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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1760**

State of Minnesota,
Respondent,

vs.

Matthew Thomas Fahey,
Appellant.

**Filed July 30, 2012
Affirmed
Johnson, Chief Judge**

Renville County District Court
File No. 65-CR-10-149

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

David Torgelson, Renville County Attorney, Glen M. Jacobsen, Assistant County
Attorney, Olivia, Minnesota (for respondent)

Richard L. Swanson, Chaska, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Stoneburner, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Matthew Thomas Fahey pleaded guilty to first-degree criminal sexual conduct,
criminal sexual predatory conduct, and kidnapping. After his guilty plea but before his

sentencing, he brought a motion for a rule 20 examination. The district court denied the motion. We affirm.

FACTS

On the morning of May 4, 2010, Fahey stalked, kidnapped, and raped a 14-year-old girl while she was on her newspaper delivery route. During the assault, Fahey threatened to harm the girl and her family. After the assault, Fahey left the girl alone on an isolated country road.

The state charged Fahey with two counts of first-degree criminal sexual conduct, a violation of Minn. Stat. § 609.342, subds. 1(c), 1(e)(i) (2008); one count of criminal sexual predatory conduct, a violation of Minn. Stat. § 609.3453, subd. 1 (2008); and one count of kidnapping, a violation of Minn. Stat. § 609.25, subd. 1(2) (2008). At the same time, the state gave notice of its intent to seek an upward durational departure from the presumptive guidelines sentence based on aggravating factors.

In June 2010, Fahey moved for a competency examination pursuant to Minn. R. Crim. P. 20.01 to determine whether he was competent to stand trial. The motion was based on his history of mental-health problems and substance abuse. Fahey withdrew the motion shortly thereafter.

In January 2011, Fahey pleaded guilty to counts 1, 2, and 4, and the state dismissed count 3. Fahey's plea petition includes a handwritten addendum acknowledging that the state is seeking enhanced penalties. The addendum identifies the length of the departure that Fahey could expect if the district court were to find that aggravating factors are present. The plea petition also recites that Fahey had time to

discuss the case with his attorneys, had been informed of possible defenses, had been a patient in a mental hospital and been treated by a psychiatrist, was taking medication, made no claim of innocence, and was not claiming that he was intoxicated or under the influence of drugs at the time of the offense.

In April 2011, after the guilty plea but before sentencing, Fahey discharged his first set of attorneys and hired a new attorney, who continues to represent Fahey on appeal. In May 2011, Fahey moved for “an examination of the Defendant pursuant to Rules 20.01 and 20.02.” The motion was not accompanied by a memorandum of law. At a hearing on the motion, Fahey’s attorney argued primarily that Fahey has a constitutional right to not be convicted of a crime or to stand trial if he does not understand the proceedings and cannot rationally consult with counsel, and he argued secondarily that Fahey could not be held criminally responsible if he did not understand the nature or wrongfulness of his actions. The attorney also referred to the possibility that the district court might “vacate the sentence” or “vacate the plea.” But the attorney also stated that he did not wish to bring the case to trial. At one point, the attorney requested that the district court order a rule 20 examination before proceeding to sentencing. The district court construed the motion as one brought pursuant to rule 20.01 in light of the fact that Fahey did not give notice of intent to present a defense of mental illness or deficiency, as required by rule 20.02. The district court reviewed the procedural history of the case as it concerned Fahey’s mental health and denied the motion. The district court later issued an order providing written reasons for the denial of the motion.

At the time of his guilty plea, Fahey requested a sentencing hearing to the court to determine whether aggravating factors exist. After the sentencing hearing, the district court found that the state had proved beyond a reasonable doubt the existence of aggravating factors that support an upward double-durational departure on the conviction of criminal sexual predatory conduct. Specifically, the district court found that the victim was particularly vulnerable because of the disparity in size between her and Fahey and that Fahey treated the victim with particular cruelty because he intentionally tried to disorient her. The district court also found that Fahey moved the victim from one place to another and did not leave her in a safe place, which is a heinous element that supports an enhanced sentence for first-degree criminal sexual conduct. The district court imposed concurrent sentences of 202 months and 404 months of imprisonment on the convictions of criminal sexual predatory conduct and first-degree criminal sexual conduct.

Fahey appeals the district court's denial of the motion that was presented to the district court before sentencing.

D E C I S I O N

Fahey argues that the district court erred by denying his motion for a competency examination after his guilty plea but before his sentencing.

We must properly frame the issues before analyzing them. In the district court, Fahey argued that the district court should order a rule 20 examination to ensure that Fahey understood the sentencing proceedings, which is the purpose of rule 20.01. *See State v. Hulin*, 412 N.W.2d 333, 337-39 (Minn. App. 1987), *review denied* (Minn.

Nov. 13, 1987). As legal authority for the motion, Fahey's attorney cited rule 20 and related cases. On appeal, however, Fahey argues that the district court erred by not permitting him to withdraw his guilty plea. As legal authority for reversal, Fahey's brief cites rule 15.05 of the Minnesota Rules of Criminal Procedure and cases interpreting that rule, but the brief does not cite the law concerning competency examinations. At oral argument, however, Fahey's attorney argued that a rule 20 examination is necessary to allow Fahey to explore a defense of mental illness or deficiency, which is the purpose of rule 20.02.

In short, Fahey's arguments are a moving target. Granted, Fahey's appellate argument refers to the need for a competency examination as the underlying reason for vacating the guilty plea. But we must confine our analysis to the legal argument that was presented to the district court. That argument, as framed by the district court, without objection from Fahey's attorney, was an argument that the district court should order a competency examination pursuant to rule 20.01, which would ensure that Fahey is competent enough to understand the proceedings and to consult with counsel during the sentencing phase of the case. That is the issue the district court considered when denying the motion. We review the district court's decision to determine whether "its finding of competency is adequately supported by the record." *State v. Ganpat*, 732 N.W.2d 232, 238 (Minn. 2007) (quotation omitted).

The district court addressed Fahey's motion in some detail before denying it. The district court noted that it had several opportunities to observe and question Fahey. The district court noted that Fahey's first set of attorneys appeared with Fahey at six prior

hearings, that they once informed the district court that they were considering a motion for a rule 20.01 examination, that they reviewed Fahey's medical records, and that they eventually informed the district court that they did not intend to move for a rule 20.01 examination. The district court also noted that Fahey's new attorney did not present any new evidence to warrant a rule 20 examination. The district court carefully reviewed the relevant facts, and its conclusion is supported by the record.

Even if we were inclined to consider Fahey's appellate argument that a rule 20.02 examination is warranted, we would reject the argument. As the state argues, a rule 20.02 examination may be ordered only in one of the three circumstances that are enumerated in the rule, and none of those circumstances was present in this case. *See* Minn. R. Crim. P. 20.02, subd. 1. The first alternative does not apply because Fahey's attorneys did not give notice of their intent to assert a mental-illness defense. The second alternative does not apply because Fahey was not charged with a misdemeanor. And the third alternative does not apply because Fahey did not offer evidence of mental illness before a determination of his guilt. The failure of Fahey's motion to satisfy any of the three requirements for a rule 20.02 examination is a sufficient reason to affirm the district court's denial of such a motion. The fatal weakness of Fahey's request for a rule 20.02 examination is that it is simply too late. In essence, Fahey's new attorney, who was brought into the case after Fahey's guilt was determined, is second-guessing the strategy of Fahey's first set of attorneys.

Furthermore, even if we were inclined to consider Fahey's appellate argument that the district court erred by not permitting him to withdraw his guilty plea (even though he

did not make an explicit request for that relief to the district court), we nonetheless would conclude that withdrawal is not warranted. Fahey argues only that withdrawal is necessary because it would be fair and just. *See* Minn. R. Crim. P. 15.05, subd. 2. The fair-and-just standard does not allow a defendant to withdraw a guilty plea “for simply any reason.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quotation omitted). In applying the fair-and-just standard, a district court is expected to give “due consideration . . . to the reasons advanced by the defendant” in support of the motion and “any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant’s plea.” *State v. Kaiser*, 469 N.W.2d 316, 319 (Minn. 1991) (quotation omitted). The movant has the burden of proving that a fair-and-just reason for withdrawal exists, and the state has the burden of proving prejudice. *State v. Lopez*, 794 N.W.2d 379, 382-83 (Minn. App. 2011).

Fahey’s mental-health history was well known to both his first set of attorneys and to the district court. The record suggests that Fahey could not develop and present evidence that would satisfy a mental-illness defense. To do so, he would need to prove that, ““at the time of committing the alleged criminal act [he] was 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.”” *Bruestle v. State*, 719 N.W.2d 698, 704 (Minn. 2006) (quoting Minn. Stat. § 611.026 (2004)) (alteration omitted). In adjudicating Fahey’s guilt, the district court found that Fahey took the victim’s cellular telephone and removed its battery, apparently to prevent her from calling for help. The district court found that Fahey pushed the girl down below the top of the passenger seat of the vehicle so that she

would not be observed by other drivers on the road. The district court found that, after completing the rape, Fahey drove around in a manner that would tend to confuse the girl so that she would not know her location. And the district court found that, after pushing the girl out of the moving vehicle, Fahey drove back to her, tossed the parts of her cell phone at her, and apologized. These actions suggest that Fahey knew that he was committing a wrongful act. In light of those facts, Fahey cannot prove a fair-and-just reason to allow him to withdraw his guilty plea.

Fahey raises one additional issue on appeal. He argues that the district court erred by not making a preliminary determination as to whether, in the district court's opinion, a petition for the civil commitment of Fahey may be appropriate, as required by Minn. Stat. § 609.1351 (2010). In fact, the district court did so. In its sentencing order, the district court stated, "Pursuant to Minn. Stat. § 609.1351, this Court concludes that a petition pursuant to Minn. Stat. § 253B.185 may be appropriate. Therefore, this Court will forward a copy of this Order and all documents in this file to the Renville County Attorney." Thus, this argument is simply without any merit.

In sum, the district court did not err by denying Fahey's motion for a rule 20 examination, by not permitting Fahey to withdraw his guilty plea, or by failing to determine that civil commitment may be appropriate.

Affirmed.