

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Victoria Bailey Casanova
Casanova Legal Services, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Evan Matthew Comer
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Christopher A. White,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 10, 2021

Court of Appeals Case No.
20A-CR-1246

Appeal from the Johnson Superior
Court

The Honorable Peter D. Nugent,
Judge

Trial Court Cause No.
41D02-1809-F1-6

Weissmann, Judge.

[1] Christopher White appeals his conviction on three felony counts, arguing that he did not personally waive his right to jury trial, rendering his purported waiver invalid. Finding that White's waiver was personal and therefore valid, we affirm White's convictions.

Facts

[2] White was charged with three crimes: child molesting, a Level 1 Felony; rape, a Level 3 felony; and sexual battery, a Level 6 felony. At a preliminary hearing, White's counsel told the trial court that White wanted to waive trial by jury. White and the trial court then shared the following exchange:

COURT: Okay. You understand that when you're charged with a crime, the State and Federal constitution [sic] guarantees you certain rights. You understand that? I went over those at your initial hearing, and we're going to go over some of them today. The first and foremost, you have the right to a public and speedy trial by jury. You understand that? You understand what a jury trial is? Okay. In a jury trial, twelve people will sit in that jury box and some alternates, listen to the State's evidence and determine what, make a determination to whether the State has met their burden of proof.

A: Uh-huh.

COURT: You understand that? The burden of proof is beyond a reasonable doubt. Okay? Now, you have an absolute right to have a jury determine whether or not you're guilty based on the facts that are presented by the State. You understand that?

A: Yes.

COURT: Any question about that?

A: No.

COURT: Okay. You also understand that if you so choose and the State agrees you can waive your right to trial by jury. And a Judge, being me, will listen to the evidence, make a determination as to whether the State has met their burden of proof, and I will make the determination as to guilty or innocence based on the State's case, in lieu of a jury trial, you understand that?

A: Yes Your Honor [sic].

COURT: Now you have the right to a jury, but you can waive that and if the State agrees you can me hear it [sic]. You understand that?

A: Yes Your Honor.

COURT: It's my understanding from [your attorney] that that's what you want to do, is that correct? Okay, so do you have any questions about waiving your right to trial by jury? Okay, I'm not trying to talk you out of anything . . .

A: I am.

COURT: . . . I just want to make sure you understand, because I don't want us to come back in later and say "hey wait a minute, I didn't understand", I just want to make sure you understand it, because I would want somebody in my shoes, if I'm in your shoes to understand everything I'm doing. Okay? So I will show there is a knowing and intelligent waiver of trial by jury, and that we will vacate the jury trial date in this and set this matter for a bench trial.

Supp. Trans. Vol. IV, pp. 4-6.

[3] After this exchange, the court set a bench trial date with counsel. At bench trial, White was convicted on all counts. He now appeals, arguing his jury trial waiver was invalid because it was not personal.

Discussion and Decision

[4] Both the United States and Indiana Constitutions guarantee the right to a jury trial. *See* U.S. Const. amend. VI; Ind. Const. art. I § 13. Criminal defendants in Indiana may waive this right but must do so personally, either verbally or in writing. *Horton v. State*, 51 N.E.3d 1154, 1158-59 (Ind. 2016). White argues that he did not personally waive his right to trial by jury, rendering his waiver invalid and requiring reversal of his convictions. We hold that White’s waiver was indeed personal and affirm the trial court.

[5] Indiana’s personal waiver requirement is rooted in statute, which confers on the defendant the authority to waive jury trial. *Id.* at 1158. The relevant statute states, “The 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.” Ind. Code § 35-37-1-2. Our Supreme Court has interpreted this requirement strictly, refusing to find waiver where circumstances only “imply” that it was the defendant’s choice. *Horton*, 51 N.E.3d at 1159. In refusing to dilute the personal waiver requirement in *Horton*, the Court observed that the requirement “eliminates an intolerable risk” of proceeding to a bench trial

against the defendant's will and there were no "urgent reasons" to disturb standard practice. *Id.* at 1160.

[6] Despite our strict application of the personal waiver requirement, White's waiver was not invalid. After describing the implications of waiver, the trial court asked, "It's my understanding from [your attorney] that that's what you want to do, is that correct? Okay, so do you have any questions about waiving your right to trial by jury?" White responded, "I am." Supp. Tr. Vol. IV, p. 6. Although White's affirmative response followed two questions, it can only reasonably be interpreted as assent to jury trial waiver—that is, "I am [waiving my right to jury trial]." Had White intended "I am" to mean he had questions about his rights, we presume he would have asked those questions. He did not. *Id.*

[7] White argues his assent must be much clearer than what the record indicates. His argument relies heavily on *Horton* and *Kellems v. State*, 849 N.E.2d 1110 (Ind. 2006), which are easily distinguished. In both cases, the defense attorney alone requested a bench trial. *Horton*, 51 N.E.3d at 1156; *Kellems*, 849 N.E.2d at 1112. No one engaged in any on-the-record colloquy with either defendant, nor did either defendant waive their rights in writing. *Horton*, 51 N.E.3d at 1156; *Kellems*, 849 N.E.2d at 1112. In contrast, the trial court here engaged in an extensive colloquy with White about the nature of his rights. Supp. Tr. Vol. IV, p. 4-6.

- [8] Additionally, White’s is not the type of “implied” waiver *Horton* rejects. 51 N.E.3d at 1159. In *Horton*, the State argued that waiver was implied because the defendant had just had a jury trial in another matter “and thus was ‘aware’ of the right his attorney waived on his behalf.” *Id.* In this case, White participated in a colloquy about his rights and assented to waiving them. His waiver, unlike that rejected by *Horton*, was direct, not implied. Supp. Tr. Vol. IV, p. 4-6.
- [9] Finding that White’s jury trial waiver was personal and therefore valid, the trial court is affirmed.

Mathias, J., and Tavitas, J., concur.