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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0723**

Justus Ogendi Kebabe,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 22, 2013
Affirmed
Ross, Judge**

Ramsey County District Court
File No. 62-CR-10-8781

David W. Merchant, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Justus Kebabe killed his wife and two of his three children. He appeals from a district court order denying his postconviction petition to withdraw his guilty plea to

three counts of second-degree murder. Kebabe argues that the postconviction court abused its discretion by refusing to allow him to withdraw his guilty plea because he was incompetent at the time of his plea and sentencing hearings and because the district court should have ordered *sua sponte* a rule 20.01 competency evaluation. The postconviction court did not abuse its discretion by finding that no manifest injustice resulted because Kebabe's guilty plea was intelligent, voluntary, and accurate. We therefore affirm.

FACTS

Justus Kebabe's convictions arise from the murder of his wife and two of his children in October 2010. On October 13, Minnesota state troopers found Kebabe running on Interstate 35, abandoning his vehicle and youngest daughter on the highway's shoulder. Kebabe told the troopers that he had just found his wife, Bilha Omare, dead from a diabetic reaction and that his other two children were with his brother. Ramsey County sheriff's deputies learned that Kebabe's wife was missing and searched Kebabe's home. They found her dead on the bathroom floor. Then they found Kebabe's twelve-year-old son and nine-year-old daughter dead in their bedrooms.

Police arrested Kebabe, who admitted to killing his wife by striking her with a golf club and strangling her. He also admitted that he drugged his son and daughter and then drowned his son in the bathtub and strangled and smothered his daughter. The state charged Kebabe with three counts of intentional second-degree murder under Minnesota Statutes section 609.19, subdivision 1(1) (2008).

Two days later, Kebabe attempted suicide and Ramsey County jail officials placed him on suicide watch. A physician examined Kebabe and ruled out depression and

psychosis. The doctor's notes recount that Kebabe felt "hopeful" and denied wanting to die.

On October 29, 2010, three days after declaring hope and no desire to die, Kebabe pleaded guilty to all three counts of second-degree murder. At the plea hearing, the district court asked Kebabe several questions about his state of mind. Kebabe answered that he was thinking clearly and was not under the influence of any substance that would affect his judgment. He said he was satisfied with his counsel's representation. He stated he had reviewed his guilty plea with his counsel, signed it voluntarily, and knew of the rights and defenses he was forfeiting, including a mental-illness defense. The court observed that Kebabe was dressed in green Kevlar corrections clothing, indicating some concern by officials over emotional distress, but it found that distress was normal for someone charged with the murder of his family. Kebabe's written guilty plea stated that he had "never been a patient in a mental hospital" and had "not talked with or been treated by a psychiatrist for a nervous or mental condition." Kebabe testified in detail about killing his family members and displayed no irrational behavior. The district court accepted Kebabe's guilty plea.

Kebabe's sentencing hearing took place on January 14, 2011. The presentence investigation report included statements from Kebabe, alleging that he had heard voices a few days before the murder telling him, "[G]et rid of your children. Kill the kids." Kebabe had asked his counsel about a competency evaluation, but his counsel did not think proper grounds existed. The prosecutor reminded the court that Kebabe had given detailed accounts of the murders without mentioning hearing voices. The district court

agreed that Kebabe had pleaded guilty knowingly, intelligently, and voluntarily, basing its finding on Kebabe's answers to specific questions, his rational behavior at the hearings, and his indication that he knew and understood the proceedings at all times. It sentenced Kebabe to three consecutive 306-month prison terms.

Eleven months later, Kebabe filed a petition for postconviction relief seeking to withdraw his guilty plea. He argued that a competency evaluation should have been conducted before his guilty plea and sentencing. The district court conducted an evidentiary hearing at which Kebabe presented several documents bearing on alleged psychological issues, including a letter from a Kenyan doctor, his presentence report, his postsentencing medical records, and an affidavit signed by Kebabe. The postconviction court did not find these documents credible, persuasive, or sufficient to prove that Kebabe was mentally incompetent at the time of his plea. The court found that he did not exhibit any sign that he did not fully understand the proceedings or that he was not competent to assist in his own defense. It acknowledged his apparent suicide attempt, but it concluded that the medical information indicated Kebabe's competence to plead guilty. It denied the plea-withdrawal petition because it saw no manifest injustice.

This appeal follows.

DECISION

Kebabe contends that he was denied his right to due process when the district court failed to order a competency evaluation under Minnesota Rules of Criminal Procedure 20.01 before accepting his guilty plea and sentencing him to prison. He argues that his suicide attempt, his statements quoted in the presentence report, and the

additional documents given to the postconviction court provided adequate notice that a competency evaluation was necessary. We review the district court's legal determinations de novo and we will reverse its factual findings if they are clearly erroneous. *State v. Finnegan*, 784 N.W.2d 243, 247 (Minn. 2010).

A defendant has a due process right not to be tried or convicted of a crime while he is incompetent. *State v. Bauer*, 310 Minn. 103, 114, 245 N.W.2d 848, 854–55 (1976) (citing *Drope v. Missouri*, 420 U.S. 162, 176, 95 S. Ct. 896, 904 (1975)); *see also* U.S. Const. amend XIV, § 1; Minn. Const. art I, § 7. And a defendant is incompetent to plead guilty if he lacks ability to “rationally consult with counsel” or to “understand the proceedings or participate in the defense due to mental illness or deficiency.” Minn. R. Crim. P. 20.01, subd. 2. Kebabe can withdraw a guilty plea in a postconviction proceeding only to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists if the guilty plea was not accurate, voluntary, and intelligently made. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). We review a postconviction court's application of the manifest-injustice standard for an abuse of discretion. *Id.* at 685. On that review here, for the following reasons we hold that the postconviction court acted within its discretion when it concluded that Kebabe's guilty plea presents no manifest injustice.

Kebabe asserts that his suicide attempt, his presentence statements that voices had told him to commit the murders, and the evidence of prior mental conditions imposed a duty on the postconviction court to conduct a competency evaluation *sua sponte*. If the district court doubts a defendant's competence, it must raise the competency question on

its own initiative. Minn. R. Crim. P. 20.01, subd. 3. Several factors bear on its decision whether further examination is required, including the defendant's demeanor at trial, irrational behavior, and prior medical opinions on competence. *Bauer*, 310 Minn. at 116, 245 N.W.2d at 855. The need for a closer look "depends entirely on the surrounding circumstances." *Bonga v. State (Bonga II)*, 797 N.W.2d 712, 720 (Minn. 2011) (quotation omitted).

We are satisfied that the postconviction court adequately considered the surrounding circumstances and that it did not abuse its discretion by finding no manifest injustice concerning Kebabe's guilty plea. It found Kebabe to be articulate, intelligent, and understanding of his situation during both the plea and sentencing proceedings, showing no signs of incompetence. Before deciding the issue, the court observed that Kebabe had been engaged with the district court, his attorneys, and the prosecutor. It recognized that Kebabe was an intelligent and educated man who appeared to know what he was doing during the hearings.

The district court also considered its own precautions when Kebabe indicated he wanted to plead guilty. And it recalled the sidebar with Kebabe's counsel, who stated that he did not believe a competency evaluation was necessary. The court highlighted that Kebabe "appeared lucid and coherent" and "expressed himself articulately when he explained how he killed his wife and two children." It had seen no irrational behavior and noticed that Kebabe's "demeanor was appropriate at all times." The court did notice his protective garb, suggesting to the court that jailers had a possible concern about Kebabe's distress at the time of his plea, but it did not consider this unusual considering that his

family members were murdered and that he faced murder charges. The court weighed these facts and found no manifest injustice present in Kebabe's guilty plea. This met the district court's duties under rule 20.01.

Kebabe argues that the circumstances required more. But a suicide attempt does not alone require a rule 20 evaluation. *Bonga II*, 797 N.W.2d at 720. And the district court considered but dismissed as incredible Kebabe's affidavit and an unauthenticated doctor's report from Kenya alleging Kebabe's previous depression. We hold that the postconviction court properly weighed any evidence of incompetency against the overwhelming evidence demonstrating competence.

We are not persuaded otherwise by *Burt v. State*, 256 N.W.2d 633 (Minn. 1977). In *Burt*, the supreme court reversed an order denying postconviction relief because a presentence report revealed that the defendant had low intelligence when waiving rights. *Id.* at 635–36. Kebabe contends that, similar to *Burt*, the district court here discovered before sentencing that he reported hearing voices and was mentally ill. The supreme court has distinguished *Burt* in a case more material to this one. In *Bruestle v. State*, 719 N.W.2d 698, 706 (Minn. 2006), the defendant argued that he was incompetent to plead guilty and that *Burt* entitled him to relief on appeal. The supreme court disagreed. It reasoned that the defendant (like Kebabe) had an attorney who had contemplated but decided not to pursue an incompetency strategy. *Id.* *Burt* had no such advocate, and evidence of his lack of an intelligent waiver of counsel warranted withdrawal of the plea. *Burt*, 256 N.W.2d at 635. In *Bruestle*, like here, the defense counsel, prosecutor, and

court all reached a contemporaneous opinion that the defendant was competent to plead guilty. 719 N.W.2d at 701–02, 706.

Kebabe finally argues that the postconviction court erred because it “ended its inquiry into his competence” when it accepted his plea and denied his postconviction petition. The record does not support this assertion. The postconviction court’s order extensively explains that the court relied on both in-court observations and evidence of his mental health condition. We hold that the district court considered all of the evidence presented. And it found that Kebabe showed no irrationality during his plea and sentencing hearings, such that no additional competency hearing was required. We therefore find no abuse of discretion in the court’s decision that no manifest injustice calls Kebabe’s guilty plea into question.

Affirmed.