

STATE OF MINNESOTA  
IN SUPREME COURT

A19-0170

Court of Appeals

Hudson, J.  
Took no part, Gildea, C.J.

State of Minnesota,

Respondent,

vs.

Filed: March 11, 2020  
Office of Appellate Courts

Luis Damian Cruz Montanez,

Appellant.

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Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, Saint Paul, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Saint Paul, Minnesota; and

Kristine A. Kolar, Ninth District Chief Public Defender, Scott G. Collins, Assistant Public Defender, Thief River Falls, Minnesota, for appellant.

Teresa J. Nelson, David McKinney, Minneapolis, Minnesota; and

Ian Bratlie, Mankato, Minnesota, for amicus curiae American Civil Liberties Union of Minnesota.

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S Y L L A B U S

By pleading guilty before filing his petition for review, appellant waived the issue of whether a defendant represented by a public defender may request funding under Minn. Stat. § 611.21(a) (2018) for out-of-court interpreter services to facilitate attorney-client communication.

Dismissed.

## OPINION

HUDSON, Justice.

The issue presented in this case is whether a defendant represented by a public defender may request funding under Minn. Stat. § 611.21(a) (2018) for out-of-court interpreter services to facilitate attorney-client communication. The district court denied appellant Luis Damian Cruz Montanez's request for that funding. The court of appeals affirmed, concluding that Minn. Stat. § 611.21(a) does not apply to interpreter services. Because appellant waived the interpreter-funding issue by pleading guilty before filing his petition for review, we dismiss the appeal.

## FACTS

The appellant, Luis Damian Cruz Montanez, was charged with second-degree assault and attempted second-degree murder in connection with a stabbing in Thief River Falls on July 29, 2018. Cruz Montanez speaks little to no English and needed an interpreter for his in-court appearances and out-of-court meetings with his public defender. Cruz Montanez had an interpreter for all in-court proceedings. His counsel filed an ex parte application with the district court to fund interpreter services for out-of-court meetings with counsel, pursuant to Minn. Stat. § 611.21(a), because the Ninth District Public Defender's Office did not have any funds remaining in its fiscal-year budget for interpreter services. The district court denied the application.

Cruz Montanez's counsel filed a second ex parte application to fund interpreter services, this time attaching affidavits from the Chief Public Defender for the Ninth District

and the Chief Administrator for the State Board of Public Defense. The affiants stated that the district public defender's office did not have any funds remaining in its fiscal year 2019 budget to pay for experts, interpreters, and other defense costs. The district court denied the ex parte application, reasoning that Minn. Stat. § 611.33, subd. 3 (2018), requires the State Board of Public Defense to assume responsibility for funding out-of-court interpreter services for communications with counsel and that Minn. Stat. § 611.21(a) does not apply to interpreter services.

Cruz Montanez appealed the district court's order. In the interim, Cruz Montanez communicated with counsel outside of court through an interpreter who agreed to accept delayed payment. In other words, Cruz Montanez received the services that he needed. The court of appeals affirmed the district court's order in an opinion filed on April 8, 2019. *State v. Cruz Montanez*, 926 N.W.2d 434, 436 (Minn. App. 2019). On April 24, 2019, Cruz Montanez pleaded guilty to second-degree assault. On the same day, the district court accepted his guilty plea and imposed a sentence of 1 year and 1 day. Cruz Montanez was released from custody based on credit for time served. He filed a petition for review on April 30, 2019, which we granted.

### **ANALYSIS**

Appellant asks us to decide whether a defendant represented by a public defender may request funding under Minn. Stat. § 611.21(a) for out-of-court interpreter services to facilitate attorney-client communication. We, however, are unable to resolve that issue in this case. We have held that a criminal defendant's valid guilty plea waives "all non-jurisdictional defects arising prior to the entry of the plea." *State v. Ford*, 397 N.W.2d 875,

878 (Minn. 1986). Cruz Montanez does not challenge the validity of his plea (for lack of interpreter services or any other reason), and there is no evidence of a jurisdictional defect. Based on this longstanding rule, we conclude that Cruz Montanez waived his right to challenge the denial of his request for funding under Minn. Stat. § 611.21(a) for out-of-court interpreter services when he pleaded guilty before filing his petition for review.

Funding for out-of-court interpreter services to facilitate attorney-client communication is undeniably an important issue that affects many defendants. Nevertheless, an issue must be properly preserved for us to address it. Because Cruz Montanez waived his right to challenge the denial of his request for funding by pleading guilty, we dismiss the appeal.

### **CONCLUSION**

For the foregoing reasons, we dismiss the appeal of Luis Damian Cruz Montanez.

Dismissed.

GILDEA, C.J., took no part in the consideration or decision of this case.