶ 15 On appeal, Mr. Jack argues that the trial court erred in accepting his jury waiver because the court failed to adequately admonish him as to the right he was waiving, including ascertaining that Mr. Jack understood that in a jury trial he could cross-examine the State's witnesses and present witnesses in his defense and the jury would have to reach a unanimous decision to find him guilty, and that the State would carry the burden of proof regardless of whether Mr. Jack selected a bench or jury trial. Mr. Jack also claims that he did not voluntarily waive his right to a jury trial because he did so based on his belief that the trial court wanted him to waive the right to a jury.

¶ 16 Mr. Jack acknowledges that he failed to raise this issue in a timely objection and written posttrial motion, but asserts that we may consider it under the plain-error doctrine. We agree. *People v. Bracey*, 213 Ill. 2d 265, 270 (2004) (finding the defendant's challenge to the validity of his jury waiver could be considered under plain-error review, even though the defendant failed to raise the issue "either by objection or in a posttrial motion"). A defendant's challenge to the validity of his jury waiver may be reviewed under second-prong plain-error review, which applies where an error is "so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence."

(Internal quotation marks omitted.) *People v. Gatlin*, 2017 IL App (1st) 143644, ¶ 12; see also *People v. Owens*, 336 Ill. App. 3d 807, 810-11 (2002).

¶ 17 The United States Constitution and Illinois Constitution both guarantee the fundamental right to a jury trial. *Bracey*, 213 Ill. 2d at 269; U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. “For a jury waiver to be valid, the defendant must understandingly waive his right to a jury trial in that the waiver is both knowing and voluntary.” *People v. West*, 2017 IL App (1st) 143632, ¶ 10; 725 ILCS 5/103-6 (West 2012). While a trial court must insure that a defendant’s waiver of a jury is understandingly made, “no set admonition or advice is required before an effective waiver of that right may be made.” *People v. Tooles*, 177 Ill. 2d 462, 469 (1997). “The determination of whether a jury waiver is valid cannot rest on any precise formula” and “depends on the facts and circumstances of each particular case.” *People v. Bannister*, 232 Ill. 2d 52, 66 (2008).

¶ 18 When waiving the right to a jury trial, “the pivotal knowledge that the defendant must understand—with its attendant consequences—is that the facts of the case will be determined by a judge and not a jury.” *Id.* at 69. “Although not dispositive of a valid waiver, a written waiver may provide evidence that the defendant knowingly relinquished his right to a jury trial.” *Gatlin*, 2017 IL App (1st) 143644, ¶ 14. A defendant’s familiarity with the criminal justice system, as demonstrated by an extensive criminal history, may be considered in determining whether a jury waiver was made understandingly. *Bannister*, 232 Ill. 2d at 71; *West*, 2017 IL App (1st) 143632,

¶ 13.

¶ 19 Mr. Jack argues that he did not knowingly waive his right to a jury trial, since the trial court failed to adequately admonish him. However, the trial court explained to Mr. Jack that in a jury trial, his guilt would be determined by “12 people picked by your lawyer and the State’s

attorney and myself.” The court asked Mr. Jack whether he knew what a jury trial was, and Mr. Jack responded, “Absolutely.” He also confirmed that by signing the jury waiver, he was indicating that he wished to waive his right to a jury trial and have the judge decide the case. The record shows that Mr. Jack expressly confirmed his understanding that the trial court, and not a jury, would be hearing his case. This was what was required. See *West*, 2017 IL App (1st) 143632, ¶ 12 (finding the defendant was adequately admonished regarding his right to a jury trial where he signed a waiver form and was told by the court that “he would be waiving a jury trial and that the court, and not a jury, would hear the evidence”); see also *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7 (“The crucial determination is whether the waiving defendant understood that his case would be decided by a judge and not a jury.”).

¶ 20 Moreover, Mr. Jack’s criminal history further supports the conclusion that his jury waiver was knowing and voluntary. The record shows that Mr. Jack had a lengthy criminal background including 35 convictions from 1985 to 2010. Mr. Jack’s list of prior felony convictions undermines any argument that he did not understand the difference between a bench trial and a jury trial. *West*, 2017 IL App (1st) 143632, ¶ 13 (finding the defendant’s “extensive experience with the judicial system” belied “any claim that he did not know or understand judicial proceedings and, in particular, the difference between a bench and jury trial”); *Reed*, 2016 IL App (1st) 140498, ¶ 8 (finding the defendant was familiar with the criminal justice system and his right to a trial by jury where he had been previously “convicted of eight felonies and multiple misdemeanors”).

¶ 21 Mr. Jack argues he did not voluntarily waive his right to a jury trial because he believed the trial court wanted him to have a bench trial. Mr. Jack’s argument largely hinges on defense counsel’s statement to the trial court that Mr. Jack “indicated that you wanted to do a bench

trial.” Regardless of what Mr. Jack may have believed the court wanted him to do, it is clear that this waiver was voluntary. The trial court asked Mr. Jack if his signature was on the jury waiver, and Mr. Jack stated, “Absolutely. Absolutely.” The court also asked if anyone forced or threatened Mr. Jack to sign the waiver, or if anyone promised Mr. Jack anything, and Mr. Jack stated, “Absolutely not. Absolutely not.” Additionally, the trial court asked him if he signed the waiver “of [his] own free will,” and Mr. Jack answered, “Absolutely.” When the court stated it would accept the waiver, Mr. Jack stated without provocation, “I did it of my own free will.” Counsel’s statement that Mr. Jack “indicated” that the court wanted a bench trial does not overcome all of these statements that the jury waiver was voluntary. We find no error in the trial court’s acceptance of Mr. Jack’s jury waiver.

¶ 22

IV. CONCLUSION

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 24 Affirmed.