STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0051

State of Minnesota,
Respondent,

vs.

DeJuan Haywood Haggins,
Appellant.

Filed August 20, 2012
Affirmed
Rodenberg, Judge

Washington County District Court
File No. 82CR093359

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

Peter Orput, Washington County Attorney, Peter S. Johnson, Assistant County Attorney, Stillwater, Minnesota (for respondent)

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

Considered and decided by Rodenberg, Presiding Judge; Cleary, Judge; and Willis, Judge.*

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

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

RODENBERG, Judge

DeJuan Haggins appeals from his resentencing for a conviction of assault on a correctional officer. He contends that his sentence must be reversed and remanded because the district court erred in (1) failing to order an updated psychological assessment regarding appellant's competence to proceed and (2) denying his request to represent himself during resentencing. We affirm.

FACTS

This is appellant's second appeal from his conviction of assault on a correctional employee. The case arises from a head-butting incident that took place at the Stillwater Correctional Facility in March 2009. At the initial plea hearing, the district court granted appellant's request for a psychological assessment of his competency to stand trial pursuant to Minn. R. Crim. P. 20. The psychological assessment, reflected in a report by Dr. Powers-Sawyer dated August 17, 2009, concluded that appellant was competent to proceed. In her report, Dr. Powers-Sawyer assessed appellant's claimed symptoms of mental illness, and opined that he was malingering. She noted that appellant had a history of feigning psychosis in order to avoid legal proceedings. She specifically cautioned that appellant was likely to feign symptoms in court if testifying on his own behalf.

Based on Dr. Powers-Sawyer's report, the district court found appellant competent to proceed. Appellant represented himself at a jury trial and was found guilty. The

district court sentenced him to 18 months in prison, imposing an upward departure from the presumptive sentence based on appellant's agreement to the departure.

During his first appeal, appellant argued that his waiver of counsel was inadequate and that the upward departure lacked the requisite factual findings. *See State v. Haggins*, 798 N.W.2d 86, 88 (Minn. App. 2011). This court affirmed the validity of appellant's waiver of counsel, but reversed and remanded due to the absence of factual findings in support of the upward sentencing departure. *Id.* at 91–92. We directed the district court to impose, "at most," the presumptive sentence of 12 months and a day. *Id.* at 92.

On remand, the district court held a resentencing hearing on August 5, 2011. At that hearing, appellant attempted to discharge his public defender. He claimed that his attorney was working for the Central Intelligence Agency and had been outside his window the night before "with an AK-47," plotting to kill him. Appellant further alleged that he did not know what was going on, as "[t]hey put a microchip in [his] head" and were "trying to track [him] with radar." After questioning appellant about his reasons for discharging his attorney, and receiving no meaningful response, the district court excused the attorney from the courtroom.

The prosecutor then asked whether a psychological evaluation had been completed with regard to appellant's competency. The district court recalled that appellant had been found competent to stand trial in 2010. It reviewed Dr. Powers-Sawyer's report from August 2009 and announced that it would proceed to sentencing.

At this point, appellant requested that his lawyer return, and he made what appeared to be a motion for a renewed psychological assessment. The district court ruled

that the August 2009 report was sufficient, concluding that further evaluation of appellant's competency was unnecessary. However, it postponed resentencing, at appellant's request, to permit the completion of a presentence investigation.

At the rescheduled sentencing hearing on October 7, 2011, appellant again asked to discharge his attorney because "[s]he's working for the CIA" and was "trying to get [him] to Guantanamo Bay." The district court found that appellant was not voluntarily, intelligently, and knowingly waiving his right to counsel. It therefore did not allow appellant to discharge his attorney.

The district court imposed the presumptive guidelines sentence of 12 months and a day. This appeal followed.

D E C I S I O N

I.

Appellant argues that the district court violated his due-process rights by declining to order an updated psychological assessment of his competency to proceed with resentencing. The accused has a due-process right to avoid standing trial while legally incompetent. *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011). Defendants cannot be sentenced "while mentally ill or mentally deficient so as to be incapable of understanding the proceedings or making a defense." Minn. Stat. § 611.026 (2010). A defendant is incompetent if he lacks the ability to rationally consult with counsel, understand the proceedings, or participate in his defense. Minn. R. Crim. P. 20.01, subd. 2.

Whenever the district court determines that "reason exists to doubt the defendant's competency," it must order an examination of the defendant's mental condition. *Id.*,

subd. 3. In reviewing the district court's denial of such a request, we must independently examine the record and determine whether the district court afforded "proper weight to the information suggesting incompetence." *State v. Camacho*, 561 N.W.2d 160, 174 (Minn. 1997); *see also In re Welfare of D.D.N.*, 582 N.W.2d 278, 281 (Minn. App. 1998) (clarifying that this court conducts an independent review of the record "to determine if the trial court drew proper inferences from the evidence bearing on [competence]").

Courts may consider a number of factors in determining whether further examination of a defendant's competency is required. *State v. Bauer*, 310 Minn. 103, 116, 245 N.W.2d 848, 855 (1976). These factors include the defendant's demeanor at trial, his irrational behavior, and "any prior medical opinion on [his] competence to stand trial." *Id.* at 116, 245 N.W.2d at 855. A prior finding of competence is not determinative, and it should not "foreclose further inquiry in the face of uncontradicted testimony suggesting incompetence." *Id.* at 118, 245 N.W.2d at 856 (quotation omitted). Thus, the district court must remain alert for circumstances suggesting that the defendant's competency may have changed since the prior evaluation. *Drope v. Missouri*, 420 U.S. 162, 181, 95 S. Ct. 896, 908 (1975). But if a defendant's behavior during later stages of a case remains consistent with that exhibited during the prior finding of competence, there will be "little reason to doubt his present fitness." *Bauer*, 310 Minn. at 118, 245 N.W.2d at 856; *see also Camacho*, 561 N.W.2d at 172 (affirming finding of competence when defendant failed to present any evidence of changed circumstances since prior determination of competence).

In this case, Dr. Powers-Sawyer's report was completed nearly two years before resentencing. As a defendant's mental condition may change in a short period of time, courts should be cautious in relying on potentially stale reports that may not reflect the defendant's current mental state. *See, e.g.*, *Rose v. United States*, 513 F.2d 1251, 1254, 1256–57 (8th Cir. 1975) (reversing federal district court's reliance on a two-month-old state court competency adjudication).

Nonetheless, the specificity of the prior evaluation, combined with our own careful review of the record, convince us that the district court afforded the proper weight to the information regarding appellant's competency at resentencing. The record reflects no new evidence of incompetency that came to light during the resentencing hearings. Although appellant voiced beliefs that his attorney was trying to kill him and that "they" were conducting experiments on him, these same expressions of conspiracy theories were fully documented, discussed, and dismissed in the competency evaluation on file.[1] Dr. Powers-Sawyer detailed appellant's purported belief that the CIA had instituted the proceedings, that he was being watched, that he was hearing voices, and that the Pentagon had implanted a microchip in his head. She diagnosed these behaviors as

[1] Appellant makes much of the fact that the district court reviewed only a ten-page portion of Dr. Powers-Sawyer's report at resentencing. The full report is thirteen pages long, and the record does not clarify which three pages may have been omitted. However, the prosecutor stated that the ten-page version "notes in numerous instances that [Dr. Powers-Sawyer] determined that [appellant] was malingering." This indicates that the court did consider the substantive portions of the report discussing the malingering behaviors. In any event, as appellant did not object to the district court's reliance on a partial report at resentencing, he cannot now raise it on appeal. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) ("This court generally will not decide issues which were not raised before the district court . . . .").

malingering, consistent with appellant's lengthy history of manipulating the system in an effort to achieve a favorable outcome. Dr. Powers-Sawyer further cautioned that appellant was likely to continue to feign these same or similar symptoms in court.

Additionally, appellant had exhibited some of these behaviors at the pretrial hearings. Since his behavior did not substantially change at the resentencing hearings, it did not cast any new doubt on his competency. *See Bauer*, 310 Minn. at 118, 245 N.W.2d at 856 (noting that if a defendant's behavior during later stages of a case remains consistent with that exhibited during the prior finding of competence, there will be "little reason to doubt his present fitness"). Although the judge presiding over resentencing was new to the case, he was nonetheless able to observe appellant's demeanor at both of the hearings held on remand—a relevant consideration under *Bauer*. *See id.* at 116, 245 N.W.2d at 855 (stating that a defendant's demeanor at trial is a relevant factor in evaluating competency). Thus, because the district court did not encounter any new evidence regarding appellant's competence at resentencing, it did not err in declining to order another psychological assessment. Although appellant's bizarre statements, considered in isolation, are suggestive of incompetency, the entire record (including a history of such behaviors and comments used in a manipulative fashion in the past) convinces us that the district court drew proper inferences from the evidence bearing on appellant's competence. *See D.D.N.*, 582 N.W.2d at 281.

II.

Appellant maintains that the district court violated his constitutional right to self-representation by denying his request to discharge his attorney at the second resentencing

hearing. In general, we review the denial of a request for self-representation under the clear-error standard. *State v. Christian*, 657 N.W.2d 186, 190 (Minn. 2003). If the request was made after trial began, we apply the abuse-of-discretion standard. *Id.* at 193–94.

The Sixth and Fourteenth Amendments guarantee the right to self-representation in state criminal proceedings. U.S. Const. amends. VI, XIV; *State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990); *see also Faretta v. California*, 422 U.S. 806, 819, 95 S. Ct. 2525, 2533 (1975) (recognizing that the Sixth Amendment "grants to the accused personally the right to make his defense"). Defendants must be free to decide for themselves whether retaining counsel is to their advantage. *Faretta*, 422 U.S. at 834, 95 S. Ct. at 2541. Thus, a defendant's request for self-representation should be granted when it is "clear, unequivocal, and timely," and when the defendant "knowingly and intelligently waives his right to counsel." *Christian*, 657 N.W.2d at 191 (quotation omitted).

But, once trial has begun, the district court has discretion to grant or deny the request. *Id*. In exercising its discretion, the court must balance the defendant's legitimate interest in self-representation against the potential for disruption and delay. *Id.* Here, as appellant's request for self-representation was made after trial, the district court's decision was discretionary.

The Minnesota Supreme Court has recognized that "the legal standard for competence to waive counsel is the same as the legal standard for competence to stand trial." *Camacho*, 561 N.W.2d at 171; *see also Faretta*, 422 U.S. at 835, 95 S. Ct. at 2541

(noting that a waiver is adequate if the defendant is "literate, *competent*, and understanding, and . . . [is] voluntarily exercising his informed free will" (emphasis added)). Thus, a district court cannot deny a defendant's self-representation request on competency grounds when it has found the defendant competent to stand trial. *State v. Thornblad*, 513 N.W.2d 260, 263–64 (Minn. App. 1994); *see also* Minn. R. Crim. P. 20.01, subd. 1 (detailing requirements for competency to waive counsel, in the broader context of competency to stand trial).

The district court in this case denied appellant's request on the expressed ground that he did not voluntarily, knowingly, and intelligently waive his right to counsel. In essence, the district court found that appellant failed to competently waive counsel. *See Camacho*, 561 N.W.2d at 171 (noting that waiver of counsel "must be effectuated competently and intelligently" (quotation omitted)). But the court had already found appellant competent to proceed with sentencing. The August 2009 competency evaluation, on which the district court relied, expressly found appellant competent to waive counsel under Minn. R. Crim. P. 20.01, subd. 1. The court cannot rely on that evaluation (the only one conducted in this case) to find appellant competent with regard to one aspect of the proceeding, but then ignore it to find him incompetent with regard to another. *See Thornblad*, 513 N.W.2d at 263–64 (stating that if a defendant is competent to stand trial, then he is competent to proceed pro se). Thus, the district court's articulated basis for denying appellant's motion for self-representation was erroneous.

Despite the district court's flawed reasoning in denying the request, we may affirm its decision on the basis of any ground supported by the record. *See Kahn v. State*, 289

N.W.2d 737, 745 (Minn. 1980) (noting that the supreme court will not "reverse on appeal a correct decision simply because it is based on incorrect reasons"); *Williams v. Nat'l Football League*, 794 N.W.2d 391, 395 (Minn. App. 2011) ("Appellate courts are free to affirm for reasons other than those on which a decision is based."), *review denied* (Minn. Apr. 27, 2011). The record here contains several other grounds to support the district court's denial of appellant's request for self-representation.

First, appellant's request for self-representation in this instance was equivocal. At the resentencing hearing, appellant repeated his previous assertions that his public defender was affiliated with the CIA and was not on his side. But, he requested only that the court discharge *that particular attorney*. He never clearly asserted a desire to represent himself, as he had previously done when proceeding to trial pro se.[2] Instead, he offered nonresponsive answers to the questioning of the court and attorneys. Even when directly asked whether he wanted the public defender to represent him, appellant did not give a comprehensible reply.[3] *Cf. State v. Blom*, 682 N.W.2d 578, 613–14 (Minn. 2004)

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[2] When asserting his right to self-representation before trial, appellant had unequivocally affirmed that he wanted to act as his own attorney. *See Haggins*, 798 N.W.2d at 89.

[3] The transcript contains the following exchange:

> THE COURT: Mr. Haggins, what is your position in terms of being represented by the public defender?
> THE DEFENDANT: I have some papers here for whoever is the judge and she won't give them to you so obviously she's not working for me. She's working for the CIA.
> THE COURT: Okay. If you care to be represented by counsel the Court will appoint counsel. If you are disclaiming counsel and are representing yourself that is your right to do so as long as you understand the consequences and do so voluntarily and intelligently.

(affirming denial of request for self-representation, in part because defendant did not clearly state that he wanted to represent himself, but only that he did not want his existing counsel to represent him). Appellant had ample opportunity to make a request to represent himself, which he had done prior to trial. He did not make that request. Thus, the record supports the district court's conclusion that appellant would not be permitted to represent himself at sentencing.

Second, the record indicates that the potential for disruption and delay outweighed appellant's interests in representing himself. *Cf. id.* at 613 (noting that request for self-representation was untimely when it occurred 40 days into a 48-day trial, as the defendant's interest was outweighed by the likelihood of disruption and delay). Appellant had already discharged and then recalled his attorney during the first

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> THE DEFENDANT: I ain't got no other choice. She works for the CIA.
> THE COURT: Well, if you do not care to be represented by the public defender, you are voluntarily waiving that representation? Are you intelligently waiving that representation?
> THE DEFENDANT: You want me to keep repeating the same thing over and over again, sir?
> . . . .
> [DEFENSE COUNSEL]: May I make an inquiry? Mr. Haggins, do you want me to represent you?
> THE DEFENDANT: I don't know who you are. You're working against me for the CIA.
> [DEFENSE COUNSEL]: My question to you is yes or no, do you want me to represent you today?
> THE DEFENDANT: You can't represent me and the CIA at the same time.
> [DEFENSE COUNSEL]: So that's a no, correct?
> THE DEFENDANT: You're trying to get me to Guantanamo Bay.

resentencing hearing. His equivocation caused disruption and delay, as the court and attorneys were required to rehash the issues raised during appellant's brief span of self-representation. Moreover, appellant failed to cooperate with the presentence investigation, which was the reason for the postponement of the resentencing hearing from August 5 to October 7.

Finally, the context of appellant's various requests strongly suggests that his mercurial position on the representation issue was likely calculated to cause delay. At a pretrial hearing, appellant had similarly discharged his public defender, claiming he did not trust the attorney and espousing his belief that the CIA had initiated the proceedings against him. Appellant's pattern of "firing" his public defender based on conspiracy theories, combined with his failure to cooperate in the presentence investigation, his evasive and unresponsive answers to the court's questioning, and his diagnosis as a malingerer, all undermined the sincerity of his request for self-representation, even if we assume for purposes of discussion that he made such a request. Thus, the district court's decision was justified on the basis that the potential for disruption and delay outweighed appellant's interest in self-representation.

Appellant also argues that the district court erred in failing to advise him of the disadvantages and potential consequences of self-representation. But the district court did not need to provide those advisories because it did not allow him to represent himself. Appellant therefore did not undertake the risks and disadvantages of self-representation. *See Faretta*, 422 U.S. at 835, 95 S. Ct. at 2541 (observing that a defendant should be

made aware of the disadvantages of self-representation so that the record establishes that his choice to proceed pro se was "made with eyes open" (quotation omitted)).

The record also establishes that appellant fully understood the consequences of representing himself. Before appellant represented himself at trial, the district court had engaged in a lengthy discussion with him about the risks and consequences of waiving counsel. Appellant expressed a thorough understanding of his rights and the role of counsel, and boasted that he had previously won an acquittal while representing himself. He then went on to represent himself during the entire trial, resulting in a conviction. Appellant was thus personally aware of the risks and disadvantages of self-representation.

The district court's articulated reason for denying appellant's request to discharge his attorney was inconsistent with the court's competency determination, but the record supports its decision on the basis that appellant's request was equivocal, and the potential for disruption and delay outweighed appellant's legitimate interest in self-representation.

Affirmed.