This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1236

State of Minnesota,
Respondent,

vs.

Christian Anthony Paul Ruth,
Appellant.

Filed August 15, 2022
Affirmed
Gaïtas, Judge

Clay County District Court
File No. 14-CR-20-2832

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

Brian J. Melton, Clay County Attorney, Cecilia A. Knapp, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Gaïtas, Judge; and Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Christian Anthony Paul Ruth challenges his conviction for second-degree driving while impaired (DWI), arguing that the use of a 2018 driver's-license revocation to enhance the DWI offense violated his constitutional right to due process. We affirm.

FACTS

In August 2020, Ruth was arrested for suspected DWI. Ruth told the officer that he had consumed alcohol before driving and a subsequent breath test revealed that Ruth's alcohol concentration was 0.08.

Following the arrest, respondent State of Minnesota charged Ruth with two counts of second-degree DWI—one count for driving under the influence of alcohol and one count for driving with an alcohol concentration of 0.08 or higher as measured within two hours of driving.[1] Minn. Stat. § 169A.20, subd. 1(1), (5) (2020). The state relied on two prior impaired-driving incidents to enhance the charges to second-degree offenses. One of these impaired-driving incidents was a 2018 driver's-license revocation, which is the focus of Ruth's appeal to this court.

As to the 2018 license revocation, the record shows that Ruth was arrested for DWI in Minnesota in February 2018. Later that month, his driver's license was revoked by operation of Minnesota law. *See* Minn. Stat. § 169A.52, subd. 4(a) (2020) (providing for

[1] Ruth was also charged with possession of an open bottle while driving, Minn. Stat. § 169A.35, subd. 3 (2020), but that charge is not at issue here.

automatic revocation of a driver's license when a police officer certifies that probable cause existed to believe the driver was driving while impaired and subsequent testing revealed an alcohol concentration over the legal limit). In the related criminal DWI proceeding, the district court ordered a competency examination, which was completed in June 2018.[2] The examiner determined that Ruth was legally competent to proceed in the prosecution pursuant to Minnesota Rule of Criminal Procedure 20.01. But the examination concluded that, at the time of the DWI offense, Ruth's mental illness had made him unable to understand the nature or wrongfulness of his behavior. In October 2018, the district court found Ruth not guilty of the criminal DWI charges by reason of mental illness. *See* Minn. R. Crim. P. 20.02, subds. 1, 4(a), 4(b) ("[T]he defendant, at the time of committing the

[2] The Minnesota Rules of Criminal Procedure provide for two types of competency evaluations. First, under rule 20.01, subdivision 3, if counsel or the court questions the defendant's competency to proceed, upon a motion and probable cause determination, the court must order a competency examination of the defendant. The examiner must write a report that includes "the defendant's mental condition" and an opinion as to whether the defendant has the "capacity to understand the proceedings or participate in the defense." Minn. R. Crim. P. 20.01, subd. 4(b)(1), (2)(a). "If the court finds the defendant competent [to proceed with trial], the criminal proceedings must resume." *Id.*, subd. 6(a).

The second type of evaluation concerns a defendant's competence at the time of the offense. Under the rules, when a defendant notifies the state of "a mental illness or cognitive impairment defense" or "the defendant offers evidence of mental illness or cognitive impairment at trial," the district court may order an examiner to provide "an opinion as to whether, because of mental illness or cognitive impairment, the defendant, at the time of committing the alleged criminal act, was laboring under such a defect of reason as not to know the nature of the act or that it was wrong." Minn. R. Crim. P. 20.02, subds. 1(a), (c), 4(b). A district court may then utilize the examination in determining whether the defendant is not guilty because of mental illness or cognitive impairment. Minn. R. Crim. P. 20.02, subd. 7(c).

A defendant may be simultaneously evaluated under Rule 20.01 and Rule 20.02. Minn. R. Crim. P. 20.04.

alleged criminal act, was laboring under such a defect of reason as to not know the nature of the act or that it was wrong."), 4(c)-(e), 7(c).

At the outset of the criminal prosecution for the 2020 second-degree DWI charges, Ruth filed a motion to dismiss for lack of probable cause, arguing that the state's use of the 2018 license revocation to enhance the severity of the charges violated his constitutional rights. Ruth contended that the district court's ruling in the corresponding 2018 criminal case that he was not guilty by reason of mental illness created an inference that he was also incompetent during the 60-day judicial-review period for the revocation of his driver's license. He further argued that, because he was unable to challenge the 2018 revocation due to his incompetence, the state's use of the revocation to enhance the 2020 DWI charges violated his right to due process.

The district court denied Ruth's motion to dismiss. Although the district court took judicial notice of the order in the 2018 criminal case finding Ruth not guilty by reason of mental illness, it was unpersuaded "that a judicial finding of mental incompetence during the 60-day judicial-review window somehow prevents the State from using the license-revocation proceeding as an aggravating factor in the instant case."

Following the district court's denial of the motion to dismiss, Ruth stipulated to the state's case to preserve his right to appeal the ruling.[3] Based on the stipulated record, the district court found Ruth guilty of one count of second-degree DWI for driving under the

[3] Under Minnesota Rule of Criminal Procedure 26.01, subdivision 4, a defendant may preserve appellate review of a dispositive issue by waiving a jury trial and stipulating to the prosecution's evidence.

influence of alcohol with an alcohol concentration over the legal limit, but not guilty of the second DWI count and the open-bottle charge. The district court placed Ruth on probation for five years and ordered him to serve 365 days in jail but stayed 275 days of the jail time.

Ruth appeals.

DECISION

Ruth argues that the use of his 2018 driver's-license revocation to enhance the conviction he now challenges violated his state and federal rights to procedural due process. We review de novo a district court's legal determination regarding the due process implications of using a prior driver's-license revocation to enhance a later DWI charge. *See State v. Goharbawang*, 705 N.W.2d 198, 201 (Minn. App. 2005), *rev. denied* (Minn. Jan. 17, 2006) (applying de novo review in considering whether the district court erred in determining that the use of a prior license revocation to enhance a subsequent offense violated the defendant's right to due process).

Under Minnesota law, the revocation of an individual's driver's license following an impaired-driving arrest may be used to enhance the severity of subsequent DWI charges. *State v. Wiltgen*, 737 N.W.2d 561, 569 (Minn. 2007); *see* Minn. Stat. § 169A.03, subds. 21(a)(1), 22 (2020) (defining a qualified prior impaired-driving incident used to enhance a subsequent offense to include driver's-license revocation). But due to "the liberty interests at stake, the use of a license revocation as an aggravating factor is limited to a situation where judicial review has already occurred or been waived by the failure to file a timely petition" for judicial review. *Anderson v. Comm'r of Pub. Safety*, 878 N.W.2d 926, 929 (Minn. App. 2016) (quotation omitted).

Designed to protect public safety, DWI-related driver's-license revocations are civil proceedings in which the 60-day period for requesting judicial review is strictly construed, even when a delay in pursuing judicial review is not the driver's fault. *McShane v. Comm'r of Pub. Safety*, 377 N.W.2d 479, 481-82 (Minn. App. 1985), *rev. denied* (Minn. Jan. 23, 1986); *see State v. Hanson*, 543 N.W.2d 84, 89 (Minn. 1996) ("[T]he primary purpose of the [license-revocation] law is to protect the public by removing from Minnesota's streets and highways those who drive under the influence of alcohol."); *see also* Minn. Stat. § 169A.53, subd. 2(a) (2020) ("Within 60 days following receipt of a notice and order of revocation . . . a person may petition the court for review."). "[F]ailure to file a petition for judicial review within the [60]-day statutory period deprives the district court of jurisdiction to hear the petition." *Anderson*, 878 N.W.2d at 929 (quoting *Thole v. Comm'r of Pub. Safety*, 831 N.W.2d 17, 19 (Minn. App. 2013), *rev. denied* (Minn. July 16, 2013)).

Ruth acknowledges that he did not timely seek judicial review of his 2018 driver's-license revocation. But, relying on the district court's 2018 determination that he was not guilty of the corresponding criminal DWI charges by virtue of his mental illness, he contends that he was also mentally incompetent during the 60-day window for requesting judicial review and therefore could not timely initiate that process. In further support of his assertion that he was not competent to timely seek judicial review, he asks us to take judicial notice of the evaluator's competency report in the 2018 criminal case, which concluded that he could not appreciate the wrongfulness of driving while impaired at the time of the offense. According to Ruth, because there was no judicial review of the 2018

revocation, and because he was incapable of requesting judicial review, the revocation could not be used.

Ruth's challenge is a collateral attack on the validity of his 2018 license revocation. The validity of a revocation can be challenged collaterally in a subsequent criminal prosecution, but only if a defendant can establish the existence of unique circumstances. *State v. Warren*, 419 N.W.2d 795, 798 (Minn. 1988). Generally, collateral attacks are disfavored because they undermine the finality of judgments. *Id.* But such challenges are permitted for constitutional violations that "rise to the level of a jurisdictional defect." *State v. Schmidt*, 712 N.W.2d 530, 533-34 (Minn. 2006). Historically, collateral attacks have been permitted in cases where a defendant's "pivotal constitutional right" to counsel was violated, *Warren*, 419 N.W.2d at 798, or where the prior proceeding "effectively eliminate[d] the right of the [defendant] to obtain judicial review." *United States v. Mendoza-Lopez*, 481 U.S. 828, 829 (1987).

The statutory scheme for judicial review of an administrative driver's-license revocation satisfies the requirement for due process. *See State v. Coleman*, 661 N.W.2d 296, 301 (Minn. App. 2003) ("[T]he availability of judicial review, though unexercised by [the defendant], satisfies the *Mendoza-Lopez* requirement that an alternative means of obtaining judicial review must be made available." (quotation omitted)), *rev. denied* (Minn. Aug. 5, 2003). Thus, even if a defendant does not seek the available review, there is generally no due process violation. *Id.*

Ruth contends that his case is unique, making his collateral attack on the validity of the 2018 revocation proper, because his incompetence precluded him from utilizing the

available judicial review. In support of this argument, he cites to *Anderson*, where a driver attempted to challenge prior revocations by initiating an untimely civil implied-consent hearing—the judicial-review hearing afforded under the statutory scheme. 878 N.W.2d at 928. Like Ruth, the driver in *Anderson* argued that he had been incapable of timely requesting judicial review because, due to his mental incompetence, he had not understood the notice he received. *Id.* at 929. We rejected the driver's use of an implied-consent hearing as a vehicle for challenging the revocations because the district court lost jurisdiction over such a proceeding when the driver failed to timely request review.[4] *Id.* at 930. But we stated that the driver could potentially challenge the revocations in a criminal proceeding if the state sought to use the revocations to enhance criminal charges. *Id.*

Ruth points out that we essentially addressed his circumstances in *Anderson*, when we stated, "The circumstances in this case may well constitute one of the 'unique' cases in which a criminal defendant may collaterally attack a revocation to prevent it from serving as an enhancement." *Id.* He observes that he, like the driver in *Anderson*, was unable to timely seek judicial review due to mental incompetence. But Ruth notes that, unlike the driver in Anderson, he used the proper vehicle for challenging his revocations—a collateral attack in the context of his criminal case.

Ruth's attempt to collaterally challenge the 2018 revocation is flawed, however. We reject his collateral attack on the revocation for two reasons.

[4] For this reason, the district court was incorrect when it stated in its order denying Ruth's motion to dismiss that Ruth could have petitioned the court for judicial review of his 2018 driver's-license revocation "at any time."

First, in *Anderson*, we "express[ed] no opinion as to the outcome of [the] analysis." *Id.* at 930. Thus, *Anderson* does not hold that a driver's incompetence during the judicial-review period precludes the use of the revocation to enhance a subsequent offense.

Second, and even more importantly, the record does not support Ruth's claim that he was not competent to seek judicial review of the 2018 revocation. His claim relies entirely on the district court's judicial notice of an order in his 2018 criminal case finding him not guilty of DWI by reason of mental illness. The record contains no evidence of Ruth's competence to participate in judicial proceedings during the 60-day window for seeking judicial review. And the record does not even include the evaluation that the district court relied on in 2018 to find Ruth not guilty by reason of mental illness.[5] Based on the record here, we cannot infer—as Ruth asks us to do—that he was not competent to seek judicial review in 2018. Yet, this factual assertion provides the entire foundation of Ruth's legal argument. Because the record does not support Ruth's claim that he was not competent to seek judicial review, his legal argument fails.

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[5] After filing his appeal, Ruth motioned the district court to supplement the record with the 2018 competency evaluation. The district court denied the motion, noting that it had not relied on the evaluation in denying Ruth's motion to dismiss.

In his brief, Ruth asks us to take judicial notice of the evaluation. Specifically, he asks us to look to the contents of the 2018 competency evaluation—including the conclusions reached by the evaluator—and to conclude on this basis that he was not competent for the period during which he could have challenged his revocation. We decline to do so. Such an analysis would require us to take notice of "adjudicative facts"—"facts about the parties, their activities, properties, motives, and intent." *State v. Norgaard*, 899 N.W.2d 205, 207 (Minn. App. 2017). We do not take notice of "adjudicative facts" in criminal cases. *Id.* Moreover, these facts do not meet the requirements of Minnesota Rule of Evidence 201(b), which governs judicial notice, because they are not "generally known" or "capable of accurate and ready determination."

We cannot conclude that Ruth's mental condition prevented him from requesting judicial review of his 2018 driver's-license revocation. Because Ruth waived judicial review by failing to timely request it, the use of the revocation to enhance his current DWI offense did not violate his constitutional right to procedural due process.

Affirmed.