STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1007

John Turnage, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed January 11, 2011
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. 27-CR-00-028939

David W. Merchant, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Klaphake, Judge; and Halbrooks, Judge.

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

KLAPHAKE, Judge

In 2000, appellant John Turnage pleaded guilty to attempted second-degree assault in violation of Minn. Stat. §§ 609.222, subd. 1, .17 (1998), for his role in attacking and

beating a co-worker. In 2009, appellant sought postconviction relief, claiming that he received ineffective assistance of counsel because his attorney failed to pursue an insanity defense. The postconviction court rejected appellant's claim because it determined that it was untimely and lacked merit. We affirm because appellant's claim is without merit.

D E C I S I O N

In a postconviction appeal, this court reviews the postconviction court's decision for an abuse of discretion, upholding factual determinations if they are supported by sufficient evidence and reviewing issues of law de novo. *Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010).

The district court found that appellant did not show that his counsel's performance was ineffective because his counsel failed to pursue an insanity defense. The court's memorandum attached to its order states, "Defense counsel was aware of [appellant's] mental deficiencies and explored various options with [appellant] prior to the plea and sentencing hearing." The court concluded that appellant's ineffective assistance of counsel claim was "manifestly contradicted by the record in this case. Defense counsel went over [appellant's] rights, possible legal strategies, and addressed [appellant's] mental deficiencies."

The record includes ample support for the district court's decision to reject appellant's claim on the merits. In May 2000, consistent with Minn. R. Crim. P. 20, the district court ordered appellant to submit to an examination to determine his mental competency to proceed to trial. The court required the evaluating psychologist to prepare a written report following the examination, including giving an opinion "whether,

because of mental illness or deficiency, [appellant] at the time of the commission of the offense charged was laboring under such a defect of reason as not to know the nature of the act constituting the offense with which [he] is charged or that it was wrong."

The district court register of actions shows that Dr. Carl Malmquist thereafter filed a report pertaining to appellant. The district court record also includes a contemporaneous psychological evaluation made by Dr. Fred Ninonuevo dated January 10, 2000, in regard to another criminal matter. Dr. Ninonuevo's report does not discuss whether appellant suffered from a mental illness or deficiency at the time of that crime, but it does state that appellant is mildly retarded (I.Q. between 55-70), that he is cannabis dependent, and that he has a personality disorder "with schizotypal and/or schizoid features." It is clear from this record that appellant was found mentally competent to stand trial.

Further, at appellant's plea hearing, he made the following statements regarding his mental condition and his attorney's diligence in investigating his mental condition:

> Q. Now, are you satisfied with how I've represented you in this matter?
> A. Yes.
> Q. And have you had sufficient time to talk to me –
> A. Yes.
> Q. -- about the facts of this case?
> A. Yes.
> Q. Have you had time to talk to me and do you think you understand the possible defenses that we –
> A. Yes.
> Q. -- would assert at trial?
> A. Yes.
> Q. And you're satisfied with the way I've represented you in this matter?
> A. Yes.

Q. Okay. Now Mr. Turnage, I'm directing your attention to item No. 7 on this petition. You have in fact been treated by a psychiatrist or other person for a nervous mental condition, correct?
A. Yes.
Q. Now, depending on which psychiatrist you rely on, they have told us that you are – you suffer from various maladies, correct?
A. Yes.
Q. Now, we talked about that fact that sometimes you hear voices, right?
A. Yes.
Q. And we had Dr. Malmquist examine you, correct?
A. Yes.
Q. And you told him about that, right?
A. Yes.
Q. And we talked a lot about that, right?
A. Yes.
Q. And we had Dr. Seymour Gross see you just the other day, correct?
A. Yes.
Q. And he's from Pilot Mental Health Center?
A. Yes.
Q. And he had kind of a different idea of what's going on in your life, right?
A. Yes.
Q. Now, you understand that the Judge needs to understand that your mental illness does not get in the way – getting in the way of you being able to make a voluntary decision, that means your own decision, on what's best for you in this case.
A. That's correct.
Q. Understand?
A. Yes.
Q. We talked a lot about that, right?
A. Yes.
Q. And that's one of the things that we saw the doctors about, right?
A. Yes.
Q. Okay. Do you think that anything that's going on in your life right now, the stress of the situation, these voices or anything – or anything else that's going on in

your life is getting in the way of you being able to make a good decision for John Turnage today?

A. No.

Based on this record, we conclude that appellant cannot meet the legal standards to show either that his mental condition constituted legal insanity, or that his attorney ineffectively represented him because he either failed to investigate appellant's mental condition or failed to assert an insanity defense. The insanity defense must be proved by showing that the offender, at the time of the crime, "was laboring under such a defect of reason [due to mental illness or deficiency] as not to know the nature of the act, or that it was wrong." Minn. Stat. § 611.026 (2010); *see Bruestle v. State*, 719 N.W.2d 698, 701 n.2 (Minn. 2006) (requiring those claiming insanity defense to "prove that, at the time of the offense, they were laboring under such a defect of reason, from [a mental illness or deficiency], as not to know the nature of the act, or that it was wrong"). "The law recognizes no degree of insanity" — "on one side are the legally sane, on the other side are the legally insane." *State v. Bouwman*, 328 N.W.2d 703, 706 (Minn. 1982).

Here, appellant was found competent to stand trial. With regard to his mental capacity, appellant merely showed that he is mildly retarded and has a personality disorder. While such conditions may be construed as mental infirmity, they do not prove that appellant was legally insane at the time of the offense. For this reason, appellant's attorney did not provide ineffective assistance of counsel by failing to pursue this defense. *See Bruestle*, 719 N.W.2d at 705 (concluding that postconviction court did not abuse its discretion in denying postconviction petition without a hearing when petitioner offered no evidence to show that trial counsel was ineffective because of failure to pursue

"a Rule 20 argument"); *Cuypers v. State*, 711 N.W.2d 100, 105 (Minn. 2006) (rejecting postconviction petitioner's claim of diminished capacity because that defense is not approved in Minnesota and because medical evaluations concluding petitioner was competent to stand trial showed "no grounds upon which to interpose a diminished capacity defense"); *see also Voorhees v. State*, 627 N.W.2d 642, 649 (Minn. 2001) (stating that ineffective assistance of counsel claim requires proponent to prove that counsel's performance fell below reasonable standard and that result would have been different without defective performance); *State v. Brocks*, 587 N.W.2d 37, 43 (Minn. 1998) (stating that differences over trial strategy will not generally demonstrate ineffective assistance of counsel). To the extent that appellant also claimed that his attorney failed to investigate his mental condition, the record also contradicts this claim as it shows that appellant was ordered to submit to a rule 20 evaluation and that his counsel explored the parameters of his mental condition. Because we reach the issue raised by appellant on the merits, we decline to address the state's claim that the postconviction claim is untimely.

Affirmed.