STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1695

Derek Leanderther Grant, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed May 5, 2014
Affirmed
Hudson, Judge

Ramsey County District Court
File No. 62-CR-10-8782

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Kaarin Long, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Hudson, Judge; and Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

On appeal from denial of his postconviction petition, appellant argues that the district court erred by denying his request to withdraw his guilty plea because his mental illness prevented the plea from being entered intelligently. We affirm.

FACTS

Appellant was charged with making terroristic threats in violation of Minn. Stat. § 609.713, subd. 1 (2010), after he admitted following a vehicle his ex-girlfriend was traveling in and striking the vehicle with his truck. Appellant pleaded guilty, but nearly two years after sentencing filed a postconviction petition requesting to withdraw his plea, claiming that his untreated mental illness prevented the plea from being entered intelligently. He claimed that he had been diagnosed with "bi-polar manic schizophrenia and depression" and was not taking medications at the time of the plea. Appellant did not request an evidentiary hearing. The district court denied the motion, concluding that neither his attorney nor the court observed any reason to doubt appellant's competency at the plea hearing. This appeal follows.

D E C I S I O N

Appellant argues that district court erred by denying his petition to withdraw his guilty plea because the court failed to inquire into appellant's mental-health status in violation of Minn. R. Crim. P. 15.01, subd. 1(5), and therefore the district court could not assure that appellant's plea was intelligent. In a request for postconviction relief, the petitioner bears the burden of establishing the facts alleged in the petition by a

preponderance of the evidence. Minn. Stat. § 590.04, subd. 3 (2012). The validity of a guilty plea is reviewed de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). But the district court must allow a defendant to withdraw a guilty plea, even after sentencing, if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists when a plea is not constitutionally valid; to be valid a plea must be accurate, voluntary, and intelligent. *Raleigh*, 778 N.W.2d at 94. Defendants have a due process right not to face trial or conviction on criminal charges if they are legally incompetent. *Drope v. Missouri*, 420 U.S. 162, 171, 95 S. Ct. 896, 903 (1975); *State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997). A defendant is competent to participate in legal proceedings if he or she has the ability to consult with a lawyer with a "reasonable degree of rational understanding" and "has a rational as well as factual understanding of the proceedings." *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011) (quotation omitted).

Minn. R. Crim. P. 15.01, subd. 1(5), states that the district court judge "must determine whether the defendant: a. is under the influence of drugs or intoxicating liquor; b. has a mental disability; or c. is undergoing medical or psychiatric treatment." Appellant claims that this rule mandates that the district court inquire into a defendant's mental health. But

> failure to follow the suggested questions in Minn. R. Crim. P. 15.01 verbatim is not fatal. The Comments to [the rule], and Minnesota case law establish that failure to interrogate a defendant as set forth in [r]ule 15.01 or to fully inform him of all constitutional rights does not invalidate a guilty plea.

State v. Doughman, 340 N.W.2d 348, 351 (Minn. App. 1983), *review denied* (Minn. Mar. 15, 1984). Instead, it is important that "the record is adequate to establish that the plea was intelligently and voluntarily given." *Id*. Therefore, a guilty plea may still be valid despite the fact that a defendant was not questioned about certain criteria listed in rule 15.01. In addition, Minn. R. Crim. P. 20.01, not rule 15.01, "provides the standard for competency in a criminal proceeding and the procedures that state courts must observe to ensure a defendant's competence." *Bonga*, 797 N.W.2d at 718. "If the prosecutor, defense counsel, or the court, at any time, doubts the defendant's competency, the prosecutor or defense counsel must make a motion challenging competency, or the court on its initiative must raise the issue." Minn. R. Crim. P. 20.01, subd. 3. Therefore, the issue before this court is whether the district court "observe[d] procedures adequate to protect [appellant's] right not to be tried or convicted while incompetent to stand trial." *Bonga*, 797 N.W.2d at 718.

Here, the district court noted in its order denying appellant's postconviction petition that there was no "indicative conduct" during the hearing that prompted any party or the court to doubt appellant's competency. The transcript of appellant's guilty plea shows that he engaged in the hearing, asked questions about what the plea agreement contained, and asked to clarify the meaning of words he did not understand. Appellant argues that the transcript shows that he was confused about what the plea offer entailed. But the state clarified that any confusion arose because there could be different recommendations based on whether the sentencing guidelines would indicate that

appellant should be incarcerated. Appellant also claims that the transcript shows he was "uncertain" about the events leading to the charge and uncooperative with the court and state when laying a factual basis for the plea. But appellant never stated that he couldn't remember the events; he only stated that he couldn't remember if October 13 was the exact date that the offense had occurred. There is nothing in the plea hearing transcript that indicated an inquiry into appellant's competence was warranted.

Finally, appellant argues that when the court received the pre-sentence investigation report following the plea the court should have further inquired into appellant's mental health. The PSI indicated that appellant had been hospitalized and discharged with mental-health diagnoses in 2008. The PSI recommended that appellant get mental-health treatment but did not note any concern about appellant's competency or his ability to understand and communicate with the investigator. Most importantly, appellant's attorney never raised concerns about appellant's mental health at the plea hearing or sentencing, despite having access to the PSI before the sentencing hearing. *See Bonga*, 797 N.W.2d at 720 (noting that court and counsel could gauge a defendant's ability to consult with counsel and ability to understand court proceedings by observing his demeanor). In addition, although the affidavit appellant submitted with his petition states his mental health diagnoses, nowhere in the petition does appellant explain how his mental illness affected his ability to understand the proceedings. Simply having a mental illness does not render one incompetent to participate in legal proceedings; the standard is whether the defendant can reasonably consult with defense counsel and understand the proceedings. Minn. R. Crim. P. 20.01, subd. 2; *see State v. Ganpat*, 732 N.W.2d 232,

238 (Minn. 2007) (affirming district court's determination that defendant who was mentally handicapped was competent to participate in legal proceedings). None of the evidence provided by appellant shows that he was incapable of consulting with his attorney or participating in the plea hearing.

Finally, we note that appellant did not answer the questions on the plea petition regarding mental health, nor did the court or counsel ask appellant any questions about his mental state or whether he was under the influence of any substances during the hearing. Ideally, the district court should utilize at least one of these methods to ensure evidence of the defendant's competence is accessible from the record. But because there was no outward indication from appellant that he was suffering from any mental-health symptoms during the hearing, we conclude that the district court complied with rule 20.01 and therefore did not err by denying appellant's motion for postconviction relief.

Affirmed.