

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY ALLEN MIDDLETON,

Defendant-Appellant.

UNPUBLISHED

February 22, 2005

No. 251587

Ogemaw Circuit Court

LC No. 02-002058-FC

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction of criminal sexual conduct in the first degree, MCL 750.502b(1)(a), entered after a bench trial, on the ground that his waiver of his right to a jury trial was invalid. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Prior to accepting a waiver of jury, a trial court must advise the defendant in open court of the constitutional right to trial by jury. The trial court must ascertain, by addressing the defendant directly, that the defendant understands the right to trial by jury, and that the defendant voluntarily chooses to waive that right and to be tried by the court. A verbatim record must be made of the waiver proceeding. MCR 6.402(B); *People v Mosly*, 259 Mich App 90, 93; 672 NW2d 897 (2003). We review a trial court's determination that a defendant validly waived his right to a jury trial for clear error. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997).

In the present case, the trial court addressed defendant directly, and ascertained that he understood that he had an absolute right to have a jury trial, that his decision was not prompted by threats or any promises made to him, and that he had discussed the waiver form with counsel. Defendant answered in the affirmative when the trial court inquired if it was his choice to waive his right to have a jury trial. He signed a waiver form after discussing it with counsel. The trial court complied with MCR 6.402(B). The trial court was not required to explain the mechanical differences between a jury trial and a bench trial. *Leonard, supra* at 596. The trial court's questioning was sufficient to allow it to properly ascertain that defendant understood his right to have a jury trial and that he voluntarily waived that right. *Id.*; *People v Shields*, 200 Mich App 554, 560; 504 NW2d 711 (1993). Furthermore, defendant's assertion, that scheduling concerns and the fact that he had been incarcerated for several months unduly influenced his decision to

waive his right to a jury trial, is not supported by the record. Defendant was not coerced into waiving his right to a jury trial. *Leonard, supra.*

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio