STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1422

State of Minnesota,
Respondent,

vs.

Randal Scott Renken,
Appellant.

Filed July 11, 2011
Affirmed
Halbrooks, Judge

Olmsted County District Court
File No. 55-CR-08-7396

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, Rochester, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Bjorkman, Judge.

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

HALBROOKS, Judge

Appellant challenges his felony conviction of violating a harassment restraining order (HRO), arguing that the state failed to prove his two prior convictions for purposes

of enhancement. Appellant raises additional challenges to his conviction in a pro se supplemental brief. Because appellant stipulated to the prior convictions and because appellant's pro se arguments are not persuasive, we affirm.

FACTS

On July 21, 2008, appellant Randal Scott Renken pleaded guilty to fifth-degree domestic assault for assaulting K.M. in March 2008, and to violating a resulting domestic-abuse no-contact order. On the same day, V.M., K.M.'s mother, petitioned for an HRO against appellant. The district court issued a one-year restraining order on July 22, 2008, limiting appellant's contact with V.M. The HRO was served on appellant on July 25, 2008. Relevant to this appeal, the HRO prohibited appellant from going to V.M.'s residence.

On July 31, 2008, appellant contacted the police so that he could retrieve a drum set from V.M.'s residence. When the police arrived, V.M. told the officer that appellant had violated the HRO by taking a shower in her home on July 26, 2008, and by bringing the drum set to her place on July 28, 2008. As a result, appellant was charged with violating the HRO.

On March 25, 2010, appellant pleaded not guilty and personally waived his right to a jury trial. A bench trial was held on April 1, 2010. At the outset of the bench trial, the following exchange occurred:

> Prosecutor: The next stipulation is that the . . . defendant will stipulate to those two prior convictions, the first being a conviction for misdemeanor domestic assault that occurred in Mower County on or about March 11, 2008. And the plea was entered on that July 21, 2008, in Mower County. . . .

> Court: Okay.
> Prosecutor: The defendant also pled guilty that same day, as part of that same hearing, to a misdemeanor violation of a domestic abuse no contact order. . . .
> . . . .
> Court: So Mr. Renken wants to stipulate for purposes of enhancement to the two prior convictions . . . . Is that right?
> Mr. Donnelly: That's correct, Your Honor.

Following the bench trial, the district court found appellant guilty of violating the HRO. This appeal follows.

D E C I S I O N

I.

Pursuant to Minn. Stat. § 609.748, subd. 6(d) (2006), it is a felony to violate an HRO "within ten years of the first of two or more previous qualified domestic violence-related offense convictions." Appellant's only argument on appeal is that the state did not prove the enhancement element of his offense because he only stipulated to pleading guilty and did not stipulate that he had been convicted.

The record shows that appellant pleaded guilty to the two qualifying offenses on July 21, 2008; but appellant is correct that the record is not clear as to when the district court accepted these pleas. Appellant is also correct in his understanding of the law—a defendant is not "convicted" of a crime until his or her guilty plea has been accepted by the district court. *See State v. Thompson*, 754 N.W.2d 352, 355 (Minn. 2008) ("[A] 'conviction' requires that a district court both accept and record the guilty plea."). But, as respondent State of Minnesota points out, these circumstances do not support the

contention that the state failed to prove the enhancement element necessary to convict appellant of a felony-level HRO violation.

There was discussion on the record at trial regarding appellant's guilty pleas that underscored these stipulated-to convictions. Based on this discussion, appellant attempts to recharacterize his stipulation on appeal. He claims that he stipulated to the guilty pleas as the factual basis for the enhancement element, but that he never stipulated to the convictions or to the element itself. But this argument is belied by the trial transcript. The district court clearly asked appellant's counsel: "So [appellant] wants to stipulate for purposes of enhancement to the two prior convictions . . . . Is that right?" And appellant's counsel said, "Yes."

Once there was a stipulation to this element on the record, the state was no longer required to prove this element of the crime. *See State v. Berkelman*, 355 N.W.2d 394, 397 (Minn. 1984) (stating that when a defendant stipulates to an element of a crime he is "judicially admit[ting] the existence of that element, thereby removing the issue from the case").

II.

Appellant raises three additional issues in his pro se supplemental brief. Appellant claims that (1) there was insufficient evidence to support his conviction because V.M.'s and K.M.'s stories changed over time; (2) he received ineffective assistance of counsel because of his attorney's decision not to call his mother as a witness; and (3) his waiver of a jury trial was not intelligent or knowing due to ineffective assistance of counsel. We address each argument in turn.

Sufficiency of the evidence

K.M. had difficulty at trial keeping some of the dates straight, but K.M. and V.M. both testified that appellant was at V.M.'s house twice between the date that he was served with the HRO and July 31, when the police arrived to retrieve his drum set. The district court was entitled to rely on this evidence and to reject appellant's testimony that he did not go to V.M.'s residence after he was served with the HRO. The district court stated that it did not find appellant's version of events to be credible, and this court defers to a fact-finder's determination of credibility. *See State v. Folley*, 378 N.W.2d 21, 26 (Minn. App. 1985). We conclude that there is sufficient evidence in the record to support appellant's conviction of violating the HRO.

Ineffective assistance of counsel

To prevail on a claim of ineffective assistance of counsel, an appellant must show that (1) trial counsel's representation "'fell below an objective standard of reasonableness'" and (2) "'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)).

The public defender representing appellant at trial made a decision not to call appellant's mother as a witness despite previous discussions with appellant about calling her. Decisions that can be considered trial strategy will generally not be second-guessed by appellate courts, and decisions based on trial strategy do not fall below the objective standard of reasonableness so as to satisfy the first prong of *Strickland*. *State v. Doppler*,

590 N.W.2d 627, 633 (Minn. 1999). Deciding which witnesses to call is a matter of trial strategy. *State v. Lahue*, 585 N.W.2d 785, 789-90 (Minn. 1998). We therefore conclude that appellant has failed to prove that he received ineffective assistance of counsel.

Jury-trial waiver

Appellant claims that he would not have waived his right to a jury trial if he had received accurate information from his attorney about the differences between a court trial and a jury trial. Appellant waived his right to a jury trial at a pretrial hearing on March 25, 2010—approximately one week before trial. The following colloquy occurred at the hearing:

> The Court: Now, Mr. Renken, Mr. Donnelly just told me that you want to waive your jury trial rights. Is that true?
> The Defendant: Yes.
> The Court: Are you thinking clearly today?
> The Defendant: Yes.
> The Court: Have you had sufficient time to discuss this matter with Mr. Donnelly?
> The Defendant: Yes.

The district court continued with this line of questioning in order to determine that appellant knew what was involved in a jury trial and what rights he was waiving by choosing a bench trial over a jury trial. On this record, we conclude that appellant was aware of his rights and knowingly waived them when he chose a court trial over a jury trial. It is therefore unnecessary to address his ineffective-assistance-of-counsel allegation related to this claim.

Affirmed.