STATE OF MINNESOTA
IN COURT OF APPEALS
A11-368

State of Minnesota,
Respondent,

vs.

Dennis Joseph Pearson,
Appellant.

Filed December 19, 2011
Affirmed
Schellhas, Judge

Goodhue County District Court
File No. 25-CR-09-2974

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

Stephen N. Betcher, Goodhue County Attorney, Elizabeth M.S. Breza, Assistant County Attorney, Red Wing, Minnesota (for respondent)

Dennis Joseph Pearson, Eagan, Minnesota (pro se appellant)

Considered and decided by Johnson, Chief Judge; Schellhas, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

SCHELLHAS, Judge

Appellant challenges two pretrial orders denying his motions to dismiss and a post-sentence order denying his motion to stay the sentence and schedule a hearing to clarify his plea agreement. Because the district court did not err by denying appellant's motions, we affirm.

FACTS

On August 28, 2009, respondent State of Minnesota charged appellant Dennis Pearson in Goodhue County with four counts: (1) second-degree driving while impaired (DWI) in violation of Minn. Stat. §§ 169A.20, subd. 1(1), .25, subd. 1(a) (Supp. 2009); (2) violation of a restricted driver's license under Minn. Stat. § 171.09, subd. 1(d)(1) (2008); (3) possession of an open bottle in violation of Minn. Stat. § 169A.35, subd. 3 (2008); and (4) failing to keep to the right in violation of Minn. Stat. § 169.18, subd. 1 (2008). Although the district court appointed a public defender for Pearson, Pearson dismissed the public defender in December and proceeded pro se.

In January 2010, Pearson moved the district court to dismiss all counts, claiming that Minn. Stat. §§ 169A.20 (driving while impaired), 169A.51 (2008) (chemical tests for intoxication), 169A.52 (2008) (test refusal or failure; license revocation), 169A.60 (2008) (administrative impoundment of plates), 169A.63 (2008) (vehicle forfeiture), and 171.09 (driving restrictions) are unconstitutional as bills of attainder. On February 17, the district court denied the motion, concluding that because Pearson had adequate access to judicial proceedings, section 169A.20 is not unconstitutional.

In July, Pearson moved the district court for dismissal of all charges on the bases that his Sixth Amendment right to a speedy trial was violated because approximately one year had passed since his arrest and his right to due process under the Fourteenth Amendment was violated because the prosecutor and public defender violated multiple provisions of the rules of professional responsibility.

In August, the district court dismissed the DWI charge in response to the opinion of an expert who provided a credible theory about how Pearson's alcohol concentration could have been below the legal limit at the time of arrest. The court concluded that dismissal served judicial efficiency because the remaining counts provided equivalent sentences.

In September, Pearson moved the district court to dismiss the remaining counts, claiming that acquittal of one charge is a bar to prosecution of any related charge. At a subsequent settlement conference, also in September, Pearson renewed his motions to dismiss. The district court denied the motions without explanation and scheduled the matter for trial.

On October 8, Pearson again moved to dismiss, claiming that the proceedings violated protections afforded him by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Pearson claimed that because his initial court-appointed attorney did not provide the results of "the independent blood-alcohol level test to all the parties including the Commissioner of Public Safety, so the defendant could have a 'meaningful judicial review,'" his due-process rights and right to counsel were violated.

On October 25, before the district court ruled on his pending motions to dismiss, Pearson pleaded guilty to violation of a restricted driver's license under Minn. Stat. § 171.09, subd. 1(d)(1). The district court convicted Pearson of that charge, dismissed the remaining counts, sentenced him to serve one year in the Goodhue County Jail, stayed execution of 335 days, and placed him on probation.

On October 28, Pearson asked the district court to "stay the sentencing order . . . until a hearing could be held to clarify the plea agreement." The court denied the request.

This appeal follows.

D E C I S I O N

Pearson submitted a letter brief, relying on his memoranda submitted to the district court. *See* Minn. R. Crim. P. 28.02, subd. 10 (stating that Minnesota Rules of Civil Appellate Procedure generally govern the form and filing of briefs); Minn. R. Civ. App. P. 128.01, subd. 2 ("If counsel elects, in the statement of the case, to rely upon memoranda submitted to the trial court supplemented by a short letter argument, the submission shall be covered and may be informally bound by stapling."). Pearson asserts error by the district court in its orders dated February 17, 2010, August 27, 2010, and November 4, 2010. The state argues that Pearson waived all non-jurisdictional challenges to the February 17 and August 27 orders because they preceded his guilty plea.

"A guilty plea by a *counseled* defendant has traditionally operated, in Minnesota and in other jurisdictions, as a waiver of all non-jurisdictional defects arising prior to the entry of the plea." *State v. Ford*, 397 N.W.2d 875, 878 (Minn. 1986) (emphasis added) (citing *State v. Lothenbach*, 296 N.W.2d 854, 857 (Minn. 1980)). Minnesota law is

unclear regarding whether a guilty plea by an *uncounseled* defendant, such as Pearson, operates as a waiver of all non-jurisdictional defects arising prior to the entry of the plea. We decline to address this issue because Pearson's claims fail on the merits.

February 17, 2010 Pretrial Order

In his January 2010 motion to dismiss, Pearson argued that Minn. Stat. §§ 169A.20 (driving while impaired), 169A.51 (chemical tests for intoxication), 169A.52 (test refusal or failure; license revocation), 169A.60 (administrative impoundment of plates), 169A.63 (vehicle forfeiture), and 171.09 (driving restrictions) are unconstitutional as bills of attainder. The constitutionality of a statute presents a question of law, which we review de novo. *State v. Melde*, 725 N.W.2d 99, 102 (Minn. 2006). In doing so, we presume that Minnesota statutes are constitutional, and we will strike down a statute as unconstitutional only if absolutely necessary. *Id.* To prevail, the party challenging the constitutionality of a statute must demonstrate "beyond a reasonable doubt that the statute violates some constitutional provision." *Miller Brewing Co. v. State*, 284 N.W.2d 353, 356 (Minn. 1979).

Bills of attainder are prohibited under the United States Constitution and the Minnesota Constitution. U.S. Const. art. I, § 9, cl. 3; Minn. Const. art. I, § 11. A bill of attainder is a law that legislatively determines guilt and imposes punishment on an identifiable individual or a group without providing the protections of a judicial trial. *Reserve Mining Co. v. State*, 310 N.W.2d 487, 490 (Minn. 1981).

Pearson pleaded guilty to violating his restricted driver's license, and the other counts were dismissed. The only statute relevant to this appeal therefore is section 171.09. *See* Minn. R. Crim. P. 28.02, subd. 2(1) (stating that a defendant may appeal judgment of conviction). In the February 17 order denying Pearson's motion to dismiss, the district court stated, "The matter was before the Court on one contested issue, the constitutionality of the statute in question, Minn. Stat. § 169A.20." The district court did not address the constitutionality of section 171.09, though raised by Pearson in his written motion. But Pearson failed to supply this court with a transcript from the motion hearing, and the record does not indicate why the district court only addressed the constitutionality of section 169A.20. We are left to wonder whether Pearson agreed to narrow the issues at the hearing.

"Appellant has the burden of providing a record supporting his claims on appeal." *State v. Smith*, 448 N.W.2d 550, 557 (Minn. App. 1989), *review denied* (Minn. Dec. 29, 1989); *see also* Minn. R. Crim. P. 28.02, subd. 9 (stating that Minnesota Rules of Civil Appellate Procedure govern transcript of proceedings and transmission of transcript and record to the appellate court); Minn. R. Civ. App. P. 110.02, subd. 1 (stating that appellant bears burden of providing transcript of proceedings). By failing to provide a transcript of the motion hearing, Pearson failed to meet his burden to provide a record supporting his claim that section 171.09 is unconstitutional. Pearson therefore fails to demonstrate beyond a reasonable doubt that section 171.09 violates a constitutional provision.

August 27, 2010 Pretrial Order

In June 2010, Pearson filed three supplemental affidavits in support of his application to proceed in forma pauperis regarding the cost of three expert witnesses, who would provide evidence or testimony at trial regarding blood tests for alcohol concentration. On July 28, the district ordered that "the First Judicial District shall pay the amount of $250.00 from in forma pauperis funds to" a forensic toxicology consulting company to write a letter to the court. Upon receiving the letter so ordered, the district court dismissed the DWI charge, because the expert opined that Pearson's alcohol concentration was likely below .08 at the time of the offense. The district court denied Pearson's motion for further expert-witness fees, explaining in its memorandum that "[t]he proffered testimony by the alleged expert does nothing to aid the Defendant on [the charge of violating a restricted license] and, in effect, would only aid the prosecution's case." Though not entirely clear, Pearson appears to be challenging the district court's decision to deny further expert-witness fees.

A financially qualifying defendant may request expert or other services necessary to an adequate defense. Minn. Stat. § 611.21(a) (2008). This court reviews a district court's determination concerning section 611.21(a) expert-witness fees under an abuse-of-discretion standard. *In re Jobe*, 477 N.W.2d 723, 725 (Minn. App. 1991). The defendant has the burden of making a threshold showing to the district court of the need for expert assistance. *State v. Volker*, 477 N.W.2d 909, 911 (Minn. App. 1991).

Here, the proposed testimony of the experts regarding blood tests would have been harmful to Pearson's defense against the violation-of-a-restricted-license charge. The

state charged Pearson with driving a vehicle in violation of an alcohol restriction. The district court noted in its memorandum that the letter submitted by an expert stated that Pearson had an alcohol concentration of .039 at the time of the test, indicating an alcohol concentration of between .069 and .084 at the time of the offense. The expert's proposed testimony would provide evidence that Pearson had alcohol in his system at the time of the offense, hindering his defense. The district court therefore did not abuse its discretion by denying further expert-witness fees.

November 4, 2010 Post-Sentence Order

Pearson also asserts that the district court erred by denying his post-sentence request to stay his sentence and schedule a hearing to clarify the plea agreement. Pearson argued to the district court that because he is disabled and acting pro se, the proceedings confused him. The district court denied Pearson's request without explanation.

Pearson has the burden of providing this court with a sufficient record upon which to consider his argument on appeal. *Smith*, 448 N.W.2d at 557. Pro se appellants must adhere to the rules of proper appellate procedure. *See* Minn. R. Crim. P 28.02, subd. 9; Minn. R. Civ. App. P. 110.02, subd. 1; Minn. Gen. R. Prac. 1.04. Pearson failed to provide this court with a transcript of the plea hearing, and our review of his argument is therefore hindered. Giving Pearson great benefit of the doubt, he seems to argue that his guilty plea was unintelligent because he did not understand the plea agreement. But Pearson did not move the district court to withdraw his guilty plea.

Because the burden to show error is on Pearson, and because Pearson failed to provide this court a sufficient record on which to understand the basis of his claim of

error by the district court, we cannot conclude that the court abused its discretion by denying his request to stay the sentence.

Affirmed.