

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING, AND IF FILED, DETERMINED**

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY  
APPELLATE DIVISION**

**RICKY WINFRED REDDEN,  
Appellant,**

**UCN: 512020AP000004APAXWS**

**Appeal No.: 20-AP-4**

**v.**

**Lower No.: 19-MM-4817**

**STATE OF FLORIDA,  
Appellee.**

\_\_\_\_\_/

On appeal from Pasco County Court,  
Honorable Debra Roberts

Joseph Anthony Manzo, Esq.,  
for Appellant

Jennifer Counts,  
Assistant State Attorney,  
for Appellee.

**ORDER AND OPINION**

Appellant argues that the trial court erred by waiving his right to a jury trial on his trial counsel's request without first conducting a colloquy to determine if Appellant himself waived the right and to determine whether the waiver was knowing and intelligent.<sup>1</sup> Appellee properly concedes error. Appellant's judgment and sentence must be reversed the case remanded for a new trial.

**STATEMENT OF THE CASE AND FACTS**

Appellant was charged by Information with Domestic Battery. During the calendar call on the day before trial, Appellee requested a bench trial due to complications caused by the alleged victim checking herself into a rehabilitation facility. Counsel for Appellant stated that he agreed to Appellee's request because Appellee had indicated that a jail

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<sup>1</sup> Because the waiver of jury trial issue is dispositive, this Court does not address Appellant's second argument that the trial court erred by failing to conduct a *Richardson* hearing before sustaining Appellee's objection to the admission of photographs on the basis that they were not discovered to Appellee prior to trial.

sentence would not be sought of Appellant was convicted. Appellee stipulated on the record to a no jail sentence. The trial court certified no jail and set the case for trial the next day. The trial court did not inquire into whether Appellant himself agreed to waive his right to a jury trial or whether the waiver was knowing and intelligent.

After the bench trial, the trial court found Appellant guilty of domestic battery. The trial court withheld adjudication and sentenced him to 11 months and 27 days of probation. Appellant timely-appeals.

### **STANDARD OF REVIEW**

The waiver of the right to a jury trial involves a pure question of law which is reviewed de novo. *Williams v. State*, 10 So. 3d 660, 661 (Fla. 4th DCA 2009) (citing *Jones v. State*, 966 So. 2d 319, 326 (Fla. 2007)).

### **LAW AND ANALYSIS**

Appellant argues that the trial court erred by accepting his trial counsel's oral waiver of a jury trial without conducting a colloquy with Appellant himself to determine whether the waiver was knowing and intelligent. Appellee properly concedes error.

Florida Rule of Criminal Procedure 3.260 provides that "a defendant may in writing waive a jury trial with the consent of the state." A waiver can also be made orally in court. *Sansom v. State*, 642 So. 2d 631, 632 (Fla. 1st DCA 1994). However, if there is an oral waiver, the waiver is not valid unless and until the trial court conducts a colloquy with the defendant himself to establish that the waiver is knowing and voluntary. *Id.* (citing *Tucker v. State*, 559 So. 2d 218 (Fla. 1990)). Failure to conduct this colloquy is reversible error. *Id.* This is true even if the defendant's trial counsel orally waives the defendant's right to a jury trial in the defendant's presence and the defendant remains silent on the matter. *Id.* A no jail order or certification does not remove the colloquy requirement. *Id.*

The facts in this case are similar to *Sansom*. As in *Sansom*, Appellant's trial counsel orally waived Appellant's right to a jury trial after Appellee agreed that no jail time would be imposed if there was a conviction. As in *Sansom*, Appellant sat quietly while this occurred. As in *Sansom*, the trial court accepted trial counsel's oral waiver without conducting a colloquy with Appellant to determine whether the waiver was knowing and intelligent. Accordingly, the trial court erred. Appellant's judgment and sentence must be reversed and the case remanded for a new trial.

It is therefore ORDERED and ADJUDGED that the trial court's order granting Appellee's motions to suppress is hereby REVERSED and the case REMANDED for proceedings consistent with this Opinion.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this \_\_\_\_ day of \_\_\_\_\_, 2020.

Original Order entered on December 29, 2020, by Circuit Judges Daniel D. Diskey, Kimberly Campbell, and Lauralee Westine.

*Copies to:*

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**Staff Attorney**