STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1909

State of Minnesota,
Respondent,

vs.

Donald Dequai Crenshaw,
Appellant.

Filed December 2, 2013
Affirmed
Hooten, Judge

Ramsey County District Court
File No. 62-CR-11-10182

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

John J. Choi, Ramsey County Attorney, Kaarin Long, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Charles F. Clippert, Special Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Stauber, Judge.

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

HOOTEN, Judge

Appellant pleaded guilty to felony domestic assault and fourth-degree criminal damage to property in exchange for an anticipated imposition of a gross misdemeanor

sentence. A term of the plea agreement required him to remain law-abiding, which was defined by the district court, in part, as refraining from being charged with additional misdemeanor, gross misdemeanor, or felony offenses between the plea and sentencing hearings.

After being charged with multiple criminal offenses during the time period between the plea and sentencing hearings, the district court imposed the presumptive prison sentence for felony domestic assault and denied appellant's request for an evidentiary hearing relative to the issue of whether appellant violated his plea agreement. Appellant challenges the denial of his request for an evidentiary hearing on due process grounds. We affirm.

FACTS

On December 27, 2011, appellant Donald Dequai Crenshaw was charged with one count of felony domestic assault and one count of fourth-degree criminal damage to property. The matter proceeded to a jury trial on May 7, 2012. On May 10, 2012, after voir dire proceedings, appellant pleaded guilty to both counts. The felony domestic assault charge was to be sentenced as a gross misdemeanor in exchange for the plea.

During his plea hearing, appellant acknowledged that he understood that he was to cooperate with a presentence investigation and remain law-abiding and that, if he failed to do so, the district court was not required to follow the plea agreement at sentencing. After accepting the guilty plea, the district court once again reminded appellant that he had to remain law-abiding and cooperate with the presentence investigation in order to receive the benefit of his agreement. The district court explained that remaining law-

abiding "means that [appellant] cannot pick up any new charges, arrests or convictions at the level of a misdemeanor or greater," to which appellant responded, "[a]ll right." Appellant was also informed by the district court that failure to do so would permit the district court to impose a harsher sentence than that which was agreed upon:

> If you do everything that I have just outlined, you will get the benefit of this plea, all right. However, if you fail to do even one thing, then the Court gets to keep your guilty plea and I sentence you however I think most appropriate. All right. In most instances that will be harsher than the terms of your plea. If you do what you're supposed to, I'll do what I'm supposed to. All right?

Appellant then communicated his understanding of this arrangement.

A sentencing hearing was scheduled for June 28, 2012. At this hearing, appellant's attorney requested a continuance until a pending criminal matter was resolved, and the state explained that appellant "picked up" two felony charges since entering his guilty plea. Based upon information provided by the Ramsey County Attorney's Office, the district court took "judicial notice" that appellant was arrested on May 30, 2012, for second-degree attempted burglary in Ramsey County and later charged with second-degree attempted burglary and attempted burglary, and was again arrested on June 2, 2012, and charged with first-degree aggravated robbery in Hennepin County. The district court indicated that because of these criminal charges, which violated the terms of the plea agreement, it was not required to sentence appellant to a gross misdemeanor under the agreement. Appellant's attorney requested an evidentiary hearing to determine "if [appellant] did, in fact, fail to remain law abiding" and objected to the use of police reports and the new complaints as evidence of appellant's failure to remain law-abiding

in lieu of witness testimony. Appellant's attorney also noted appellant's desire to move to withdraw his guilty plea and requested the opportunity to review the transcript of the plea hearing.

The district court denied the request for an evidentiary hearing, explaining that appellant failed to remain law-abiding, taking judicial notice that probable cause had been found on the attempted burglary and possession of burglary tools in Ramsey County, and probable cause would be determined within a short time in Hennepin County.[1] The district court granted a continuance to provide appellant with the opportunity to review the plea transcript and consider a motion to withdraw the plea.

On July 26, 2012, the parties appeared for a hearing on appellant's motion, filed July 12, 2012, to withdraw his guilty plea, and for sentencing. The district court denied the motion to withdraw and again denied appellant's request for an evidentiary hearing. The district court then imposed the presumptive sentence of 27 months in prison. This appeal follows.

D E C I S I O N

On appeal, appellant asserts that because the district court erred by denying his request for an evidentiary hearing to determine whether he violated the terms of his conditional plea, he was denied due process. Appellant does not challenge the denial of his request to withdraw his plea.

[1] The district court noted that, based on police reports, eyewitnesses placed appellant "at the scene with a gun allegedly robbing a group of individuals," and that 10 or 12 individuals saw appellant flee the scene. At the July 26, 2012, hearing, the district court took notice that probable cause had been found in the felony aggravated robbery matter in Hennepin County.

Term of plea agreement at issue

Appellant first objects to the district court's conclusion that he violated the condition of the plea agreement requiring him to remain law-abiding simply by taking judicial notice of the criminal complaints and police reports. At the plea hearing, the district court explained that remaining law-abiding meant that appellant could not "pick up any new charges, arrests or convictions at the level of a misdemeanor or greater." In light of this broad definition of what constituted the requirement that appellant was to remain law-abiding, the district court, finding that it could take judicial notice of the "two new complaints that had been filed," concluded that it was not necessary to hold an evidentiary hearing.

Appellant does not dispute that he "picked up" new criminal charges at the level of a misdemeanor or greater or that by the time that he was sentenced, the district court had found that there was probable cause relative to the new charges. Instead, arguing principles of contract law, appellant claims that he should have received a "limited" evidentiary hearing "to determine whether [he] breached the plea agreement."

Interference with a protected liberty interest

Aside from his request for an evidentiary hearing, which is relevant to considering whether any process received was constitutionally sufficient, appellant merely asserts that he "had a contractual expectation to be sentenced to a gross misdemeanor unless he violated the conditions of his plea agreement" and "had a liberty interest in his freedom that required a hearing to be protected."

"Whether due process is required in a particular case is a question of law, which we review de novo." *State v. Batchelor*, 786 N.W.2d 319, 322 (Minn. App. 2010) (quotation omitted), *review denied* (Minn. Oct. 19, 2010).

> When engaging in a due process analysis, a court must conduct two inquiries. First, the court must determine whether the complainant has a liberty or property interest with which the state has interfered. Second, if the court finds a deprivation of such an interest, it must determine whether the procedures attendant upon that deprivation were constitutionally sufficient.

Carrillo v. Fabian, 701 N.W.2d 763, 768 (Minn. 2005) (citation omitted). "A constitutionally-protected liberty interest arises from a legitimate claim of entitlement rather than simply an abstract need or desire or a unilateral expectation." *Id.*

With respect to the first portion of the due process analysis, appellant cites *State v. Ness*, in which this court concluded that a domestic abuse no contact order "implicates a protected liberty interest[] by ordering a defendant to have no contact with a family or household member." 819 N.W.2d 219, 225 (Minn. App. 2012), *aff'd*, 834 N.W.2d 177 (Minn. 2013). Appellant argues that "[i]f limiting a person's right to contact people implicates a liberty interest, then increasing the time a person spends in custody from a year to 27 months implicates a liberty interest."

But the record establishes that appellant had notice, prior to being charged with his new offenses, that he would not receive the benefit of the agreement if he violated its conditions, which included not being charged with new criminal conduct. *See State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) ("In determining whether a plea agreement was violated, courts look to what the parties to the plea bargain reasonably understood to

be the terms of the agreement." (alteration and quotation omitted)). "On demonstration that a plea agreement has been breached, the court may allow withdrawal of the plea, order specific performance, or alter the sentence if appropriate." *Id.*; *see also State v. Williams*, 418 N.W.2d 163, 168 (Minn. 1988) ("A plea agreement is in many ways analogous to a contract whose terms will not be enforced to benefit a breaching party."). "[T]here is no authority . . . that a defendant who breaches a plea agreement after being warned that such violation would result in execution of sentence[] is entitled to specific performance of the plea agreement." *State v. Rud*, 372 N.W.2d 434, 435 (Minn. App. 1985), *review denied* (Minn. Sept. 26, 1985). Appellant assented to this requirement on the record without reservation. Therefore, appellant has no legitimate claim of entitlement to the sentence anticipated in the original plea agreement because he failed to abide by the terms of the agreement.

In *Batchelor*, this court held that a defendant's right to due process was not violated when the district court did not "specifically find that a defendant's failure to appear at a scheduled sentencing hearing was intentional or inexcusable before imposing an agreed-on sentence instead of a reduced sentence that was expressly conditioned upon appearance at the scheduled sentencing hearing." 786 N.W.2d at 322–23. We explained:

> Although appellant surely *desired* a 60-month rather than a 161-month sentence, his plea agreement specifically contemplated a guidelines sentence of 161 months. Because appellant entered a guilty plea in which the reduced sentence was conditioned upon his appearance for sentencing, and because he in fact failed to appear, he had no legitimate claim of entitlement to the reduced sentence.

Id. at 323. Here, as in *Batchelor*, while appellant may desire that his felony conviction be sentenced as a gross misdemeanor, he has no legitimate claim for the benefit of a reduced sentence when he violated the terms of his plea agreement by getting charged with additional crimes.

Sufficiency of procedures

Even if appellant were able to show a deprivation of a protected liberty interest or a legitimate claim for a reduced sentence, there is no showing that the procedures attendant upon that deprivation were constitutionally insufficient under the circumstances of this case. In considering what process is due, we consider three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest, through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substantive procedural requirement would entail.

Fosselman v. Comm'r of Human Servs., 612 N.W.2d 456, 462 (Minn. App. 2000) (quoting *Mathews v. Elridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976)).

Appellant's private interest in this matter is receiving a gross misdemeanor sentence for his felony charge, as was agreed upon in his plea. However, the record is clear that the district court could impose a felony-level sentence if appellant violated the plea agreement by being arrested or being charged with new criminal charges before the sentencing hearing.

The issue of whether appellant violated a plea agreement by getting arrested or charged with additional crimes is a narrow one which, as a matter of public record, is

relatively easy to ascertain. *See State v. Clow*, 600 N.W.2d 724, 727–28 (Minn. App. 1999) (discussing manner in which criminal charges are initiated by complaint), *review denied* (Minn. Oct. 21, 1999); Minn. R. Crim. P. 2.01, subd. 1 ("The complaint is a written signed statement of the facts establishing probable cause to believe that the charged offense has been committed and that the defendant committed it . . . ."); *see also* Minn. Stat. § 13.01, subd. 3 (2012) (establishing "a presumption that government data are public and are accessible by the public"); Minn. Stat. § 13.82, subd. 2 (2012) (providing that "data created or collected by law enforcement agencies which document any actions taken by them to cite, arrest, incarcerate or otherwise substantially deprive an adult individual of liberty" is to "be public at all times in the originating agency"); Minn. R. Pub. Access to Recs. of Jud. Branch 2 (providing that "[r]ecords of all courts and court administrators . . . are presumed to be open to any member of the public"). "Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth . . . the activities of the office or agency[]" are not excluded as hearsay. Minn. R. Evid. 803(8)(A).

Even though appellant does not contest that the criminal complaints are public records, appellant argues that the district court erred by taking judicial notice of the criminal complaints and police reports and that such procedure was constitutionally defective. Appellant argues that *Batchelor* is distinguishable because the violation was the defendant's failure to appear for sentencing, which "occurred in the courtroom," whereas here, the district court relied on reports and complaints from "outside agencies"

in order to determine that appellant violated the plea agreement. But in *Batchelor*, because we determined that a defendant who violates the conditions of a plea agreement is not entitled to the benefits of the agreement and is not deprived of due process, we did not address the *Mathews* factors regarding procedural due process. 786 N.W.2d at 323.

Minnesota courts have not squarely addressed whether the district court may take judicial notice of a police report and complaint as proof that a defendant has violated a sentencing condition that he not obtain new arrests or charges. Appellant is correct that "[c]riminal cases are not normally the appropriate setting for judicial notice, particularly of disputed facts." *State v. Pierson*, 368 N.W.2d 427, 434 (Minn. App. 1985). We believe the better practice would have been for the state to offer, and for the district court to admit, the criminal complaints into the record as a public record for the limited purpose of establishing that appellant was arrested and charged subsequent to the plea hearing. Pursuant to Minn. R. Crim. P. 2.01, subd. 1, a criminal complaint must both include "a written signed statement of the facts establishing probable cause" and "specify the offense charged." Because the plea agreement, by its terms, was violated upon appellant's arrest or obtaining new misdemeanor, gross misdemeanor, or felony charges, it was not necessary for the district court to determine whether, as appellant seems to suggest, the evidence supporting the arrests and new charges was sufficient to sustain findings of probable cause or convictions for such charges.

The district court did not err by taking judicial notice and denying appellant's request for an evidentiary hearing for other reasons. Minn. R. Evid. 201(b) permits the district court to take judicial notice in civil cases of facts that are not reasonably in

dispute and that are either generally known within the district court's territorial jurisdiction or capable of accurate and ready determination by resorting to sources whose accuracy cannot be reasonably questioned. We recognize that "the use of judicial notice in criminal cases is unsettled," Minn. R. Evid. 201(a) 1989 comm. cmt., but the rules do not specifically prohibit the district court from taking judicial notice in criminal cases. Appellant does not dispute that he was arrested or that he obtained additional criminal charges or that the police reports and complaints are inaccurate insofar as they show that he was arrested or obtained new charges. Admission of these documents at an evidentiary hearing would have simply confirmed that appellant had been arrested and was facing new charges. Under these circumstances, any error of the district court in taking judicial notice of the complaints and police reports was harmless. *See* Minn. R. Crim. P. 31.01 ("Any error that does not affect substantial rights must be disregarded.").

And we see no prejudice in the district court considering the police reports and complaints because hearsay is admissible at sentencing hearings. *See* Minn. R. Evid. 1101(b)(3) ("The rules other than those with respect to privileges do not apply in the following situations: . . . [p]roceedings for . . . sentencing . . . ."); *Williams v. New York*, 337 U.S. 241, 246, 69 S. Ct. 1079, 1082–83 (1949) (discussing the "wide discretion in the sources and types of evidence" that a sentencing judge may consider when imposing a sentence, including "[o]ut-of-court affidavits," probation reports, and a judge's "knowledge of the personalities and backgrounds" of offenders). *But see State v. Rodriguez*, 754 N.W.2d 672, 683–84 (holding that the Minnesota Rules of Evidence apply to jury sentencing trials).

We note that appellant does not specify what more could be accomplished at an evidentiary hearing. Because there was "no likely value to an evidentiary hearing," the district court did not err in refusing to grant one. *See Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 321 (Minn. App. 2005), *review denied* (Minn. Nov. 15, 2005). We also recognize that "[t]he government . . . has an interest in saving time and money" and that the cost of such evidentiary hearing outweighs "the limited benefit, if any, of providing an evidentiary hearing." *Id.* at 321–22.

Where there was no dispute that the terms of the plea agreement included a requirement that appellant not be arrested or receive new charges prior to sentencing, and that appellant was arrested and charged subsequent to the plea agreement, the district court did not err in refusing to grant an evidentiary hearing regarding whether appellant violated the plea agreement.

Affirmed.