Criminal Non-Jury Trials

North Carolina Constitution Article I, Section 24

Right of jury trial in criminal cases. No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

North Carolina Constitution Article I, Section 24

Limitation codified in NCGS §15A-1201

North Carolina last state which did not allow waiver of jury trials in criminal cases

North Carolina Constitution Article I, Section 24 (amended 2014)

Right of jury trial in criminal cases.

No person shall be convicted of any crime but by the unanimous verdict of a jury in open court, **except** that a person accused of any criminal offense for which the **State is not seeking a sentence of death in superior court may, in writing or on the record in the court and with the consent of the trial judge, waive jury trial, subject to procedures prescribed by the General Assembly. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo. (2013-00, s. 1.)**

Right to waive jury trial <u>Article I, Section 24 (amended 2014)</u>

- State not seeking sentence of death
- In writing or on the record
- With the consent of the trial judge
- Subject to procedures prescribed by General Assembly

NCGS §15A-1201(a)-(e)

N.C. General Assembly amended statute to set out procedures for waiving a jury trial

- Effective 12/1/14-arraignments on or after this date
- Effective 10/1/15-waivers on or after this date

NCGS §15A-1201

effective 12/1/14

Permitted waiver by Defendant if:

- State not seeking sentence of death
- Made knowingly and voluntarily
- In writing or on the record
- With the trial judge's consent

NCGS §15A-1201

Effective October 1, 2015

- applicable to defendants waiving their right to trial by jury on or after October 1, 2015
- clarification of law and fact to be decided
- procedure for joined defendants
- method of providing notice of intent to waive, and when
- procedure for judicial consent to waiver
- procedure to revoke waiver

requirements for resolving motions to suppress

Procedures to waive jury trial NCGS 15A-1201

- Notice of intent to waive
- State schedule hearing on waiver
- Judicial consent to jury waiver

Step 1

Notice of intent to waive by one of three methods:

- Stipulation
- File written notice of intent to waive with court

Give notice on the record in open court

Stipulation NCGS § 15A-1201(c)(1)

- may be conditioned on each party's consent to the trial judge
- signed by both the State and the defendant
- served on the counsel for any co-defendants.

Filing a written notice with court NCGS §15A-1201(c)(2)

- Serving that notice:
 - -on the State
 - -on counsel for any co-defendants
- Within the earliest of 10 working days after:
 - (i) arraignment,
 - (ii) service of a calendar setting under G.S. 7A-49.4(b), or

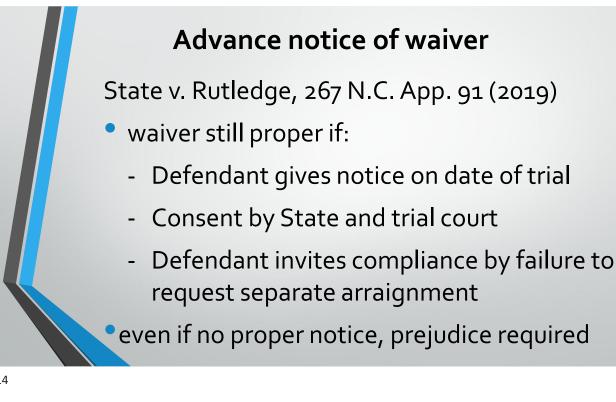
(iii) setting of a definite trial date under G.S. 7A-49.4(c).

Waive on the record in open court NCGS §15A-1201(c)(3)

By the earlier of :

the time of arraignment (i)

calling of the calendar under G.S. 7A-49.4(b) (ii) or G.S. 7A-49.4(c).



Step 2 State schedule hearing NCGS §15A-1201(d)(1)

- matter to be heard in open court
- before the trial judge who will actually preside over the trial

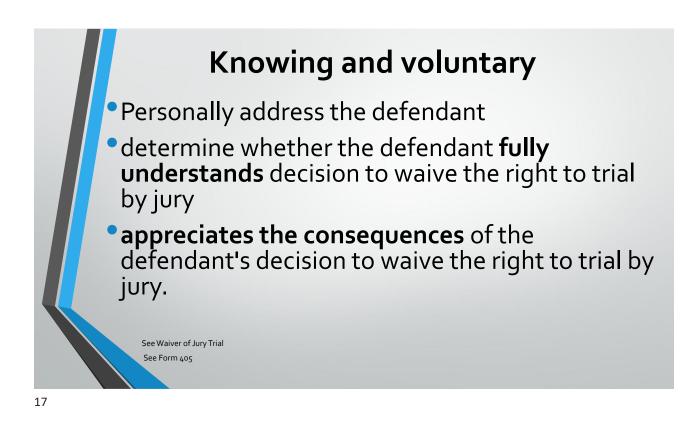
Note: No time frame in which State must set matter for hearing

15



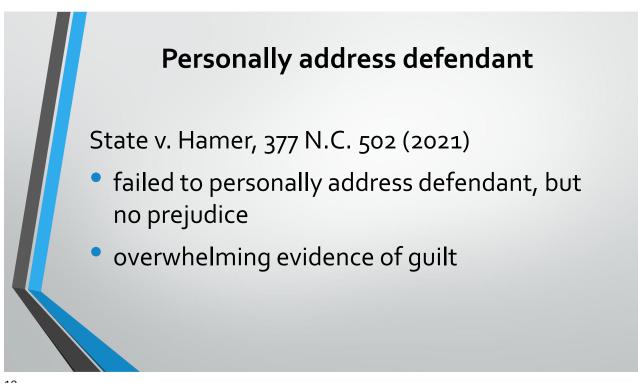
Trial judge shall:

- Address defendant personally to determine fully understands decision and appreciates consequences
- Determine State's position
- Consider arguments by State and defendant



STATE OF NORTH CAROLINA	File No.	FINDINGS OF FACT AND CONCLUSIO	
County	Additional File No.(s) In The General Court Of ,	Following a hearing on this matter, I, the undersigned judge, who will preside over th State objects to the waiver, and, if so, why, and after considering the arguments pres	
	Superior Court Divisi	the defendant's waiver of a jury trial, find the following: (check all that apply)	
STATE VERSUS	WAIVER OF JURY TRIAL	The above-named defendant is charged with a criminal offense for which the S The defendant has provided notice of his or her intent to waive a jury trial in ac stipulation.	
ACKNOWLEDGMENT OF F	RIGHTS AND WAIVER		
1. I, the above-named defendant, hereby declare that		3. The defendant has been fully informed in open court of the charges against hir	
a. I have provided notice of my intent to waive a jury trial in accordance with G.S. 15A-1201(c) by (choose one) in tip mitten notice, include on the record in open court. b. I have been fully informed in open court of the charges against me, the nature of the proceedings against me, c. I have been advised by the court that I have the right to be tried by a jury of twelve (12) of my peers, that I may partic selection of the motors of the jury, and that jury verdicits must be unanimous, d. I have been advised by the court that I have the right to be tried by a jury of twelve (12) of my peers, that I may partic selection of the metares of the jury, and that jury verdicits must be unanimous, d. I have been advised by the court that I have in up in triat, the judge above will decide my guilt or innocence, and the j will determine any aggravating sentencing factors in my case, and e. I fully understand and appreciate the consequences of my decision to waive the right to be tried by a jury. 2. Other:		each charge, and the nature of the proceedings against him or her.	
		 The defendant has been advised of his or her right to be tried by a jury of twelv participate in the selection of the members of the jury, and that jury verticts mu The defendant has been advised that if he or she waives a jury trial, the judge the judge alone will determine any aggravating sentencing factors in the case. The defendant fully understands and appreciates the consequences of his or h requested such a waiver, as indicated in the ACKNOWLEDGMENT OF RIGHT 	
1. Sec		7. Other:	
3. In light of the foregoing, I, the above-named defendant, freely, volunta			
SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME	te		
	gnature Of Defendant	In light of the foregoing findings of fact, the undersigned judge concludes that the de is is appropriate.	
Deputy CSC Assistant CSC Clerk Of Superior Court			
CERTIFICATION BY LAWY		ORDER	
I hereby certify that I have fully explained to the defendant the charges ag charge, and the nature of the proceedings against him or her; the defend and to participate in the selection of the jury; that jury verdicts must be un	ant's right to be tried by a jury of twelve (12) of his c nanimous; and that if the defendant waives a jury tri	In light of the foregoing findings of fact and conclusions of law, the undersigned judg 1. The court consents to the defendant's waiver of the right to trial by jury, and the	
alone will decide the defendant's guilt or innocence, and the judge alone ate Name Of Lawyer For Datendant (type or pint)	Signature Of Lawyer For Defendant	accordance with that waiver, and as otherwise required by law. 2. The court does <u>not</u> consent to the defendant's waiver of the right to trial by jury proceed as required by law.	

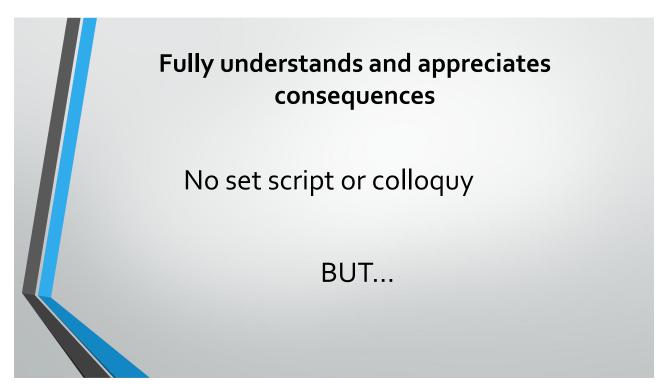
NOTE: "Once waiver of a jury trial has been made and consented to by the trial judge pursuar



State v. Rollinson 383 N.C. 528 (2022)

Not abuse of discretion to accept waiver when

- Defense counsel responded instead of defendant who wished to waive
- Defendant signed jury trial waiver form under oath



No set script or colloquy

State v. French, 280 NC. App. 300 (2021)(unpublished)

State v. Portillo-Tobias, 284, N.C. App. 771 (2022)(unpublished)

BUT...

State v. Cranford, 279 N.C. App. 512 (2021)(unpublished)

State v. Rager, 294 N.C. App. 482 (2024)

State v. Swink 252 N.C. App. 218 (2016)

- sufficient colloquy
- in writing and in open court
- signed waiver form which stated rights given

Determine State's position

Determine whether the State objects to the waiver and, if so, why.

Note: State's consent not required

Consider arguments by State and defendant

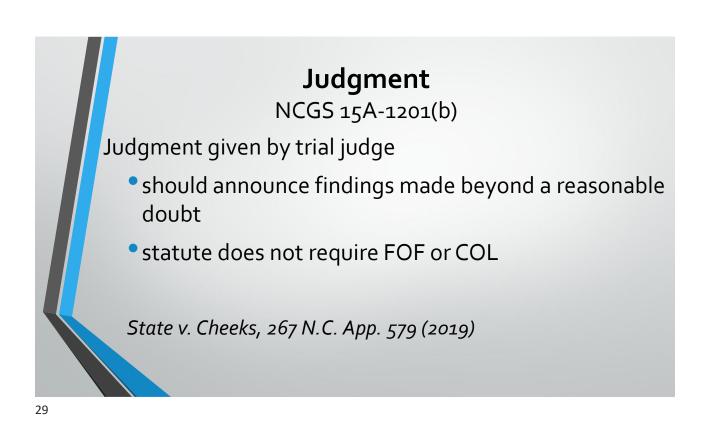
Consider the arguments presented by both the State and the defendant regarding the defendant's waiver of a jury trial.

Decision on Waiver

The decision to grant or deny the defendant's request for a bench trial <u>shall</u> be made by the judge who will actually preside over the trial.

Scope of Waiver of Jury Trial NCGS §15A-1201(b)

- Whole matter of law and fact heard by trial judge
- Determination of sentencing factors heard by trial judge
- Judgment given by court



Revocation of Waiver NCGS §15A-1201(e)

• within 10 business days of initial notice.

- at other times, in discretion of trial judge, if no unreasonable hardship or delay to the State.
- once revocation granted, decision is final and binding.

10-day revocation of waiver

State v. Rutledge, 267 N.C. App. 91 (2019)

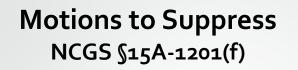
- 10 days, if waiver in advance of trial
- No cooling off period-cause unnecessary delays

Co-defendants

NCGS §15A-1201(b)

If joinder of co-defendants: shall be a jury trial UNLESS all defendants waive the right to trial by jury OR

the court, in its discretion, severs the case.



The court shall make written findings of fact and conclusions of law.

State v. Jones 248 N.C. App. 418 (2016)

Motion in Limine:

Same judge could hear and preside over trial because:

- Defendant chose to waive jury trial and proceed with a bench trial
- Trial court is presumed to disregard inadmissible evidence

