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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1821**

Clayton James Hanks, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 30, 2017
Affirmed
Hooten, Judge**

St. Louis County District Court
File Nos. 69DU-CR-13-2951; 69DU-CR-13-3979; 69DU-CR-13-4421

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica M. Surges, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Mark S. Rubin, St. Louis County Attorney, Gary W. Bjorklund, Assistant County Attorney, Duluth, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges the denial of his petition for postconviction relief, arguing that the district court should have made further inquiry into his competency. We affirm.

FACTS

In July 2013, appellant Clayton James Hanks was charged by complaint with one count of second-degree burglary. The district court stayed the proceedings in August 2013 and ordered evaluations pursuant to Minn. R. Crim. P. 20.01 to determine whether Hanks was competent to stand trial. In September 2013, in a second court file, Hanks was charged with one count of offering a forged check. In October 2013, the first evaluator opined that Hanks was competent to proceed and stated that she suspected Hanks was malingering. A few days after the evaluator issued her report, Hanks was charged in a third court file with four counts of threats involving weapons of mass destruction, three counts of terroristic threats, and two counts of first-degree witness tampering.¹ In November 2013, with respect to the first two court files, the district court found that Hanks was competent to proceed.

In April 2014, the district court stayed the proceedings again and ordered a second evaluation of Hanks' competence. The second evaluator opined that Hanks was competent to proceed and stated that Hanks was severely malingering. Hanks' defense counsel filed objections to the evaluation. In late June 2014, in order to resolve the charges in the three separate criminal files, Hanks waived his objections to the second evaluation and pleaded

¹ The four counts of threats involving weapons of mass destruction were dismissed in March 2014 due to lack of probable cause.

guilty to second-degree burglary, offering a forged check, and three counts of terroristic threats. In accordance with Hanks' agreement with the state, the district court sentenced Hanks to 56 months on the second-degree burglary count, a concurrent sentence of 21 months on the offering a forged check count, and consecutive sentences of one year and one day on each of the three terroristic threats counts, which were to run consecutively to the burglary sentence.

In August 2016, Hanks filed a petition for postconviction relief, arguing that he should be allowed to withdraw his guilty pleas because the district court failed to ensure that he was competent. The postconviction court judge, who was also the district court judge who accepted Hanks' guilty pleas and sentenced him, dismissed the petition without holding an evidentiary hearing. This appeal followed.

D E C I S I O N

Hanks argues that the postconviction court abused its discretion by denying his petition for postconviction relief. Hanks contends that the district court erred by failing to conduct further inquiry into his competence and that therefore the postconviction court should have allowed him to withdraw his pleas.

When a defendant seeks to withdraw his guilty plea after sentencing, "the motion to withdraw the plea must be raised in a petition for postconviction relief." *James v. State*, 699 N.W.2d 723, 727 (Minn. 2005). In a request for postconviction relief, the petitioner has the burden of establishing the facts alleged in the petition by a fair preponderance of the evidence. Minn. Stat. § 590.04, subd. 3 (2016). Appellate courts review the postconviction court's findings for clear error, but review its legal conclusions de novo.

State v. Nicks, 831 N.W.2d 493, 503 (Minn. 2013). We review the district court’s ultimate decision to deny or grant a petition for postconviction relief for an abuse of discretion. *Id.*

The validity of a guilty plea is a question of law, which we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). “A defendant does not have an absolute right to withdraw a valid guilty plea.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). But, a district court must allow a defendant to withdraw a guilty plea at any time if withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid. To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Raleigh*, 778 N.W.2d at 94 (citation omitted). A plea is not intelligent if the defendant does not understand “the charges against him, the rights he is waiving, and the consequences of his plea.” *Id.* at 96.

Criminal defendants have a due process right not to face trial or conviction of a criminal charge if they are legally incompetent. *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011). Minn. R. Crim. P. 20.01 “provides the standard for competency in a criminal proceeding and the procedures that state courts must observe to ensure a defendant’s competence.” *Id.* The rule provides that a defendant is incompetent if he lacks the ability to “rationally consult with counsel” or “understand the proceedings or participate in the defense due to mental illness or deficiency.” Minn. R. Crim. P. 20.01, subd. 2.

The prosecutor, defense counsel, and the district court share responsibility for ensuring that a defendant is not tried or convicted unless he is competent. *Bonga*, 797 N.W.2d at 718. A defendant is deprived of his due process right to a fair trial if the district court fails “to observe procedures adequate to protect a defendant’s right not to be tried or

convicted while incompetent to stand trial.” *Id.* There is no precise test for determining whether the district court followed adequate procedures to ensure the defendant’s competency. *Id.* at 719. The need for further inquiry “depends entirely on the surrounding circumstances.” *Id.* at 720.

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.” *Id.* at 719 (quotation omitted). In reviewing whether the district court followed adequate procedures to ensure a defendant’s competency, reviewing courts do not determine whether the individual was competent to proceed, but only whether the district court should have conducted further inquiry into the defendant’s competence. *State v. Bauer*, 310 Minn. 103, 108, 245 N.W.2d 848, 852 (1976).

Hanks argues that the district court erred by failing to conduct further inquiry into his competency before accepting his guilty pleas. Hanks points to his self-injurious and suicidal behaviors and statements between the date that the second evaluator interviewed him and the date of the plea hearing as evidence that he was not competent to plead guilty and that the district court had an obligation to conduct further inquiry into his competence. In the most serious of these incidents, Hanks pushed a pencil into his abdomen, requiring surgical removal. Hanks also notes that sometime after speaking with the second evaluator he made suicidal statements and threatened to go on a hunger strike, claiming that it would make him superhuman. Hanks argues that, to the extent the district court was unaware of his self-injurious behavior after the second evaluator interviewed him, the district court

erred by failing to inquire further into his competence after defense counsel mentioned that Hanks had been hospitalized “a couple times fairly recently.”

We conclude that the postconviction court did not abuse its discretion by denying postconviction relief because its finding that the district court took sufficient steps to ensure Hanks’ competence was not clearly erroneous.

First we note that, although Hanks cites a number of his behaviors and suggests that they may have impacted his ability to consult with counsel or understand the criminal proceedings, the fact that an individual is mentally ill does not mean that he or she is not competent to stand trial. Rather, the standard is whether the individual can consult with counsel and understand the proceedings. Minn. R. Crim. P. 20.02, subd. 2. Hanks presented no evidence that he was incapable of consulting with his attorney or participating in the plea hearing.

The district court ordered two competency evaluations of Hanks, and both evaluators opined that Hanks was competent to stand trial. Although Hanks initially challenged the second evaluation, he waived his objections during the plea hearing. Additionally, as the postconviction court noted, defense counsel comprehensively reviewed the plea agreement and petition with Hanks. At the plea hearing, Hanks acknowledged that he suffers from mental illness and was taking medication to treat his illness, but testified that he was of sound mind. The transcript indicates that throughout the plea hearing Hanks responded appropriately to questions and was able to describe the events surrounding the crimes in detail. The district court stated on the record that it had “extensively” reviewed the first and second evaluations, each of which contained a detailed

history of Hanks' substantial history of mental illness, and had determined that he was "certainly" competent to plead guilty despite his mental illness. Moreover, Hanks' counsel never indicated concern about his competence at the plea hearing or sentencing, despite being aware of recent hospitalizations. *See Bonga*, 797 N.W.2d at 720 (stating that counsel and court could gauge defendant's competence by observing his demeanor during criminal proceedings).

Hanks points to specific behaviors and statements that he made in between the second evaluator's interview with him and the plea hearing that indicate that he may have been incompetent and that the district court had an obligation to conduct further inquiry into his competence. But, the self-injurious behaviors to which Hanks points and his suicidal statements are the same type of behaviors that the second evaluator reviewed before opining that Hanks was competent to stand trial. Likewise, although Hanks points to his statement that he claimed that a hunger strike would make him superhuman as evidence that he was not competent, the second evaluator noted a number of similar statements that Hanks had made in the month before his interview with the evaluator. Here, the district court knew that Hanks had a substantial history of mental illness and had "reviewed extensively" the reports of the two evaluators prior to the plea hearing. We conclude that the record supports the district court's denial of Hanks' petition.

Because the district court demonstrated that it was aware of Hanks' mental health issues and because there was no outward indication at the plea hearing that Hanks was suffering from any mental health symptoms during the hearing, we conclude that the

district court made sufficient inquiry into his competence, despite not asking questions about his mental state and recent hospitalizations.

Moreover, to the extent that Hanks argues that he was not competent to plead guilty, as discussed above, he was found competent by two separate evaluators prior to the plea hearing and has failed to point to any changes in circumstances between the date of the second evaluation interview and the plea hearing that would put into question the second evaluator's opinion. And, importantly, no concerns about Hanks' mental health were raised at the plea hearing, beyond Hanks' acknowledgement that he was mentally ill, took medications to treat his mental illness, and had recently been hospitalized. *See* Minn. R. Crim. P. 20.01, subd. 3 (stating that court or any party who doubts defendant's competency must raise issue).

Hanks argues that the postconviction court erred by not holding an evidentiary hearing regarding his petition. A petitioner is entitled to an evidentiary hearing "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2016). "An evidentiary hearing on a petition is mandated whenever material facts are in dispute which have not been resolved in the proceedings resulting in conviction and which must be resolved in order to determine the issues raised on the merits." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

Hanks contends that an evidentiary hearing is required so that he can testify as to his mental state on the date of the plea hearing and develop a record concerning an alleged conflict of interest with the second evaluator. However, the district court judge, who was

also the postconviction court judge, had the opportunity to view Hanks' demeanor at the plea hearing. Regarding the second evaluator, Hanks claimed "on [his] information and belief" that the second evaluator is closely related to the victim in the robbery. But, Hanks waived his objections to the second evaluation at the plea hearing. Under these circumstances, we conclude that the postconviction court did not err by dismissing Hanks' petition without an evidentiary hearing.

Affirmed.