

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0560**

State of Minnesota,
Respondent,

vs.

Anthony Thomas Laspina,
Appellant.

**Filed December 12, 2022
Affirmed
Smith, Tracy M., Judge**

St. Louis County District Court
File No. 69DU-CR-20-1233

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kimberly J. Maki, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Johnson, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Anthony Thomas Laspina challenges the district court's order revoking stays of adjudication of three criminal charges against him. He argues that the district court committed reversible plain error by failing to provide him with a written copy of a

probation-violation report before accepting his admissions to the alleged violations and revoking the stays of adjudication. Because we conclude that any error did not affect Laspina's substantial rights, we affirm.

FACTS

On April 3, 2020, respondent State of Minnesota charged Laspina with second-degree assault,¹ three counts of threats of violence,² gross-misdemeanor obstructing legal process,³ and misdemeanor assaulting a public-safety dog.⁴ Laspina pleaded guilty to the three counts of threats of violence in exchange for stays of adjudication on those three counts and dismissal of the other counts. At sentencing, the district court stayed the adjudication of the three threats-of-violence counts, dismissed the remaining counts, and placed Gibbs on supervised probation.

On January 20, 2022, the state filed a probation-violation report. It alleged that Laspina violated conditions of probation by (1) failing to contact his probation officer when he missed a meeting on January 13, 2022; (2) failing to abstain from using or possessing mood-altering substances when 118.38 grams of methamphetamine were found in his residence; and (3) failing to refrain from engaging in threats or acts of violence when he became aggressive in a police interview and kicked a hole in the wall. At the first probation-violation hearing, which was held via videoconference the same day that the report was filed, Laspina was represented by counsel, who told the district court that he had "discussed

¹ See Minn. Stat. § 609.222, subd. 1 (2018).

² See Minn. Stat. § 609.713, subd. 1 (2018).

³ See Minn. Stat. § 609.50, subd. 1(2) (2018).

⁴ See Minn. Stat. § 609.596, subd. 2a (2018).

the probation violation with Mr. Laspina” and that Laspina “understands the nature of the violations.” Laspina denied the violations, and a second hearing was scheduled.

Four days later, on January 24, the state filed an addendum to the probation-violation report, adding a fourth alleged violation for failing to abstain from the use of mood-altering substances. This alleged violation was based on a January 20 sample that tested positive for methamphetamine. At the second videoconference hearing held the same day that the amended report was filed, defense counsel told the district court, “Mr. Laspina and I had a conversation. Kind of given the circumstances as to how this arose in the alleged violation.” Defense counsel requested a continuance of the hearing to pursue discussions with the state, which the district court granted.

On January 31, a third videoconference hearing was held. Laspina and the state reached an agreement under which Laspina would admit two of the alleged violations—failing to contact his probation officer as directed (the first alleged violation) and use or possession of mood-altering substances (the fourth alleged violation); the state would withdraw the remaining two alleged violations; the stays of adjudication would be revoked and convictions entered; and concurrent prison sentences of 18, 21, and 24 months would be imposed but with execution stayed. Through colloquies with defense counsel and the prosecutor, Laspina stated that he understood the conditions of his probation, that he knew the rights he was giving up by admitting to the alleged violations, that he was of clear, sound mind on that day, and that he was freely and voluntarily admitting that he intentionally and inexcusably violated his probation. Laspina was then questioned about the factual basis for his admitted violations, and he testified to missing a required meeting

with his probation officer on January 13 and to testing positive for methamphetamine on January 20 because he had used methamphetamine.

The district court found Laspina's violations to be intentional and inexcusable. The district court revoked the stays of adjudication; imposed the agreed-upon concurrent sentences of 18 months, 21 months, and 24 months; stayed execution of the sentences; and continued Laspina on probation.

Laspina appeals.⁵

DECISION

Laspina argues that the revocation of the stays of adjudication should be reversed because the district court failed to either provide him with a written copy of the probation-violation report or obtain a waiver of his right to receive a written report. He contends that this failure violated his right to due process under the United States Constitution and his rights under the Minnesota Rules of Criminal Procedure.

As Laspina acknowledges, because he did not raise his objection to the district court, the plain-error standard of review applies. *See State v. Beaulieu*, 859 N.W.2d 275, 278-79, 281 (Minn. 2015) (applying plain-error review to unobjected-to alleged failure to comply with rule 27.04 and stating that plain-error applies to review of unobjected-to constitutional violation). "In order to meet the plain error standard, a criminal defendant must show that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant's

⁵ The state did not file a brief, and we ordered the appeal to proceed per Minnesota Rule of Civil Appellate Procedure 142.03, which directs that, when a respondent fails to file a brief, the matter is to be decided on the merits.

substantial rights.” *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016) (citing *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998)). If the defendant satisfies the first three prongs of the plain-error test, appellate courts “may correct the error only if it ‘seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.’” *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001) (quoting *Johnson v. United States*, 520 U.S. 461, 467 (2001) (alteration in original)). If a defendant “fails to establish that the claimed error affected his substantial rights”—the third prong—a reviewing court need not address the other prongs. *State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007).

Laspina argues that the district court’s claimed failure to provide him a written copy of his probation-violation report plainly violated his rights under Minnesota’s Rules of Criminal Procedure and his constitutional due-process rights. As to the former, Laspina cites Minnesota Rule of Criminal Procedure 27.04, which states that, in probation-revocation proceedings, “the court . . . must [g]ive the probationer a copy of the violation report, if not already provided.” Minn. R. Crim. P. 27.04, subd. 2(1)(b). Laspina asserts that the failure to provide him a copy of the report was a plain error because it contravened an unambiguous rule of criminal procedure. He relies on the supreme court’s decision in *Beaulieu*, which concluded that a district court’s failure to provide a rights advisory mandated by rule 27.04 in a probation-revocation proceeding was plain error. 859 N.W.2d at 282. As to Laspina’s constitutional argument, Laspina relies on caselaw establishing that written notice of claimed violations is required as a matter of due process before a person’s parole or probation may be revoked given the liberty interest at stake. *See Morrissey v. Brewer*, 408 U.S. 471, 489 (1972) (holding that minimum procedural protections, including

written notice of claimed violations of parole, are required under the Due Process Clause of the U.S. Constitution before parole may be revoked); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (extending the same minimum due-process requirements to probation revocation).

Laspina’s argument asks us to rule that the district court’s asserted failure to provide him with a written copy of a probation-violation report⁶ was plain error under rule 27.04 and the U.S. Constitution. He asks us to do so although the asserted failure took place in the context of a proceeding to revoke a stay of adjudication in which probation was not revoked but was continued. But we need not address the question of plain error if Laspina has failed to establish that the asserted error has affected his substantial rights, as required by the third prong of the test. *See Goelz*, 743 N.W.2d at 258. We therefore turn to the substantial-rights prong.

A plain error affects the substantial rights of the defendant when “there is a reasonable likelihood that the error substantially affected” the decision. *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002). Thus, “[t]he court’s analysis under the third prong of the plain error test is the equivalent of a harmless error analysis.” *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011).

Laspina argues that the district court’s failure to provide him with a written copy of the violation report affected his substantial rights because, without it, he lacked sufficient information to consult fully with counsel, to negotiate an agreement with the state, and to

⁶ The transcripts of the three videoconference hearings contain no discussion of whether Laspina was provided a copy of the written report and addendum.

counter the evidence and statements against him with mitigating evidence or reasons why the stays should not be revoked. This argument is unpersuasive.

Laspina contends that his discussions with his attorney about the violations were insufficient to inform him of the alleged violations. However, Laspina's counsel told the district court that he "discussed the probation violation with Mr. Laspina" and that Laspina "understands the nature of the violations." Laspina's attorney also said that they "had a conversation" regarding "the circumstances as to how this arose in the alleged violation." The alleged violations described in the report were brief and uncomplicated. Laspina's claim that his attorney's descriptions were insufficient to understand the circumstances is unconvincing.

Moreover, Laspina demonstrated that he fully understood the alleged violations and the conditions of his probation when the state questioned him about them:

[STATE]: If I ask you anything that is confusing or if [the videoconferencing platform] gets in the way of our communicating, would you please let me know?

THE DEFENDANT: Yes.

[STATE]: Okay. You signed a probation agreement, a contract with [defense counsel] back on September 16th of 2021, is that right?

THE DEFENDANT: Yes.

[STATE]: And there were certain conditions that you agreed to follow, correct?

THE DEFENDANT: Correct.

[STATE]: Did [defense counsel] review those with you?

THE DEFENDANT: I believe so.

[STATE]: Did you understand all of them?

THE DEFENDANT: Yep.

The state then asked Laspina about the first violation for failure to contact his probation officer to which he was admitting:

[STATE]: Okay. So, there were certain obligations and we're going to review two of them in particular today. The first one is a violation of condition number two; contact your probation officer as directed. Now it's my understanding that you were doing well and then what happened as specifically in January? Specifically in January did you report to probation as directed?

THE DEFENDANT: No, I missed one.

[STATE]: Okay and you had an obligation on the second Thursday of each month, is that right?

THE DEFENDANT: Yes.

[STATE]: Okay and so that was January 13th of 2022?

THE DEFENDANT: Right.

[STATE]: Okay, was there a reason that you didn't check in?

THE DEFENDANT: You know, I think I just spaced it out.

[STATE]: So, an explanation but not an excuse, no legal excuse for it?

THE DEFENDANT: No, no.

The state then questioned Laspina about the violation for possession or use of mood-altering substances to which he was admitting:

[STATE]: Okay and then also now condition number 14, that was do not use or possess any mood-altering substances unless prescribed by a physician and submit to random testing at the request of the probation officer at your own expense. Now, let's talk about use, specifically were you asked to give a drug test by probation agents in January?

THE DEFENDANT: Yes.

[STATE]: Okay and tell me, we're looking specifically at January 20th, is that right?

THE DEFENDANT: I couldn't tell you the exact date but around that time.

[STATE]: Sure, yeah, no reason to dispute if the reports say that it was the 20th, that's when you gave this test?

THE DEFENDANT: No, no reason to, no.

[STATE]: What were the results of the test?

THE DEFENDANT: Positive I think for meth.

[STATE]: Okay, why was that?

THE DEFENDANT: Because I had used.

[STATE]: Okay, when did you use?

THE DEFENDANT: I don't know, several times the week prior.

[STATE]: The week prior leading up to --
THE DEFENDANT: -- yeah --
[STATE]: -- leading up to that test or leading up to the arrest?
THE DEFENDANT: Leading up to the arrest.
[STATE]: Okay, all right. Your Honor, I believe that's
sufficient for these two violations.

Laspina demonstrated his knowledge of the nature of the alleged violations by answering specific fact questions about the violations, including when and why they happened. Moreover, Laspina has identified no testimony or evidence that he was unable to marshal in order to dispute the alleged violations. Nor has he identified any information that he was unable to gather in order to negotiate some agreement with the state or to resist revocation of the stay of adjudication. In sum, Laspina has failed to carry his burden to demonstrate that any error in failing to give him a written copy of the probation-violation report affected his substantial rights.

Because Laspina's substantial rights were not affected, the district court did not commit reversible plain error by not providing him with a written copy of the probation-violation report.

Affirmed.