

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

GARY A. PUGH

Defendant-Appellant

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JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. Sheila G. Farmer, J.

Hon. Julie A. Edwards, J.

Case No. 02CA00010

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Municipal Court, Case No.  
01CRB02207

JUDGMENT:

Vacated and remanded

DATE OF JUDGMENT ENTRY:

August 12, 2002

APPEARANCES:

For Plaintiff-Appellee

HARVEY H. SHAPIRO  
40 West Main Street, 4<sup>th</sup> Floor  
Newark, OH 43055

Newark, OH 43055  
*Farmer, J.*

For Defendant-Appellant

ANDREW T. SANDERSON  
21 West Church Street, Suite 201

{¶1} On October 10, 2001, appellant, Gary Pugh, was charged with one count of assault in violation of R.C. 2903.13.

{¶2} A bench trial commenced on December 5, 2001. Appellant represented himself. At the conclusion of the trial, the trial court found appellant guilty and sentenced him to six months in jail.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶4} “THE TRIAL COURT COMMITTED HARMFUL ERROR IN ALLOWING THE BENCH TRIAL, WHICH LEAD TO THE CONVICTION OF THE DEFENDANT-APPELLANT, TO PROCEED WITH THE DEFENDANT-APPELLANT APPEARING PRO SE WHERE THE RECORD FAILS TO ESTABLISH THAT A KNOWING AND INTELLIGENT WAIVER OF TRIAL COUNSEL WAS EXECUTED BY THE DEFENDANT-APPELLANT.”

II

{¶5} “THE TRIAL COURT COMMITTED HARMFUL ERROR IN SENTENCING THE DEFENDANT-APPELLANT TO A PERIOD OF INCARCERATION WHEN THE RECORD FAILS TO DEMONSTRATE THAT THE DEFENDANT-APPELLANT EXECUTED A KNOWING AND INTELLIGENT WAIVER OF HIS RIGHT TO COUNSEL.”

I, II

{¶6} Appellant’s two assignments of error challenge the commencement of the bench trial and his subsequent conviction and sentence based upon the fact that he was unrepresented by counsel and the record does not establish that he executed a knowing and intelligent waiver of his right to counsel.

{¶7} In its response brief at 1, appellee, the State of Ohio, concedes the issue. Therefore the assignments of error are granted. The conviction and sentence are vacated and the case is remanded for retrial.

{¶8} The judgment of the Municipal Court of Licking County, Ohio is hereby vacated and remanded.

By Farmer, J.

Gwin, P.J. and

Edwards, J. concur.

topic: no knowing & intelligent waiver of right to counsel, State concedes issue.