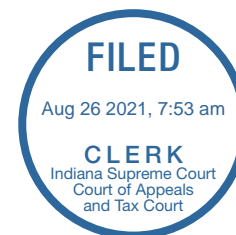


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



---

### ATTORNEY FOR APPELLANT

Timothy P. Broden  
Lafayette, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
  
Courtney Staton  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Michael Dean Crowder,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

August 26, 2021

Court of Appeals Case No.  
20A-CR-2388

Appeal from the Tippecanoe  
Superior Court

The Honorable Laura W. Zeman,  
Judge

The Honorable Bruce Graham,  
Judge pro tem

Trial Court Cause No.  
79D04-1901-F6-84

**Pyle, Judge.**

## Statement of the Case

[1] Michael Crowder (“Crowder”) was convicted, following a bench trial held *in absentia*, of Level 6 felony possession of methamphetamine.<sup>1</sup> On appeal, Crowder argues that he did not waive his right to a jury trial. Concluding that Crowder waived his right to a jury, we affirm his conviction.

[2] We affirm.

## Issue

Whether Crowder waived his right to a jury trial.

## Facts

[3] On January 23, 2019, the State charged Crowder with Level 6 felony possession of methamphetamine. At the initial hearing held the following day, Crowder was advised that he had a right to a jury trial. Initially, Crowder’s jury trial was scheduled for April 11, 2019. However, after several motions for continuances filed by both parties, Crowder’s jury trial was eventually scheduled for February 13, 2020. At the final pretrial conference on January 28, 2020, Crowder waived his right to a trial by jury.<sup>2</sup> The “report to the court” document from the

---

<sup>1</sup> IND. CODE § 35-48-4-6.1.

<sup>2</sup> In his notice of appeal, Crowder requested the transcript of the January 28 hearing. On March 10, 2021, the court reporter filed a notice of completion of transcript. The transcript of the hearing held on January 28 was not included. On April 7, 2021, this Court ordered the court reporter to file the missing transcript within twenty (20) days. Thereafter, the court reporter filed an affidavit stating that she could not locate a recording

hearing includes a handwritten notation that states “set for bench trial; waive jury.” (App. Vol. 2 at 82). The document is signed by Crowder, his trial counsel, and the deputy prosecutor. The Chronological Case Summary (“CCS”) contains several entries indicating that Crowder had “waived JT 1/28/20.” (App. Vol. 2 at 12, 13, 16).

[4] After two more continuances, Crowder’s case proceeded to a bench trial on June 3, 2020.<sup>3</sup> Crowder failed to appear. Immediately before the trial began, the following exchange occurred:

[Defense Counsel]: No, [Crowder] is not yet here your honor. I can report I’ve been in contact with him. He is aware of today’s date.

The Court: Okay, I reviewed the docket sheet in this case. Has there been a waiver by the defendant of jury trial?

[Defense Counsel]: There was.

The Court: There was?

\* \* \*

The Court: He did it personally, I mean in Court?

[Defense Counsel]: He did it in person on the record. Mr. Prosecutor, is that my memory?

[State]: I believe so. It’s been a little while[,] but I believe so.

---

of the January 28 hearing. This Court relieved the court reporter of the obligation to prepare the January 28 hearing transcript.

<sup>3</sup> In a May 2020 order denying Crowder’s motion to continue the bench trial, the trial court stated that “[o]n January 28, 2020, counsel and the defendant appeared in person. The defendant waived jury trial personally and in writing.” (App. Vol. 2 at 69).

[Defense Counsel]: Pre-trial in February.

The Court: I'll take your word on that because we're all wasting our time if he didn't do that. And we can't do it now.

[Defense Counsel]: My memory is there was a pre-trial I believe in February, your honor, although I'm not sure what day it is, I believe it is April (inaudible). My memory is that there was an in[-]person waiver.

The Court: Are you looking at the docket sheet?

Court Reporter: Oh no, did you need me to?

The Court: Yes. What date was it counsel? Did you say?

\* \* \*

[Defense Counsel]: Maybe it was the 28<sup>th</sup> day of January.

[State]: Let's see, I have something filed on the 29<sup>th</sup> of January. That's when a bench trial was [set] and the note is waive jury on it your honor and that was filed on the docket January 29<sup>th</sup>. The hearing was January 28<sup>th</sup> of 2020.

\* \* \*

The Court: Okay, so, it certainly appears that he has waived his right to trial by jury back in January.

(Tr. 57-58). The trial court then proceeded to try Crowder *in absentia*. The trial court found Crowder guilty as charged.

[5] At the November 2020 sentencing hearing, the trial court sentenced Crowder to 545 days with 180 days executed in the Tippecanoe County Jail, and the remaining 365 days were to be executed on community corrections. Crowder now appeals.

## Decision

[6] Crowder argues that he did not waive his right to a jury trial. We begin our analysis by acknowledging that Crowder requested the January 28 hearing transcript. However, Crowder did not use Indiana Appellate Rule 31 to supplement the record following the filing of the court report’s affidavit and this Court’s order relieving the court reporter of the obligation of preparing the January 28 hearing transcript. It is well-settled that the appellant bears the burden of presenting a record that is complete with respect to the issues raised on appeal. *Childress v. State*, 96 N.E.3d 632, 637 (Ind. Ct. App. 2018). Indiana Appellate Rule 31 outlines the procedure for parties to supplement the Clerk’s Record when “no Transcript of all or part of the evidence is available[.]” App. R. 31(A). In such a situation, parties may “prepare a verified statement of the evidence from the best available sources, which may include the party’s or the attorney’s recollections[.]” and submit it to the trial court for certification. *Id.* Because it is Crowder’s burden to provide a record adequate for review, and he has failed to do so, his claim of error is waived. *See Martinez v. State*, 82 N.E.3d 261, 263-64 (Ind. Ct. App. 2017) (explaining that the defendant’s failure to supplement the record after receiving an incomplete transcript resulted in waiver of issue on appeal), *trans. denied*.

[7] Waiver notwithstanding, we will address the merits of Crowder’s argument. He asserts that the “record does not reflect a valid waiver of his right to a trial by jury.” (Crowder’s Br. 6). We disagree.

[8] “The jury trial is a bedrock of our criminal justice system, guaranteed by both Article I, Section 13 of the Indiana Constitution and the Sixth Amendment to

the United States Constitution.”<sup>4</sup> *Horton v. State*, 51 N.E.3d 1154, 1158 (Ind. 2016). “In broad view, federal and Indiana constitutional jury trial rights guarantee the same general protection—a criminal defendant must receive a jury trial, unless he waives it.” *Id.* Waiver of the Indiana constitutional jury trial right must be knowing, voluntary, and intelligent, and waiver of the Sixth Amendment jury trial right must be express and intelligent. *Id.* The Indiana jury trial right provides greater protection because, in a felony prosecution, waiver is valid only if communicated personally by the defendant. *Id.* “A knowing, intelligent and voluntary waiver of a jury trial may be accomplished by a written waiver or in open court.” *McSchooler v. State*, 15 N.E.3d 678, 682 (Ind. Ct. App. 2014) (quoting *Kimball v. State*, 474 N.E.2d 982, 986 (Ind. 1985)). The validity of a jury trial waiver is a question of law, which we review *de novo*. *Horton*, 51 N.E.3d at 1157.

[9] Our review of the record reveals that Crowder waived his jury trial right. For example, the CCS contains several entries indicating that Crowder had “waived JT 1/28/20.” (App. Vol. 2 at 12, 13, 16). A review of the record further reveals that the report to the court document from the January 28 hearing, which is signed by Crowder, his trial counsel, and the deputy prosecutor, indicates that Crowder had waived his jury trial right during that hearing. “[I]t

---

<sup>4</sup> The right to a jury trial is further guaranteed by INDIANA CODE § 35-37-1-2, which provides that “[t]he defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court. Unless a defendant waives the right to a jury trial under the Indiana Rules of Criminal Procedure, all other trials must be by jury.”

is well settled that the trial court speaks through its CCS or docket[.]” *City of Indianapolis v. Hicks*, 932 N.E.2d 227, 233 (Ind. Ct. App. 2010), *reh’g denied, trans. denied*. Moreover, on the date of Crowder’s trial, the trial court inquired whether Crowder had made an in-person waiver of the jury trial right.

Crowder’s counsel, along with the State, informed the court that Crowder had made such a waiver, which the trial court had accepted. Under these facts, we conclude that the record is sufficient to establish that Crowder knowingly, intelligently, and voluntarily waived his right to trial by jury. Accordingly, we affirm Crowder’s conviction.

[10] Affirmed.

Bailey, J., and Crone, J., concur.