

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1460

September Term, 2014

JONATHON THOMAS VEASEY

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Krauser, C.J.

Filed: May 6, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a bench trial in the Circuit Court for Worcester County, Jonathan Veasey, appellant, was convicted of second-degree assault and sentenced to a term of 90 days of imprisonment, which was suspended, and two years of probation. On appeal, Veasey presents a single question for our review: “Should this Court vacate Mr. Veasey’s conviction because the lower court accepted [his] waiver of the right to a jury without determining and announcing on the record that the jury trial waiver was knowing and voluntary?” This issue, however, was not preserved for our review and therefore we shall affirm the judgment of the circuit court.

BACKGROUND

Appellant was charged with second-degree assault in connection with a domestic dispute, the facts of which are not relevant to the issue before us. When, before the commencement of the trial, Veasey’s counsel indicated that Veasey wished to waive his right to a jury trial, the following exchange ensued:

[DEFENSE COUNSEL]: I represent Mr. Veasey. We want to plead not guilty to the only charge, which is assault, but we want the Court to hear the case without a jury.

THE COURT: All right. It is my duty to advise you that you have the right to plead not guilty and have this case heard by a jury. A jury trial consists of 12 people. You and your lawyer would get to participate in their selection. Before a jury could find you guilty, they would have to be convinced you are guilty beyond a reasonable doubt. All 12 would have to be convinced that way before you could be convicted.

Did you know that?

[THE DEFENDANT]: Yes, Your Honor.

THE COURT: Do you want a jury trial?

[THE DEFENDANT]: No, Your Honor.

THE COURT: All right. The plea is not guilty. You can be seated.

Appellant did not object to the court's acceptance of the waiver of the right to a jury and the case proceeded to trial.

DISCUSSION

Veasey contends that the circuit court erred in accepting his waiver of the right to be tried by a jury because there was no announcement and determination on the record that the waiver was knowing and voluntary. He does acknowledge, however, that there was no objection to the court's acceptance of his waiver of a jury trial. Nonetheless, Veasey requests that this Court exercise its discretion under Maryland Rule 8-131(a) and review this unpreserved claim, or, in the alternative, find that his attorney rendered ineffective assistance of counsel for failing to preserve the issue for appeal.

A criminal defendant's right to a jury trial is a fundamental right guaranteed under both the United States and Maryland Constitutions. *See* U.S. CONST. amend. VI, XIV, § 1; Md. Declaration of Rights, Art. 5, 21, 24. But, a defendant may elect to waive this right pursuant to Maryland Rule 4-246(b). That rule provides:

A defendant may waive the right to a trial by jury at any time before the commencement of trial. The court may not accept the waiver until, after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, *the court determines and announces on the record that the waiver is made knowingly and voluntarily.* (Emphasis added).

The “determine and announce” requirement is “in place to ensure that the waiver procedure is not discharged as a mere matter of rote, but, instead, is undertaken with sound and advised discretion, to conclude that the defendant’s waiver is or is not knowing and voluntary.” *Id.* (citations and internal quotation marks omitted). Although the failure to comply with this requirement constitutes reversible error, it must nonetheless be preserved for appellate review by a contemporaneous objection. *Nalls v. State*, 437 Md. 674, 693 (2014). As appellant acknowledges, no objection was made to the circuit court’s acceptance of his waiver of the right to a jury trial, and thus, this issue was not preserved for our review.

Appellant, nonetheless, urges this Court to exercise its discretion under Rule 8-131(a) and consider this issue. Rule 8-131(a) provides:

Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue *if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.* (Emphasis added).

As *Valonis v. State*, 431 Md. 551 (2013), and its progeny have made the requirements for the acceptance of a jury trial waiver abundantly clear, we need not address this issue to provide guidance to the trial court. Moreover, given that “[t]he claim of ineffective assistance of counsel [] is generally best asserted by way of a postconviction petition,” *Ingram v. State*, 179 Md. App. 485, 503 (2008), and given that the trial record reveals nothing as to why counsel did not object to the court’s failure to determine and announce, a post-conviction proceeding is the appropriate venue for appellant’s claim of ineffectiveness of counsel.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**