FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2025-1438

ZIYERE GIAMONI MCCANTS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the County Court for Escambia County.
Ronald Scott Ritchie, Judge.

November 25, 2026

TREADWELL, J.

Following a bench trial, Appellant Ziyere McCants was found guilty of driving without a valid driver's license. He raises four issues on appeal, but we write only to address his unpreserved argument that the trial court deprived him of a jury trial to which he was entitled under section 918.0157, Florida Statutes (2025). Because we conclude that the trial court's noncompliance with section 918.0157 was not fundamental error, we affirm.

I.

Following a traffic stop, Appellant was charged with driving without a valid driver's license and giving a false name to a law enforcement officer. At a pretrial hearing with Appellant in

attendance, counsel for both parties represented that the case was ready for trial. The trial court set it for trial, and the parties went off the record. The State then went back on the record and asked if Appellant could be returned to the courtroom so that the State could ask "if we could set this for a judge trial." After another short recess, Appellant's counsel introduced Appellant on the record, and the State asked to set the case for a bench trial, explaining that it would enter a nolle prosequi on the second charge: "If we could set this for a judge trial, the State will announce a nolle pros on Count 2." Appellant's counsel made no objection, but neither does the record contain an express waiver of the jury trial. The trial court proceeded to set the case for a bench trial without any further discussion or pronouncement.

The trial court ultimately found Appellant guilty of driving without a valid driver's license but acknowledged that the evidence made the decision "a very close one." It did not sentence Appellant to prison. Rather, it withheld adjudication and ordered Appellant to pay court costs and a $100 fine.

On appeal, the State acknowledges the absence of an express jury trial waiver but argues that, because the jury trial right is only statutory in this case, the trial court's error was harmless in view of its sentence of non-imprisonment. Appellant contends that the lack of a jury trial waiver made the error per-se reversible.

II.

Not all criminal offenses require a jury trial. Under both the state and federal constitutions, the prosecution of a "petty" offense with a penalty of no more than six months' imprisonment and a fine of no more than $500 does not require a jury trial, unless the nature of the offense otherwise makes it a serious crime. *Whirley v. State*, 450 So. 2d 836, 839 (Fla. 1984) (recognizing the petty-crime exception to the constitutional right to a jury trial); *Reed v. State*, 470 So. 2d 1382, 1384 (Fla. 1985) (same).

The offense of driving without a license is a second-degree misdemeanor for a first conviction. § 322.03(1), Fla. Stat. (2025). As such, it is punishable by a term of imprisonment up to 60 days and a fine up to $500. §§ 775.082(4)(b), 775.083(1)(e), Fla. Stat. (2025). Because of these limitations on the available punishment,

there is no constitutional right to a jury trial for such offense. *Whirley*, 450 So. 2d at 839; *cf. Barrett v. State*, 421 So. 3d 523, 523 n.1 (Fla. 3d DCA 2025) (no constitutional right to a jury trial for the second-degree misdemeanor of driving with a suspended license).

The Florida Legislature, however, enacted section 918.0157, Florida Statutes, which extends the right to a jury trial to any prosecution for an offense punishable by any term of imprisonment. Ch. 86–115, Laws of Fla. (codified at § 918.0157, Fla. Stat.). But even under section 918.0157, a trial court may still proceed without a jury trial for an offense punishable by imprisonment of six months or less if, when setting the case for trial, the court announces that in the event of a conviction (1) a sentence of imprisonment will not be imposed and (2) the defendant will not be adjudicated guilty. § 918.0157, Fla. Stat.[1] Accordingly, Appellant had a statutory right to a jury trial for the charge of driving without a license, unless the trial court followed the statutory procedure by making the proper, pre-trial announcement pursuant to section 918.0157.

Here, the record contains no trial-court announcement in accordance with section 918.0157. Nor does the record reflect that Appellant waived his right to a jury trial. Thus, the trial court deprived Appellant of his right to a jury trial under section 918.0157 by holding a bench trial in this case. We must therefore consider the nature of this error to determine whether it is reversible error.

For deprivations of the *constitutional* right to a jury trial, the error is fundamental and requires reversal. *See Blair v. State*, 698 So. 2d 1210, 1218 (Fla. 1997) (citing *Dumas v. State,* 439 So.2d 246, 252 n. 8 (Fla. 3d DCA 1983) (en banc) for the proposition that because defendants have a fundamental right to a jury trial,

[1] This option to proceed without a jury trial is not available for any offense for which a jury trial is otherwise guaranteed under the state or federal constitution. § 918.0157, Fla. Stat.; *see, e.g.*, *Erb v. State*, 415 So. 3d 915 (Fla. 1st DCA 2025) ("Defendants charged with any category of criminal mischief have a right to a jury trial under the Florida and United States Constitutions.").

infringement of that right is fundamental error); *Jean-Charles v. State*, 428 So. 3d 209, 212 (Fla. 3d DCA 2026) ("An infringement on the right to a jury trial constitutes per se reversible error, or fundamental error."); *Baker v. State*, 386 So. 3d 141, 142 (Fla. 4th DCA 2024) ("The failure to obtain a valid waiver of a defendant's right to jury trial is not only per se reversible error, but also constitutes fundamental error.").

For deprivations of the *statutory* right to a jury trial, this Court has never addressed the nature of the error. However, the Third District recently concluded in *Barrett v. State* that a trial court's failure to follow the procedure in section 918.0157 before conducting a bench trial was not fundamental error. 421 So. 3d at 523. It affirmed the trial court because defense counsel waived trial by jury and because the challenged disposition and sentence were within the parameters of section 918.0157. *Id.* Relying on *Barrett*, the State contends here that violations of section 918.0157 do not amount to fundamental error.

In another jury-right context, Florida courts have held that the statutory right to a twelve-person jury in capital cases is not a fundamental right, unlike the constitutional right to a six-person jury. *State v. Griffith*, 561 So. 2d 528, 530 (Fla. 1990); *Jimenez v. State*, 167 So. 3d 497, 499 (Fla. 3d DCA 2015); *Smith v. State*, 857 So. 2d 268, 270 (Fla. 5th DCA 2003).[2] Thus, a trial court's failure to comply with the twelve-person statutory requirement is not fundamental error. *Jimenez*, 167 So. 3d at 499. Moreover, the preservation requirement applies and precludes appellate review of any such error not raised below. *Id.*; *see also Smart v. State*, 695 So. 2d 448, 450 (Fla. 1st DCA 1997) (explaining that a defendant must preserve the issue by objecting to the six-person jury in the trial court); *Howell v. State*, 687 So. 2d 1339, 1340 (Fla. 1st DCA 1997) (same).

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[2] Although the United States Supreme Court previously upheld the constitutionality of Florida's six-person jury in *Williams v. Florida*, 399 U.S. 78 (1970), the Court is currently reconsidering its constitutionality in *Kian v. Florida*, No. 25-6623 (petition for cert. granted June 15, 2026) (reviewing *Kian v. State*, 421 So. 3d 439 (Fla. 4th DCA 2025)).

We choose to apply the same analysis to the statutory right to a jury trial for petty offenses under section 918.0157, and hold that the trial court's noncompliance with the statutory procedure was not fundamental error. As in *Barrett*, the trial court's disposition and sentence were consistent with the parameters of section 918.0157 for a non-jury trial. Furthermore, the preservation requirement applies and precludes appellate review of this non-fundamental error under section 918.0157, because neither Appellant nor Appellant's counsel objected to the bench trial. *Cf. Howell*, 687 So. 2d at 1340 (affirming the judgment because "no objection was voiced" below). Rather than object, Appellant and his counsel reappeared on the record at the pre-trial hearing for the sole purpose of having the State announce the nolle prosequi of the second charge in exchange for the bench trial on the remaining charge. Because Appellant and his counsel agreed to forego a jury trial in exchange for the State's agreement on the second charge, an on-the-record waiver was unnecessary, and Appellant "should not now be heard to complain" about it. *Griffith*, 561 So. 2d at 530–31.

AFFIRMED.

LEWIS and KELSEY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jessica J. Yeary, Public Defender, and Danielle Jorden, Assistant Public Defender, Tallahassee, for Appellant.

James Uthmeier, Attorney General, and David Welch, Assistant Attorney General, Tallahassee, for Appellee.