STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1018

State of Minnesota,
Respondent,

vs.

Jary Glenn Goodrich,
Appellant.

Filed July 8, 2008
Affirmed
Willis, Judge

Lincoln County District Court
File No. K3-03-192

Lori Swanson, Attorney General, Peter R. Marker, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Glen Petersen, Lincoln County Attorney, P.O. Box 671, 225 North Tyler Street, Tyler, MN 56178 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Bridget Kearns Sabo, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Willis, Judge; and Johnson, Judge.

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

WILLIS, Judge

Following remand from this court and resentencing by the district court, appellant challenges his sentence, arguing that he was denied due process of law at resentencing because the district court did not, sua sponte, order an examination of his mental competency under Minn. R. Crim. P. 20.01, subd. 2. Appellant also raises several additional arguments in his pro se supplemental brief. We affirm.

FACTS

In 2004, appellant Jary Glenn Goodrich was convicted of kidnapping, first-degree assault of a peace officer, and second-degree assault. On appeal, this court affirmed Goodrich's convictions but reversed his sentence under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), and remanded the case for resentencing. *See State v. Goodrich*, No. A04-2299, 2006 WL 9534, at *2-*3 (Minn. App. Jan. 3, 2006). On remand, the state decided not to submit any evidence regarding aggravating factors to a sentencing jury and instead recommended that Goodrich be sentenced to the mandatory minimum term for the conviction of first-degree assault of a peace officer. During all four of the hearings involved in his resentencing, Goodrich behaved in a disruptive manner and refused to follow the instructions of the district court, and during one hearing, he assaulted his public defender in open court. Before pronouncing sentence, the district court found that Goodrich's behavior was intended to disrupt the proceeding and that it provided no basis to order a competency examination under Minn. R. Crim. P. 20.01. This appeal follows.

D E C I S I O N

I. The district court correctly determined that a competency examination was not required.

When reviewing a district court's determination that no further inquiry into a defendant's competency is required, we examine the record "to determine whether [the district court] gave proper weight to the information suggesting incompetence." *State v. Bauer*, 310 Minn. 103, 117, 245 N.W.2d 848, 856 (1976) (quotation marks omitted); *see also In re Welfare of D.D.N.*, 582 N.W.2d 278, 281 (Minn. App. 1998) ("[W]e independently review the record before us to determine if the trial court drew proper inferences from the evidence bearing on [the defendant's] competence . . . .").

A criminal defendant may not be tried if he is not legally competent. *Pate v. Robinson*, 383 U.S. 375, 378, 86 S. Ct. 836, 838 (1966). In Minnesota, a defendant is not competent to stand trial if he (1) lacks sufficient ability to consult with defense counsel with a reasonable degree of rational understanding or (2) is mentally ill or mentally deficient so as to be incapable of understanding the proceedings or participating in the defense. Minn. R. Crim. P. 20.01, subd. 1. If the district court determines "that there is reason to doubt the defendant's competency," the court must suspend the criminal proceedings and order a professional examination of the defendant's mental condition. Minn. R. Crim. P. 20.01, subd. 2. In deciding whether there is reason to doubt the defendant's competence, the district court may consider the defendant's behavior, demeanor, and any prior medical opinion on the defendant's competence. *State v. Camacho*, 561 N.W.2d 160, 172 (Minn. 1997).

Goodrich argues that a "perusal of [his] behavior at all of the hearings . . . provides copious evidence that there was a basis to question his competence." But the district court disagreed, concluding that Goodrich's behavior was not evidence of his incompetence but was, instead, a deliberate attempt to disrupt the proceedings. Before sentencing Goodrich, the district court stated:

> Mr. Goodrich's conduct has been disruptive within the courtroom. However, I have formed an opinion, based upon observing Mr. Goodrich, his response to various matters and manners that I believe that Mr. Goodrich's conduct has been volitional and I believe that conduct has been entirely volitional, and has been intentional. . . .
>
> I found no basis to order a Rule 20 Examination at this time. There was no request by counsel and my observations of Mr. Goodrich cause me to conclude that his conduct was, in fact, intentional.

Goodrich's resentencing included four hearings before the district court. At each hearing, Goodrich acted in a disruptive manner. But Goodrich—acting pro se—also brought numerous oral and written motions, many supported by citations to legal authorities and rational, if misguided, legal arguments. And Goodrich was given a mental examination during his 2004 trial, which resulted in a finding of competency. *See Camacho*, 561 N.W.2d at 172 (stating that a prior medical opinion is relevant in deciding whether further inquiry is required under rule 20.01).

The district court had the opportunity to observe Goodrich's behavior firsthand, and the record demonstrates that the district court considered this behavior in concluding that there was no basis to order a mental examination. Goodrich has not demonstrated how the district court failed "to give proper weight to the information suggesting incompetence."

See Bauer, 310 Minn. at 117, 245 N.W.2d at 856 (quotation marks omitted). Nor has Goodrich demonstrated that the district court drew improper "inferences from the evidence bearing on [his] competence." *See In re D.D.N.*, 582 N.W.2d at 281.

Goodrich also argues that his competence should have been questioned because portions of the record indicate that he did not understand the purpose of the proceedings on remand and that he thought that he was entitled to a new trial on the issue of his guilt. But the district court immediately corrected this misunderstanding. And there is nothing in the record indicating that Goodrich was "incapable of understanding the proceedings," as required by rule 20.01.

II. None of Goodrich's pro se arguments merits relief.

Goodrich raises several additional arguments in his pro se supplemental brief. None merits relief.

A. *Goodrich's right to counsel was not violated.*

"In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI.

1. *Goodrich had no right to the counsel of his choice.*

Goodrich essentially argues that his right to counsel was violated because the district court did not allow him the counsel of his choice. As Goodrich correctly asserts, the right to counsel includes "the right of a defendant who does not require appointed counsel to choose who will represent him." *United States v. Gonzales-Lopez*, 548 U.S. 140, 144, 126 S. Ct. 2557, 2561 (2006). But "the right to counsel of choice does not extend to defendants who require counsel to be appointed for them." *Id.* at 151, 126 S. Ct. at 2565. Because Goodrich

was represented by appointed counsel—the public defender's office—he had no right to choose the specific attorney representing him. *See also State v. Gassler*, 505 N.W.2d 62, 70 (Minn. 1993) ("While [an indigent] defendant has the right to court appointed counsel, he does not have the right to choose the attorney; he must accept the attorney appointed by the court.").

2. *Goodrich validly waived his right to counsel.*

Goodrich argues that the district court failed to follow proper procedures to ensure a valid waiver of his right to counsel before allowing him to proceed pro se. Before allowing a defendant to proceed pro se, the defendant "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing." *Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541 (1975) (quotation omitted). But a detailed, on-the-record colloquy is not always necessary. *See State v. Worthy*, 583 N.W.2d 270, 276 (Minn. 1998).

On remand for resentencing, Goodrich was represented by a public defender different from the one who had represented him at trial. Goodrich refused to recognize this attorney as his counsel and insisted that the original public defender was his "counsel of record" and that the new attorney was "fired." The district court attempted, on several occasions, to explain to Goodrich that he did not have the right to choose which member of the public defender's staff would represent him and that he could proceed either with the attorney assigned to him or pro se. Goodrich repeatedly interrupted the court and refused to accept either option or to allow the court to fully explain the disadvantages of self-representation. But Goodrich insisted on making several pro se motions, objecting to the state's arguments,

and otherwise acting in a self-represented capacity. As a result, the district court appointed the assigned public defender to act as standby counsel, and allowed both Goodrich and his standby counsel to make motions and arguments to the court.

"A defendant's refusal, without good cause, to allow appointed counsel to continue representation may by itself be sufficient to find a valid waiver [of the right to counsel]." *Worthy*, 583 N.W.2d at 277. In *State v. Brodie*, the supreme court held that a waiver was valid when the "[d]efendant was in fact given counsel and he then 'fired' counsel. The record is clear that [the] defendant knew that he did not have a right to a different public defender but would have to represent himself if he did not accept the services of the public defender." 532 N.W.2d 557, 557 (Minn. 1995). As in *Worthy* and *Brodie*, Goodrich's insistence on firing his public defender without good cause and proceeding pro se established a valid waiver of Goodrich's right to counsel. *See Worthy*, 583 N.W.2d at 276-77; *Brodie*, 532 N.W.2d at 557.

B. *Goodrich was not denied the effective assistance of counsel.*

Goodrich claims he was denied the effective assistance of counsel. In order to prevail on a claim of ineffective assistance of counsel, a defendant must affirmatively prove "that his counsel's representation fell below an objective standard of reasonableness and that 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) (quotation omitted). Goodrich lists more than 20 different instances of allegedly unprofessional errors in support of his claim. But many of his allegations, such as his claim that counsel failed "to subject the prosecution's case to adversarial testing," are merely

argumentative assertions not supported by facts in the record. *See Hodgson v. State*, 540 N.W.2d 515, 518 (Minn. 1995) (stating that the underlying allegations must be more than argumentative assertions without factual support). Many others, such as his claim that counsel failed "to object to jury instructions," are simply irrelevant in the context of a sentencing hearing that did not include a jury. In any event, Goodrich has not demonstrated that, absent these alleged errors, the result of the proceeding would have been different.

C. *Goodrich's remaining claims are barred.*

The remaining claims in Goodrich's pro se brief are challenges to his conviction. That conviction was affirmed on Goodrich's first appeal. *See State v. Goodrich*, No. A04-2299, 2006 WL 9534, at *2-*3 (Minn. App. Jan. 3, 2006). "[I]ssues considered and adjudicated on a first appeal become the law of the case and will not be reexamined or readjudicated on a second appeal of the same case." *Lange v. Nelson-Ryan Flight Svc., Inc.*, 263 Minn. 152, 155, 116 N.W.2d 266, 269 (1962). Our prior decision is binding, and "no questions that might have been raised on" Goodrich's prior appeal can be considered on a subsequent appeal in the same case. *Bradley v. Norris*, 67 Minn. 48, 48, 69 N.W. 624, 624 (1896) (syllabus by the court); *see also State v. Bailey*, 732 N.W.2d 612, 623 (Minn. 2007) (applying law-of-the-case doctrine in a criminal case).

Affirmed.