STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1158

State of Minnesota,
Respondent,

vs.

Shawn Pierre Belland, II,
Appellant.

Filed July 19, 2021
Affirmed
Smith, Tracy M., Judge

Red Lake County District Court
File No. 63-CR-20-22

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mike LaCoursiere, Red Lake County Attorney, Red Lake Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Jesson, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from a final judgment of conviction of second-degree assault, appellant Shawn Pierre Belland, II, argues that his sentencing hearing, which was held remotely via videoconference because of the COVID-19 pandemic, was closed to the

public in violation of his Sixth Amendment right to a public trial. He asserts that his sentence therefore must be vacated and the matter remanded for a new sentencing hearing. Belland bases his claim of courtroom closure entirely on the fact that the record does not contain a written notice of the sentencing hearing. We conclude that the record is insufficient to determine whether the district court violated Belland's right to a public trial. Therefore, we affirm.

FACTS

In May 2020, Belland pleaded guilty to second-degree assault with a dangerous weapon. Because of the COVID-19 pandemic, his plea hearing was held remotely. The district court record contains a notice of that pretrial hearing, with a copy to Belland, directing that the recipient must appear fully prepared and must notify the court if the recipient's address changes. The notice also explains that the hearing will be held remotely and provides directions as to how to join the remote hearing by phone or video.

Belland's sentencing hearing was also held remotely. But the district court record does not contain a similar notice of hearing. Nevertheless, the state and Belland appeared at the remote sentencing hearing, and the district court sentenced Belland to an executed prison term of 29 months.

Belland appeals.[1]

[1] Respondent the State of Minnesota did not file a brief in this appeal, and we ordered that the appeal proceed under Minn. R. Civ. App. P. 142.03.

DECISION

Belland argues that his sentencing hearing was impermissibly closed in violation of his constitutional right to a public trial. The United States and Minnesota Constitutions, using identical language, grant criminal defendants the right to a public trial: "In all criminal prosecutions, the accused shall enjoy the right to a . . . public trial . . . ." U.S. Const. amend. VI; Minn. Const. art. I, § 6. The right to a public trial applies during all phases of a trial. *Presley v. Georgia*, 558 U.S. 209, 213, 130 S. Ct. 721, 723-24 (2010); *State v. Brown*, 815 N.W.2d 609, 617 (Minn. 2012).

But the right to a public trial is not absolute. *State v. Taylor*, 869 N.W.2d 1, 10 (Minn. 2015). Rather, the closure of a courtroom during a criminal proceeding may be justified if (1) "'the party seeking to close the hearing . . . advance[s] an overriding interest that is likely to be prejudiced,'" (2) the closure is "'no broader than necessary to protect that interest,'" (3) the district court considers "'reasonable alternatives to closing the proceeding,'" and (4) the district court makes "'findings adequate to support the closure.'" *State v. Fageroos*, 531 N.W.2d 199, 201 (Minn. 1995) (alteration omitted) (quoting *Waller v. Georgia*, 467 U.S. 39, 48, 104 S. Ct. 2210, 2216 (1984)).

Not all restrictions on access during a trial raise constitutional concerns—"[s]ome restrictions on access to the courtroom are so insignificant that they do not amount to a 'true closure' of the courtroom." *State v. Petersen*, 933 N.W.2d 545, 551 (Minn. App. 2019) (quoting *Taylor*, 869 N.W.2d at 11). To determine whether a "true closure" occurred, courts look to several factors, including whether (1) the courtroom was cleared of all spectators; (2) the proceedings remained open to the public and press; (3) there were

periods where the public was absent; and (4) the defendant, the defendant's family and friends, or other witnesses were excluded. *Id.*

Whether the district court violated a defendant's right to a public trial is a constitutional question that we review de novo. *See Brown*, 815 N.W.2d at 616. A violation of the public-trial right "is considered a structural error that is not subject to a harmless error analysis." *State v. Bobo*, 770 N.W.2d 129, 139 (Minn. 2009). The remedy for a violation "should be appropriate to the violation." *State v. McRae*, 494 N.W.2d 252, 260 (Minn. 1992); *see also Waller*, 467 U.S. at 50, 104 S. Ct. at 2217 (remanding to the district court to redo an unconstitutionally closed suppression hearing and to order a new trial if necessary based on the outcome of the suppression hearing).

With that background, we turn to Belland's argument. As an initial matter, we note that no Minnesota precedential decision has determined that the constitutional right to a public trial applies to a sentencing hearing. The state did not file a brief in this appeal and thus does not argue that the right to a public trial does not apply. We assume without deciding that the right applies to a sentencing hearing.

The first question in assessing whether Belland's constitutional right was violated is whether a true closure actually occurred. Belland's sole basis for asserting that his sentencing hearing was closed is that the record contains a notice of his remote plea hearing, which included information about how hearing participants could log in, but the record contains no notice of the later remote sentencing hearing, at which the participants in fact logged in and participated. Belland argues that the lack of a notice of his sentencing hearing shows that the district court violated his right to a public trial. But the lack of a

record of notice to the parties of the sentencing hearing does not establish that the hearing, when it occurred, was in fact closed to the public. The record is insufficient to determine whether any of the factors for determining whether a true closure occurred were present. *See Petersen*, 933 N.W.2d at 551. And, without the establishment of a true closure, we do not reach the question of whether a closure was unconstitutional. *See Fageroos*, 531 N.W.2d at 201-02.

Because the record is not sufficient for this court to determine that a closure occurred, we reject Belland's argument that his constitutional right to a public trial was violated. We do so without prejudice to his ability to petition for postconviction relief in the district court. *See State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000) (affirming appellant's conviction without prejudice to appellant's right to raise claims in a postconviction proceeding).

Affirmed.