STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2174

State of Minnesota,
Respondent,

vs.

Ely Ovis Emmanuel Sabahot,
Appellant.

Filed January 3, 2012
Affirmed
Hudson, Judge

Crow Wing County District Court
File No. 18-CR-09-5408

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

Donald F. Ryan, Crow Wing County Attorney, Candace Prigge, Assistant County Attorney, Brainerd, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Connolly, Judge.

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

HUDSON, Judge

On appeal from his convictions of fleeing a police officer and violating a domestic abuse no contact order (DANCO), appellant challenges the district court's failure to order

a rule 20.01 competency evaluation after one had previously been ordered and then cancelled. Appellant also challenges the district court's denial of his request to waive his right to counsel and denial of his request to withdraw his guilty plea. We affirm.

FACTS

In October 2009, the state charged appellant Ely Ovis Emmanuel Sabahot with one count of fleeing a peace officer in a motor vehicle, one count of driving after cancellation–inimical to public safety, and one count of fleeing a peace officer/other than in a motor vehicle. At a first appearance, the district court appointed a public defender to represent him. At a hearing in November 2009, defense counsel requested a rule 20.01 evaluation because of appellant's self-reported stroke or seizure-like symptoms that resulted in appellant not remembering conversations he had with counsel related to the case. The district court ordered a rule 20.01 evaluation.

In December 2009, appellant appeared for a hearing and asked to discharge his attorney and represent himself, telling the district court: "[W]hat I really want to do, I want to fire him, you know what I mean? It's not in a way because what I'm saying is there's nothing that we can work out because if he's got 43 trial cases, you know what I mean?" The district court deferred the issue to the next hearing.

At a hearing in January 2010, appellant's counsel reported to the district court that appellant did not believe the rule 20 evaluation was necessary and would not comply with the evaluation. Counsel reported that the original request for a rule 20 evaluation was based on physical issues that appellant had reported to him, but those issues had not manifested themselves. The district court cancelled the evaluation.

Appellant appeared before the district court with counsel for a contested omnibus hearing about three weeks later. During the hearing appellant made a lengthy statement, including the following:

> Every time that I leave this courtroom, I'm tasered or I'm thrown in the hole, and I'm made to sit in there and suffer. You know, I'm not given clothes, I'm not given hot water, I'm not given the proper food. I'm coughing up blood. They take my money, so that I don't have no way – they take my phone numbers out of the phone so I can't call nobody. They stop my visits.

Appellant also expressed frustration with his attorney: "They said that they're only here to satisfy the State and get a conviction and have me sent away. They have no—they have no purpose to mount a defense in my regard. I'm what they consider a throw-away."

In February 2010, appellant appeared at a hearing with counsel, but he told the district court that he believed that "unilateral coercion [was] going on between the county attorney's office and the public defenders." Appellant raised concerns regarding his health, whether his right to a speedy trial had been complied with, his belief that he was the victim of a malicious prosecution, claimed abuse that he suffered in jail, and pretrial rule and bail violations. The district court advised appellant to speak with his attorney and then raise any issues with the district court.

At a hearing on March 29, 2010, defense counsel reported that appellant planned to ask that he be discharged, but if the district court did not discharge him, counsel would again request a rule 20 evaluation. The district court asked appellant if he wished to discharge the public defender's office; appellant replied that he did. Appellant stated that

he did not need a rule 20.01 evaluation. The district court questioned appellant, who stated that he understood the charges against him and understood his rights. The district court told appellant: "[Y]ou do tend to get off on tangents sometimes, and I know that you're not a lawyer. I think you're a smart guy, but you're not a lawyer." The district court allowed appellant to meet with his counsel to discuss the advantages and disadvantages of proceeding without counsel and to complete a petition to proceed pro se.

Appellant signed the petition and was thoroughly questioned by the district court regarding his request to proceed pro se. The district court appointed the public defender's office as advisory counsel. The district court warned appellant that if he got off track during trial, the district court could consider it a waiver of appellant's right to self-representation. The district court informed appellant that it would "be paying very close attention to whether you're going to be able to focus your efforts and attention to what this case is about. Because I can always go back to a Rule 20 Evaluation if I start seeing you're having trouble defending yourself in this case."

Appellant appeared pro se with advisory counsel for a jury trial on March 31, 2010. After discussing a possible plea agreement with advisory counsel, appellant stated that he wished to proceed with a jury trial, for the following reasons:

> The thing is that if I take the State's deal then I'm committing a grave sin, because I believe in God. Number two, if I take it, what will wind up happening is that driving with—driving after cancellation, I'll never get a license in the state of Minnesota. And the penalty right now is so great—I mean, I'm taking a felony, a gross misdemeanor, losing my truck, paying a fine, going to prison.

When the district court asked appellant if he planned on calling any witnesses, appellant responded:

> And I think some what's going to be medical evaluations, reports, medical reports on—I guess it pertains to the fleeing part, because evidently the officer said that he seen somebody get out of the truck and flee on foot. Well, it's pretty hard to do when I have a degenerative spine, and knees, and I was supposed to have replacements. And I have—I have a documentation that clearly states that I can't even run.

Appellant requested a continuance, primarily to gather medical records and identify witnesses to testify regarding his physical health issues; the district court granted the continuance. Appellant informed the district court that his request to proceed in forma pauperis had been granted. Appellant also made a counteroffer to the county attorney and offered to serve more time in exchange for dismissal of the driving-after-cancellation charge. A new trial date was selected, and appellant was given a deadline for providing discovery to the county attorney. The district court did not state on the record that it found appellant to be competent, but stated in an order that "it had already determined . . . that Defendant was competent to represent himself at the trial."

Appellant did not comply with the discovery deadline, but moved for an extension of time, to which the stated agreed. Appellant completed an application for a public defender, and the district court reappointed the public defender's office to represent him. Appellant never submitted discovery, and a hearing was held in May 2010, to address the discovery violations. Appellant appeared for the hearing, represented by counsel. He again requested to discharge counsel, and the district court denied his request.

About two weeks later, appellant, now represented by counsel, waived his right to a trial, signed a plea petition, and entered an *Alford* plea to count one, fleeing in a motor vehicle. On June 17, 2010, appellant was charged with two felony counts of harassment and one count of felony domestic assault. The next day, a DANCO was issued, which prohibited appellant from having contact with his wife.

The parties appeared for sentencing on June 24, 2010. Defense counsel told the district court that appellant was not ready to proceed with sentencing because he was having physical health issues. Appellant complained about the lack of medical attention he had received in jail: "[M]y jaw was broke the day of the arrest and I was tasered in the heart and I got a gash on my tongue and it's probably two inches long. My tongue is half cut off and the doctor won't see it." Appellant submitted a writ of habeas corpus and requested a hearing on it. Appellant made a long statement to the court, including the following: "I want to invoke the U.S. Marshals on it right now. I want charges brought, too. I have my right to invoke the U.S. Marshals. I want the full scale FBI and the U.S. Marshals." The district court told him that it would review his motion and continued the sentencing hearing.

On July 8, 2010, appellant appeared again, represented by counsel. Appellant waived his right to a trial and entered an *Alford* plea to an amended charge of violation of a DANCO. The district court continued sentencing on both cases.

In August 2010, appellant filed a motion for a presentence mental-health assessment. At a hearing on that motion, appellant's counsel informed the court that the law allowing for a mental-health assessment prior to sentencing was brought to his

attention by appellant. Appellant asked to discharge the public defender, and the district court took appellant's request under advisement. But appellant told the district court that he would not be ready to proceed with sentencing at the next hearing if he were allowed to proceed pro se. The district court denied appellant's request to discharge the public defender's office because it was not timely.

At a continued sentencing hearing, the district court denied appellant's motion for a mental-health assessment prior to sentencing. During the hearing, defense counsel moved to withdraw appellant's plea, arguing that appellant did not knowingly and voluntarily enter a guilty plea because he thought he had pleaded guilty to violating a no-contact order, not violating a DANCO. The prosecutor stated that the complaint had been amended to include the violation of a DANCO at appellant's request because appellant was concerned about the language of the original charge and how it would affect his programming in prison. The prosecutor further argued that an order for protection was not in place when appellant entered his plea. The district court denied the plea-withdrawal request. Appellant moved again to discharge the public defender and obtain substitute counsel, and the district court denied the motion because it would unduly delay the proceedings.

The district court sentenced appellant to 29 months for the DANCO violation, based on the plea agreement, and 20 months for fleeing a peace officer in a motor vehicle. This appeal follows.

D E C I S I O N

I

Appellant argues that he was denied his right to due process when the district court failed to order a rule 20 competency evaluation prior to accepting his guilty plea and sentencing him. Appellant argues that he repeatedly demonstrated that he did not have a sufficient ability to consult with his counsel with a reasonable degree of rational understanding, he did not have a rational understanding of the proceedings, and his attorney expressed doubt about his competency.

The due process clauses of the Fifth and Fourteenth Amendments require that a defendant be legally competent before being tried or convicted. *State v. Camacho*, 561 N.W.2d 160, 170 (Minn. 1997). A defendant is competent to stand trial if he "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings against him." *Id.* at 171 (quotation omitted). Under Minnesota law, a defendant is incompetent to proceed in a criminal matter if he lacks the ability to "(1) rationally consult with counsel; or (2) understand the proceedings or participate in the defense due to mental illness or deficiency." Minn. R. Crim. P. 20.01, subd. 2. In felony or gross misdemeanor cases, the court must suspend the proceedings and order a medical examination if it finds, either on its own motion or that of the prosecutor or defense counsel, that there is reason to doubt a defendant's competency. *Id.*, subd. 3. In considering whether there is reason to doubt a defendant's competency, the court should consider factors such as "[e]vidence of the defendant's irrational behavior, demeanor at

trial, and any prior medical opinion on competence to stand trial." *Camacho*, 561 N.W.2d at 172. In reviewing competency decisions, this court independently reviews the evidence to determine whether the district court gave "proper weight" to the evidence related to appellant's competence. *Bonga v. State*, 797 N.W.2d 712, 720 (Minn. 2011) (quotation omitted).

The district court originally ordered a rule 20.01 evaluation at the request of appellant's counsel, who reported that appellant had physical symptoms that rendered him unable to remember conversations with his counsel. The rule 20.01 evaluation was cancelled by the district court when appellant's counsel stated that the issues appellant had previously reported had not continued to manifest themselves in his interaction with appellant. During subsequent hearings, appellant made statements to the district court that included allegations of abuse he suffered in jail and mistreatment by both the county attorney's and public defender's offices. But neither party raised further concerns about appellant's competency until appellant's counsel made a second request for a rule 20.01 evaluation in March 2010. At that hearing, appellant's counsel was discharged at appellant's request, and appellant was allowed to proceed pro se. The district court declined to order a rule 20.01 evaluation. The district court told appellant that he was "a smart guy," but warned appellant that he needed to be careful not to get off track and that it would consider ordering a rule 20.01 evaluation if he appeared to be struggling.

While appellant made several troubling statements to the district court, the record reflects that he understood the proceedings and was able to participate in his defense. During several hearings appellant demonstrated engagement with the district court, his

attorney, and the county attorney regarding his case. He demonstrated that he understood the trial process and his right to a jury trial when he argued for a reduction in bail and demanded that his right to a speedy trial be vindicated. In particular, we note that at a hearing on March 31, 2010, appellant expressed himself articulately when he explained why he wanted to proceed to trial and what his trial strategy would be, including the witnesses he would call and exhibits he would propose. Appellant also negotiated with the county attorney by making a counteroffer to her plea offer and requesting that the complaint be amended because of his concerns about facts in the original complaint. He filed motions with the district court, and at one point defense counsel attributed the research that led to the filing of an additional motion to appellant.

Appellant also demonstrated an ability to consult with his attorney, although he often disagreed with him. During several hearings appellant asked to discharge his attorney and cited reasons such as his attorney's high case load and lack of interest in his case. Appellant also accused his attorney of colluding with the county attorney's office. But these statements reflect disagreements with his attorney's strategy and a lack of confidence in his attorney's commitment to his case, not an inability to consult with counsel or lack of understanding of the proceedings and inability to participate in his defense. We conclude that the district court gave proper weight to the evidence related to appellant's competence and did not err by denying the request for a rule 20.01 evaluation.

II

Appellant argues that, even if the district court was correct in not ordering a rule 20 evaluation, the district court erred when it denied his request to discharge his public

defender and appear pro se. A criminal defendant is guaranteed the right to assistance of counsel at trial. U.S. Const. amend. VI, XIV; Minn. Const. art. I, § 6. However, a criminal defendant also has the right to self-representation in state criminal proceedings. *Faretta v. California*, 422 U.S. 806, 836, 95 S. Ct. 2525, 2541 (1975). A defendant who is competent to stand trial is competent to represent himself. *Camacho*, 561 N.W.2d at 171. If a criminal defendant requests to represent himself, the district court must determine (1) whether the request is clear, timely, and unequivocal, and (2) whether the defendant has knowingly and intelligently waived the right to counsel. *State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990). To determine if a defendant's waiver of his right to counsel is voluntary and intelligent, the district court should "comprehensively examine the defendant regarding the defendant's comprehension of the charges, the possible punishments, mitigating circumstances, and any other facts relevant to the defendant's understanding of the consequences of the waiver." *Camacho*, 561 N.W.2d at 173. The inquiry should focus on whether the defendant is "aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open." *Faretta*, 422 U.S. at 835, 95 S. Ct. at 2541 (quotation omitted); *accord Camacho*, 561 N.W.2d at 173. This court reviews a district court's denial of a defendant's motion for self-representation for clear error. *State v. Christian*, 657 N.W.2d 186, 190 (Minn. 2003).

The district court may deny last-minute requests for a change in counsel that will delay the proceedings. *See State v. Clark*, 722 N.W.2d 460, 465 (Minn. 2006) (concluding that the district court did not abuse its discretion when it denied the

defendant's request to substitute counsel on the second day of trial after jury selection had begun because it was not timely); *State v. Reed*, 398 N.W.2d 614, 616 (Minn. App. 1986) (concluding that a request to substitute counsel was not timely when it was made a week before trial and no exceptional circumstances were given), *review denied* (Minn. Feb. 13, 1987). When a defendant's request to discharge counsel and proceed pro se is made after a trial has begun, which occurs at the beginning of voir dire, the district court must balance the defendant's interest in appearing pro se and the possible disruption and delay of the proceedings. *Christian*, 657 N.W.2d at 191, 193. A district court "cannot allow a defendant to use the right of self-representation to delay proceedings or to force a mistrial." *Id.* at 191.

Appellant raised concerns about his attorney during hearings in December 2009, January 2010, and February 2010, but he did not then clearly and unequivocally request to discharge his attorney. At a hearing in March 2010, appellant clearly and unequivocally requested to discharge his attorney, and appellant proceeded to voluntarily and intelligently waive his right to counsel. The district court examined appellant on the record about his understanding of the charges, the possible consequences for his offense, and the consequences of waiver of counsel. The district court also took a short recess to allow time for appellant to complete the petition to proceed pro se with his attorney and to ask his attorney any questions before the court granted the motion.

Appellant asked that he be reappointed counsel in April 2010, and his request was granted. Reversing course again, appellant made three more requests to discharge counsel and appear pro se; the district court denied these requests as untimely. First, in

May 2010, appellant requested to discharge counsel so that he could seek substitute counsel. While appellant's request was clear and unequivocal, the district court properly exercised its discretion to deny the request because, like the defendant in *Reed*, appellant's request was made shortly before trial, and appellant identified no exceptional circumstances. *See Reed*, 398 N.W.2d at 616. It was also reasonable for the district court to conclude that granting his request would have delayed the proceedings because they had already been continued once at appellant's request, and because appellant admitted that if his request were granted, he would not be prepared to proceed to trial. In addition, when appellant had previously been permitted to proceed pro se and given a continuance to prepare, he did not comply with discovery deadlines and remained unprepared to proceed.

Second, appellant requested to discharge his attorney in August 2010, after he had already pleaded guilty to violation of a DANCO and fleeing in a motor vehicle, but before sentencing. Appellant then stated that he would not be prepared to proceed at the sentencing hearing if allowed to proceed pro se. Granting this request after appellant's guilty pleas would have further delayed the proceedings since appellant admitted he would not be prepared to proceed with sentencing at the next hearing. In this instance, appellant's interest in proceeding pro se was outweighed by the likely disruption and delay of the proceedings.

Third, appellant again requested to discharge his attorney at the sentencing hearing later in August 2010. By this time, appellant had already entered two guilty pleas and was scheduled to be sentenced. Again, appellant's interest in proceeding pro se was

outweighed by the likely disruption and delay of the proceedings if his request were granted. We conclude that the district court did not commit clear error when it denied appellant's requests to proceed pro se as untimely.

III

Appellant argues that the district court abused its discretion by denying his motion to withdraw his guilty plea prior to sentencing because it would have been fair and just to allow him to do so. A defendant does not have an absolute right to withdraw a guilty plea after it has been accepted. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). However, a district court may allow withdrawal of a guilty plea prior to sentencing "if it is fair and just to do so," or at any time "to correct a manifest injustice." Minn. R. Crim. P. 15.05, subds. 1, 2. In considering whether it is fair and just to allow plea withdrawal before sentencing, the district court must consider the defendant's reasons for seeking withdrawal and any possible prejudice to the state from granting withdrawal. *Id.*, subd. 2. It is the defendant's burden to prove that there is a fair and just reason for withdrawing his plea. *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007). It is the state's burden to prove prejudice if the defendant were permitted to withdraw his plea. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). A reviewing court will reverse the district court's determination of whether to permit withdrawal of a guilty plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

Appellant moved to withdraw his guilty plea before he was sentenced. Counsel for appellant argued that appellant did not knowingly and voluntarily enter a guilty plea because he thought he was pleading guilty to violation of a no-contact order instead of

violation of a DANCO. But the district court found that appellant specifically requested that the complaint be amended to include violation of a DANCO because he was concerned about the facts in the original complaint, that appellant completed and signed a petition to enter a plea of guilty, and that he was represented by counsel at the time of the plea. In addition, the district court found that there had been no order for protection in place at the time appellant entered his plea. As a result of these findings, the district court denied appellant's motion to withdraw his guilty plea. Under these circumstances, we agree with the district court that appellant failed to establish that it would be fair and just to allow him to withdraw his guilty plea. We conclude that the district court did not abuse its discretion by denying appellant's motion to withdraw his guilty plea.

Affirmed.