STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0572

State of Minnesota,
Respondent,

vs.

Michael Timothy Reiten,
Appellant.

Filed March 27, 2017
Affirmed
Bratvold, Judge

Douglas County District Court
File No. 21-CR-14-1153

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

Chad Larson, Douglas County Attorney, Michelle L. Clark, Assistant County Attorney, Alexandria, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Appellate Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Kirk, Judge; and Bratvold, Judge.

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

BRATVOLD, Judge

On appeal from his terroristic threats conviction, appellant raises two issues based primarily on events that happened after his plea hearing and while he was awaiting

sentencing. Appellant argues that the district court erred when it denied his request for a competency evaluation before sentencing. Appellant also contends that the district court abused its discretion when it denied his motion to withdraw his guilty plea because of his unknown "medical condition" and evidence that the victim had recanted. Because the district court questioned appellant in detail regarding his competency at two hearings before sentencing and, at sentencing, left open the record for additional information concerning appellant's competency, we conclude that the district court fulfilled its protective duty in response to appellant's motion. Because appellant did not sufficiently establish either a medical condition or a recantation, we also conclude that the district court did not abuse its discretion when it refused to allow appellant to withdraw his guilty plea. Thus, we affirm.

FACTS

Based on the complaint and the evidence offered at the plea hearing, appellant Michael Timothy Reiten and J.R., who was his sister-in-law and lived in the same home, had an argument on January 27, 2014. J.R. left in her car, but quickly returned because she felt uncomfortable leaving Reiten with her children. J.R. saw Reiten go into the garage and pull the gas line off of the riding lawn mower, causing gas to spill onto the garage floor. Reiten held up a lighter and said he was going to "set the place on fire."

J.R. tried to call the police, and Reiten and J.R. scuffled. Reiten grabbed and pulled J.R.'s hair, J.R. bit Reiten, and J.R. dropped her phone, which broke when it hit the floor. Reiten followed J.R. as she went into the home, held a knife to his chest, told J.R. she should not call the police, and then "took off into the woods."

The state charged Reiten with felony terroristic threats, gross misdemeanor interference with an emergency telephone call, and misdemeanor domestic assault. The state later amended the charges to add two felony terroristic threats charges because J.R.'s nine-year-old daughter and fourteen-year-old son witnessed the incident.

Reiten requested a public defender, but the district court determined that he was ineligible. Reiten later waived his right to an attorney and elected to represent himself. After discussing a number of things with Reiten, including his mental health history, the court accepted his waiver and appointed advisory counsel under Minn. R. Crim. P. 5.04, subd. 2(1), expressly stating that the appointment was to ensure fair proceedings.[1] The district court stated, "[t]he intent is that everybody gets a fair trial, and . . . I think you need to have someone to consult with." The district court then discussed advisory counsel's role, saying "you can consult with [advisory counsel] about trial procedures [such as] who goes first, who goes second, jury issues, so that you can obtain information you need in this case."

On the first day of the scheduled jury trial, the parties discussed a number of pretrial matters, including exhibits and jury selection. After a short recess, the parties informed the court that that Reiten wanted to resolve his case by entering an *Alford* plea to one count of

[1] Rule 5.04, subd. 2, allows a court to "appoint advisory counsel to assist a defendant who voluntarily and intelligently waives the right to counsel." The district court must state on the record the reason for appointing advisory counsel; if the reason is "because of concerns about fairness of the process," then the appointment is under Minn. R. Crim. P. 5.04, subd. 2(1).

felony terroristic threats with an agreement to a maximum sentence of 26 months and an ability to argue for departure.

Under oath, Reiten pleaded guilty and stated that he understood the charge and potential penalty, he was waiving his trial rights, and no one had threatened or induced him to enter a plea. Reiten stated that, based on the evidence, he believed he would be found guilty if the case proceeded to trial. The state then made an offer of proof regarding the evidence that would have been presented at trial. After the district court explained the plea process to Reiten and confirmed that Reiten understood the process, the district court allowed Reiten's advisory counsel to inquire of Reiten. The district court found that Reiten entered his plea voluntarily and intelligently, but deferred acceptance of the plea until after the pre-sentence investigation.

Approximately five months later, in December 2015, Reiten was charged with eight new crimes. According to the complaint, Reiten threw a firecracker out his car window while driving on December 23, 2015. When police pursued him, he pointed a pistol at each of the two officers, drove at speeds exceeding 80 miles per hour on the wrong side of the road, and disregarded traffic signals, all with his headlights off, even though it was after midnight. When officers eventually stopped Reiten's vehicle, he fled on foot until he was apprehended by a police dog. Reiten actively resisted arrest and fought with the police dog. After he was taken into custody, he told officers that he had swallowed a lethal dose of heroin, and told a nurse that he had bit the police dog. Reiten was charged with speeding, fleeing a police officer on foot, driving after cancellation, harming a public safety dog,

fleeing the police in a motor vehicle, possession of stolen property, and two counts of second-degree assault (collectively, "December charges").

On January 7, 2016, Reiten appeared for sentencing in the terroristic-threats case and a second appearance under Minn. R. Crim. P. 8.01 for the December charges.[2] Reiten then moved for a mental health examination under Minn. R. Crim. P. 20.01 and 20.02, arguing that he "potentially suffers from an organic source of mental deficiency, (brain tumor) and mental illness."[3] The motion stated it was "based on [Reiten's] actions and statements" to advisory counsel and the county attorney's office. Reiten's advisory counsel commented that Reiten's recollection of the events related to the December charges was "spotty at best."[4]

The prosecuting attorney told the court that Reiten had previously claimed to suffer from bipolar disorder and remarked that the "notion of a brain tumor is particularly concerning." She suggested it was possible that Reiten was using the competency motion as a delay tactic, but nevertheless told the court she did not object to Reiten's request.

[2] The same attorney that had served as Reiten's advisory counsel in the terroristic threats case was appointed as his attorney for the December charges. Because the advisory counsel was never appointed as Reiten's attorney in this case, we refer to this attorney as Reiten's advisory counsel throughout the opinion.

[3] Under Minn. R. Crim. P. 20.01, a district court may order a competency examination to ensure that only competent defendants are tried or sentenced for a crime. Under Minn. R. Crim. P. 20.02, the district court may order a mental examination of defendant if the defendant offers evidence of mental illness at trial or if the defendant asserts a mental illness defense.

[4] Based on the transcript and on the written motion, Reiten appears to have sought a competency examination in this case as well as for the December charges. The December charges are not before the court in this appeal.

Initially, the district court rejected the rule 20.02 request because Reiten had given no notice of a mental illness defense. Next, the district court found there was insufficient basis to doubt Reiten's competency for sentencing under rule 20.01 because the only evidence submitted was a reminder for a medical appointment with the Mayo Clinic neurology department on January 12, 2015. The district court told the parties it would reconsider if additional documentation was provided and expressly left open the record.

The district court then considered Reiten's motion to withdraw his guilty plea in the terroristic-threats case, addressing Reiten's arguments that "the alleged victim has now recanted" and that Reiten's unknown medical condition supported withdrawal. Reiten attached to his motion several screen shots of text messages, one of which states "It's Jeremy and [first name of J.R.]. we want to say sorry we made up those allegations to the police." The state opposed Reiten's motion to withdraw. The district court denied the motion, accepted the plea, and sentenced Reiten to 26 months in prison. Reiten appeals.

D E C I S I O N

I. The district court did not err in denying Reiten's rule 20.01 motion because it found no reason to doubt Reiten's competency.

A "criminal defendant has a due process right not to be tried or convicted of" a crime if he is legally incompetent. *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011). A criminal "defendant is incompetent and must not plead, be tried, or be sentenced if [he] lacks ability to (a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense due to mental illness or deficiency." Minn. R. Crim. P. 20.01, subd. 2. In this case, we primarily focus on Reiten's ability to understand and participate in sentencing

because Reiten represented himself and the court appointed advisory counsel under rule 5.04, subd. 2(1). We note the limited role of advisory counsel; "the defendant retains the right to decide when and how to use advisory counsel." Minn. R. Crim. P. 5.04, subd. 2(1).[5]

The prosecutor, defense counsel, and the court all share the responsibility of ensuring that only competent defendants are tried. *See* Minn. R. Crim. P. 20.01, subd. 3. If defense counsel, or the prosecutor, doubts the defendant's competency "at any time," counsel "must make a motion challenging competency." *Id.* If the court doubts the defendant's competency, the court "must raise the issue" on its own and "order an examination of the defendant's medical condition." *Id.*

Relevant factors to be considered in determining competency include "evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial," but there are "no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed." *Bonga*, 797 N.W.2d at 719 (citing *Drope v. Missouri*, 420 U.S. 162, 180, 95 S. Ct. 896, 908 (1975)).

Whether the district court "observed procedures adequate to protect a defendant's right not to be tried or convicted while incompetent is a different question than whether the

[5] Importantly, Reiten's counsel was not appointed under Minn. R. Crim. P. 5.04, subd. 2(2), as standby counsel that would assume "full representation" if the court determined that the defendant had waived his right to self-representation. Standby counsel is appropriate when the district court expressly determines appointment will address "concerns about delays in completing the trial, the potential disruption by the defendant, or the complexity of length of the trial," under Minn. R. Crim. P. 5.04, subd. 2(2). While standby counsel may take over representation of the case, advisory counsel appointed under rule 5.04, subd. 2(1) may not be subject to this requirement. *See State v. Chavez-Nelson*, 882 N.W.2d 579, 586 & n.3 (Minn. 2016).

defendant is incompetent." *Id.* at 718. The procedural issue is a narrow one and limited to whether the district court, in "fulfilling its protective duty, should have conducted further inquiry." *Id.* "If the evidence possibly relevant to a defendant's mental condition is not disputed, then we review the record to determine whether the district court gave proper weight to the information suggesting incompetence." *Id*. at 720 (quotation omitted); *State v. Bauer*, 310 Minn. 103, 117, 245 N.W.2d 848, 856 (1976).

Reiten argues that the district court erred in failing to conduct further inquiry into his competency before he was sentenced and in denying his motion. Reiten essentially makes two arguments supporting his claim that the district court had reason to doubt his competency. We will discuss each argument in turn.

First, Reiten argues that his behavior leading to the December charges shows that he was suicidal and therefore mentally unstable. A suicide attempt may raise a doubt as to competence. *See Drope*, 420 U.S. at 181, 95 S. Ct. at 908; *see also Bonga*, 797 N.W.2d at 720 (noting suicide attempt was evidence of irrational behavior but observation of defendant during court proceedings after the suicide attempt supported determination that there was no reason to doubt defendant's competence). The state argues that Reiten's behavior in December did not give the court reason to suspect his incompetency because no evidence established a suicide attempt. We agree with the state that the December charges do not, without more, provide reason to doubt Reiten's competency.

Second, Reiten argues that the district court should have given more credence to advisory counsel's opinion of Reiten's competence. Reiten relies on *Bauer*, where advisory counsel informed the court that it was "impossible" for the defendant to participate in his

own defense due to his "paranoid distrust of anyone connected with the judicial system" and "his delusional thinking regarding a defense." 310 Minn. at 109, 245 N.W.2d at 852. The supreme court determined that the attorney's opinion was relevant to determining the defendant's competency. *Id.* at 121, 245 N.W.2d at 858.

Reiten's point is not well taken. Reiten's advisory counsel merely informed the court that Reiten had told him "his recollection of events in the new file is spotty at best." Evidence of a defendant's sporadic memory of recent events during a possibly drug-induced escapade is much different from evidence of a defendant's "delusional thinking" or "paranoid distrust," as discussed in *Bauer*.

Reiten points out that the district court did not make "any inquiry into Reiten's ability to consult with a reasonable degree of rational understanding with [advisory] counsel or his ability to understand the proceedings and participate in his defense." Reiten is correct; at the time of the competency motion, the district court made no personal inquiry of Reiten, nor any explicit findings about Reiten's ability to understand and participate in the sentencing proceedings. The district court stated that "Mr. Reiten on his own . . . filed a motion to withdraw his plea of guilty" in the terroristic threats case and that the motion "appears to be lucid and competent." However, advisory counsel informed the court that Reiten asked him to prepare the motion, which Reiten signed.

The state argues that the district court "had an opportunity to observe [Reiten] and speak directly with him at numerous hearings and there is nothing indicating any type of behavior that would call into question [Reiten's] competency." The record supports the state's position. In two earlier court hearings, the district court had questioned Reiten

extensively about his understanding of the court proceedings and his ability to conduct his own defense. The court inquired about Reiten's mental health history, his understanding of the charges against him and of the court proceedings, and his relationship with advisory counsel. The record indicates that Reiten understood and had no questions or concerns. In fact, Reiten even informed the court that the proposed advisory counsel had a conflict of interest because that attorney had previously represented his brother and the alleged victim, J.R. The court determined that Reiten voluntarily and intelligently waived his right to counsel and determined that Reiten voluntarily and intelligently entered a guilty plea. We note that Reiten has not challenged these earlier determinations on appeal.

Moreover, in response to Reiten's competency motion, the district court expressly left open the record for additional evidence and a motion to reconsider; yet, Reiten did not provide additional evidence. Because the district court was not presented with any circumstances that would alter its previous determination that Reiten had voluntarily and intelligently entered a guilty plea, the district court fulfilled its protective duty, gave sufficient weight to the evidence offered by Reiten in support of his motion, and did not err when it concluded that it had no reason to doubt Reiten's competency at the sentencing hearing.

II. The district court did not abuse its discretion when it denied Reiten's motion to withdraw his guilty plea.

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). Instead, a district court "may" permit withdrawal of a guilty plea "at any time before sentence if it is fair and just to do so," and

"must give due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution." Minn. R. Crim. P. 15.05, subd. 2. A district court has discretion when determining whether or not to allow a guilty plea withdrawal under the "fair and just" standard, and this court will reverse only in the "rare case in which the appellate court can fairly conclude that the trial court abused its discretion." *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).[6]

Reiten argues that the district court erred when it denied his motion to withdraw his guilty plea because he offered new evidence establishing the victim had recanted earlier statements and that Reiten had a medical condition. The state opposed Reiten's motion to withdraw. The district court, correctly stating that the standard "is whether it's fair and just to allow withdrawal of the plea," addressed both of Reiten's proffered reasons for withdrawal and denied the motion. We discuss each reason in turn.

First, a district court may rely on a recantation to invalidate the factual basis of a guilty plea, but the court must be "reasonably certain that the recantation is genuine." *State v. Risken*, 331 N.W.2d 489, 490 (Minn. 1983); *cf. State v. Tuttle*, 504 N.W.2d 252, 256-587 (Minn. App. 1993) (affirming the denial of a motion to withdraw a guilty plea after an alleged recantation because the strength of the state's case is not relevant where guilt is

[6] Rule 15.05, subdivision 1, includes a second standard for guilty plea withdrawal. "At any time the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. The "manifest injustice" standard requires the defendant to make a showing that the guilty plea was invalid because it was not voluntary, accurate, and intelligent. *Raleigh*, 778 N.W.2d at 94. On appeal, Reiten does not argue that his guilty plea was invalid; therefore, we analyze this issue under subdivision 2, the fair and just standard.

established by the defendant's admission of guilt). Here, the text messages were the only evidence Reiten submitted to prove recantation. The district court noted, and the record reflects, that Reiten submitted "simply screen shots, it appears, of text messages from a potential witness in this case." The district court determined that the messages did not carry the weight of being under oath, as would a verified affidavit or a deposition. Moreover, the messages state that they are from "Jeremy" and a person who shares J.R.'s first name.

Even assuming the messages were sent by J.R., the text messages lack specificity as to which statements J.R. would allegedly recant—they state only that the senders are "sorry we made up those accusations to the police." The texts do not identify the accusations, which is problematic because the terroristic-threats case was not the only case between Reiten and J.R. The record indicates that Reiten also faced allegations that he had violated J.R.'s restraining order.

Because Reiten did not provide sufficient information to allow the district court to conclude that the recantation was genuine or that the "accusations" mentioned in the text messages were relevant to this case, we conclude that the district court did not abuse its discretion in determining the text messages did not provide a fair and just reason for withdrawal.

Second, Reiten argues his medical condition supported his request for a plea withdrawal. The district court concluded that "there's no substantiated medical records to indicate [the condition] is, in fact, occurring or that it affects his ability to understand proceedings." The only information Reiten submitted to support his unknown medical condition was that he had a future neurology appointment at the Mayo Clinic. The district

court did not abuse its discretion when it determined that the appointment reminder did not provide a fair and just reason for plea withdrawal.

Finally, Reiten argues that the state did not "allege, much less prove, that it would have been prejudiced by allowing Reiten to withdraw his plea." Reiten is correct that the district court must consider prejudice to the state. Minn. R. Crim. P. 15.05, subd. 2. Here, the district court determined that "[g]iven the time that it has taken to get this case to the point of sentencing or trial . . . there is substantial prejudice to the State in terms of prosecution of this case." The record reflects many continuances and other delays had occurred in this case before sentencing. Thus, the district court did not abuse its discretion when it determined that a further delay would substantially prejudice the state.

We conclude that the district court did not abuse its discretion when it determined that the proffered text messages and medical appointment reminder did not constitute a fair and just reason meriting withdrawal of Reiten's guilty plea.

Affirmed.