STATE OF MINNESOTA
IN COURT OF APPEALS
A08-663

State of Minnesota,
Respondent,

vs.

Ronnie Duane Cartlidge,
Appellant.

Filed October 6, 2009
Affirmed
Wright, Judge

Hennepin County District Court
File No. 27-CR-07-0009597

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County Attorney, C-2000 Government Center, 80 South Eighth Street, Minneapolis, MN 55487 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and Wright, Judge.

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

WRIGHT, Judge

Appellant challenges the denial of postconviction relief, arguing that (1) the district court abused its discretion by denying his petition for postconviction relief without an evidentiary hearing and (2) he received ineffective assistance of trial counsel. We affirm.

FACTS

On February 12, 2007, as appellant Ronnie Cartlidge entered the 4th Street Saloon (Saloon) he set off the metal detector. After a pat-down search during which a Saloon security guard felt what he believed was a gun in Cartlidge's right front pocket, the Saloon's manager followed Cartlidge into the parking lot. Minneapolis Police Officer James Burns, who was off duty and working as a security guard for the Saloon that evening, approached Cartlidge as Cartlidge walked through the parking lot. Officer Burns saw Cartlidge remove a black handgun from his right front pants pocket and drop the gun into a snow bank. Cartlidge continued to walk slowly toward Officer Burns, ignoring his commands. After Officer Burns removed his handgun from its holster, Cartlidge complied with the officer's orders and was placed under arrest. During a subsequent search of the vicinity, Minneapolis police retrieved a semi-automatic handgun from the snow bank.

A surveillance video from inside the Saloon shows Cartlidge entering the bar, struggling with the security guard, and then being escorted out by the Saloon's manager. A surveillance video from outside the Saloon shows Cartlidge walking behind a car and

then engaging in a struggle with Officer Burns. In a tape-recorded telephone call that Cartlidge placed from the Hennepin County Jail, Cartlidge apologized to the woman with whom he was speaking, admitted that he "f***ed up," and stated that the officers did not find the gun on him, but they found it in the snow. Cartlidge advised the woman that, because there were 30 people in the parking lot where the gun was found, he would not admit committing the crime.

Cartlidge, who is prohibited from possessing a firearm because he had been adjudicated delinquent of first-degree aggravated robbery in 1995, was charged with unlawful possession of a firearm, a violation of Minn. Stat. § 624.713 (2006). Cartlidge waived his right to a jury trial and agreed to proceed with a stipulated-facts trial. *See* Minn. R. Crim. P. 26.01. The district court found Cartlidge guilty of the charged offense and sentenced him to the mandatory term of 60 months' imprisonment. Cartlidge filed a direct appeal, which we stayed to permit him to petition for postconviction relief. The district court denied Cartlidge's postconviction petition without an evidentiary hearing. This appeal followed.

D E C I S I O N

I.

A.

As an initial matter, we consider whether Cartlidge agreed to a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 3, or a trial conducted under the procedure set forth in *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980), because the scope and nature of this appeal depends on the type of procedure employed. Cartlidge argues that his

counsel's ineffectiveness arises from limiting the matter to a *Lothenbach* procedure, which preserves review of the search and seizure issues but precludes challenges to the sufficiency of the evidence. Although Cartlidge's argument refers to the *Lothenbach* procedure, we observe that this procedure has been codified in Minn. R. Crim. P. 26.01, subd. 4, and likewise preserves the right to appeal pretrial rulings.[1] The state counters that a rule 26.01, subdivision 3, stipulated-facts trial procedure was used, which preserves for appeal challenges to both the sufficiency of the evidence and any pretrial rulings, including the constitutionality of the search and seizure conducted in the case.

Rule 26.01, subdivision 3, permits a defendant to submit stipulated facts to the district court for determination of whether the evidence is sufficient to prove the defendant's guilt beyond a reasonable doubt. Minn. R. Crim. P. 26.01, subd. 3. If after reviewing the evidence submitted the district court finds the defendant guilty, "the defendant may appeal from the judgment of conviction and raise issues on appeal the same as from any trial to the court." *Id*. In contrast, following a stipulated-facts trial preserving pretrial rulings pursuant to the procedure set forth in *Lothenbach*, now codified as rule 26.01, subdivision 4, an appellant may not challenge the sufficiency of the evidence because this procedure preserves only pretrial issues for appeal. Minn. R. Crim. P. 26.01, subd. 4; *see also State v. Riley*, 667 N.W.2d 153, 157-58 (Minn. App. 2003) ("[T]he rationale for the *Lothenbach* procedure is to prevent the inefficient use of

[1] Effective April 1, 2007, rule 26.01, subdivision 4, implements the procedure authorized by *Lothenbach*. Minn. R. Crim. P. 26 cmt. Cartlidge was charged prior to the effective date of rule 26.01, subdivision 4, but the stipulated-facts trial occurred after that date.

judicial resources that occurs when the facts are undisputed, but a trial is necessary to obtain appellate review of a pretrial ruling."), *review denied* (Minn. Oct. 21, 2003).

Here, Cartlidge waived his right to a jury trial and agreed to "have a stipulated facts trial." At no point during the proceedings was a *Lothenbach* procedure or a rule 26.01, subdivision 4, stipulation to preserve pretrial rulings referenced. Indeed, defense counsel did not file any pretrial motions that would warrant such a procedure. Moreover, Cartlidge's postconviction petition alleged that his trial counsel was ineffective because he (1) failed to challenge "the legality of the arrest" and (2) advised Cartlidge to "agree to a stipulated facts trial which failed to preserve the issue for appeal without [Cartlidge] knowing he had waived that right." Based on the record before us, we conclude that Cartlidge was tried on stipulated facts pursuant to rule 26.01, subdivision 3.

B.

Cartlidge argues that the district court abused its discretion by denying his postconviction petition without an evidentiary hearing. "On review of a denial of postconviction relief, we inquire as to whether sufficient evidence supported the postconviction court's findings, and will reverse only for an abuse of discretion." *Brown v. State*, 746 N.W.2d 640, 641-42 (Minn. 2008). An evidentiary hearing must be held on a postconviction petition unless "the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2006); *see also Gustafson v. State*, 754 N.W.2d 343, 348 (Minn. 2008) (before being granted an evidentiary hearing, a petitioner must "allege facts that are sufficient to entitle him or her to the requested relief and the allegations must be more than argumentative assertions

without factual support" (quotations omitted)). "Any doubts as to whether to conduct an evidentiary hearing should be resolved in favor of the party requesting the hearing." *Sanchez-Diaz v. State*, 758 N.W.2d 843, 846 (Minn. 2008) (quoting *State v. Rhodes*, 627 N.W.2d 74, 86 (Minn. 2001)). An evidentiary hearing on a claim of ineffective assistance of counsel is warranted when the petitioner alleges "facts that would affirmatively show that his attorney's representation fell below an objective standard of reasonableness, and that but for the errors, the result would have been different." *Leake v. State*, 737 N.W.2d 531, 536 (Minn. 2007) (quotation omitted) (citing *Strickland v. Washington*, 466 U.S. 668, 690-94, 104 S. Ct. 2052, 2066-68 (1984)).

The record before us establishes that (1) on entering the Saloon, Cartlidge set off the metal detector; (2) a Saloon security guard believed he felt a gun in Cartlidge's right front pants pocket; (3) Officer Burns saw Cartlidge remove a black handgun from his right front pants pocket and drop it into a snow bank; (4) after Officer Burns arrested Cartlidge, he recovered a semi-automatic handgun from a snow bank; and (5) Cartlidge admitted culpability during a recorded telephone conversation and stated that police found a gun in a snow bank. Although Cartlidge asserts that Officer Burns's credibility could have been challenged and that "[m]ost likely, the officer did not have probable cause," Cartlidge's unsupported assertions fail to establish that the district court abused its discretion by declining to hold an evidentiary hearing.

II.

Cartlidge also argues that his attorney rendered ineffective assistance in violation of the Sixth Amendment to the United States Constitution, maintaining that his attorney

(1) failed to challenge "the legality of the arrest" and (2) advised Cartlidge to "agree to a stipulated facts trial which failed to preserve the issue for appeal without [Cartlidge] knowing he had waived that right." To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that (1) counsel's performance was deficient such that counsel "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment"; and (2) the defendant was prejudiced by counsel's performance. *Strickland*, 466 U.S. at 687, 104 S. Ct. at 2064; *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987). An insufficient showing on one of these requirements defeats a claim of ineffective assistance of counsel. *Strickland*, 466 U.S. at 687, 104 S. Ct. at 2064; *Gates*, 398 N.W.2d at 561.

There is ample evidence in the record indicating that Cartlidge was lawfully arrested and that police seized the gun as a result of observations made before the arrest. Nothing other than mere speculation would support a determination that Cartlidge's trial counsel failed to function with the competence guaranteed by the Sixth Amendment. Moreover, were we to assume that counsel's performance was deficient, Cartlidge has not satisfied his burden of proving that he was prejudiced by his trial counsel's error. Accordingly, the district court did not abuse its discretion when it denied Cartlidge's postconviction relief without an evidentiary hearing.

Affirmed.