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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0376**

State of Minnesota,
Respondent,

vs.

Cory James Bebeau,
Appellant.

**Filed March 6, 2017
Affirmed
Jesson, Judge**

Itasca County District Court
File No. 31-CR-15-981

Lori Swanson, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

John J. Muhar, Itasca County Attorney, Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Kate M. Baxter-Kauf, Special Assistant Public Defender, Lockridge Grindal Nauen P.L.L.P., Minneapolis, Minnesota (for appellant)

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

UNPUBLISHED OPINION

JESSON, Judge

During an argument at his home, appellant Cory James Bebeau picked up a folding knife and stabbed R.L.J. On appeal from his conviction of second-degree assault, Bebeau argues that he was not competent to stand trial and that the district court abused its discretion when it denied his motion for a new trial and his motion for a downward dispositional departure. We affirm.

FACTS

On April 6, 2015, Bebeau and R.L.J. began a loud argument in Bebeau's home in the town of Ball Club, where he lived with his mother. R.L.J. was spending a few days at the home. During the course of the argument, Bebeau picked up a folding knife and stabbed R.L.J. a total of eight times. Bebeau's mother witnessed the fight. R.L.J. fled the house when she saw blood dripping off her neck.¹ Bebeau left the home as well, threw the knife in the woods and called his aunt, telling her he was "in trouble, I stabbed [R.L.J]." His aunt called the police.

A police officer found Bebeau with a small cut on his hand. Bebeau explained to the officer that he drew the folding knife in self-defense and showed the officer where he threw it in the woods. His mother denied that a stabbing occurred, claiming instead that

¹ R.L.J testified that she did not seek immediate medical attention because she had an outstanding warrant for her arrest. However, the next day, she went to the emergency room due to pain in her neck and shoulders.

R.L.J. attacked Bebeau. The following day, Bebeau was arrested and charged with felony second-degree assault.

Later that month, the district court granted defense counsel's motion for a competency evaluation under Minnesota Rules of Criminal Procedure 20.01 and 21.02. A court-appointed psychologist, Dr. Charles Chmielewski, conducted the evaluation by administering two tests: the Wechsler Adult Intelligence Scale (WAIS-IV), which is the most commonly used IQ test, and the Rorschach test, administered to discern personality traits and how an individual processes information. Dr. Chmielewski concluded that Bebeau was not competent to stand trial because his understanding of his legal situation was too limited, despite his graduating from high school, obtaining a driver's license, and a history of employment. Dr. Chmielewski noted that Bebeau understood that assaulting someone is wrong, but concluded:

With regard to [r]ule 20.01, it is perhaps a rather close call, but I would have much difficulty suggesting that someone with an IQ at the 0.02 percentile is competent to stand trial. He is not going to be able to process his options with any degree of sophistication.

The report further stated that Bebeau's "IQ is not going to change, and so I don't believe that there is any way to restore competency." Based on this recommendation and the agreement of the parties, the district court found Bebeau not competent to stand trial, suspended the criminal proceedings, and referred Bebeau for civil commitment.

As part of the civil commitment proceeding, the district court ordered Bebeau to submit to a psychological evaluation to assess his suitability for civil commitment. The court-appointed psychologist, Dr. Craig Stevens, administered the Independent Living

Scales test, used to assess a person's ability to perform skills and behaviors typical of individual living. While opining that Bebeau was chemically dependent, Dr. Stevens concluded that Bebeau did not meet criteria for commitment as a person with developmental disabilities or mental illness. According to Dr. Stevens, Bebeau's scores on the Independent Living Scales "did not indicate any areas of significant deficit" and were "somewhat incongruous" with the low IQ score obtained during the rule-20 evaluation. The district court found Bebeau to be chemically dependent and committed him to treatment at a halfway house.

In light of Dr. Stevens's report and the commitment proceedings, the district court granted the state's motion for another competency evaluation. The court-appointed examiner, Dr. Jay Lucas, administered several tests designed to assess a person's ability to concentrate, recall words, engage in abstract thinking, react to social problems, and spatial abilities. After synthesizing the varied results, Dr. Lucas concluded that Bebeau fell into the mildly impaired range on abstract tests, but that he functioned in the low-average to average range on straightforward testing. From the test results and the interview, Dr. Lucas concluded that Bebeau has a "fairly good understanding of courtroom functioning and the role of the various people involved." In addition, Bebeau appeared to appreciate the wrongfulness of stabbing or assaulting someone. Dr. Lucas ultimately concluded that Bebeau was competent to stand trial.

In early July 2015, the district court held a contested competency hearing, which included testimony from each psychologist. After the hearing, the district court found Bebeau competent to stand trial. Bebeau pleaded not guilty to felony second-degree

assault, asserting self-defense. After a court trial in October 2015, the district court found Bebeau guilty of felony second-degree assault with a dangerous weapon. *See* Minn. Stat. § 609.222, subd. 1 (2014). The district court denied Bebeau’s motion for a new trial and motion for a downward dispositional departure, sentencing him to 21 months in prison. This appeal follows.

D E C I S I O N

A cornerstone of our American legal system is the understanding that someone who cannot consult with counsel and understand the nature of criminal proceedings may not be subject to criminal prosecution. *Drope v. Missouri*, 420 U.S. 162, 171-72, 95 S. Ct. 896, 903-04 (1975). Incumbent on the district court is the duty to remain vigilant in “ensuring that the defendant is competent to stand trial.” *State v. Bauer*, 310 Minn. 103, 114, 245 N.W.2d 848, 854 (1976). When evidence of mental illness or other mental deficiencies comes to light, the district court must conduct a competency hearing. *Id.*; *see also* Minn. R. Crim. P. 20.01. Here, the district court held a competency hearing and found Bebeau competent to stand trial. Because the competency finding is well supported and the decisions to deny the motions for a new trial and for a downward dispositional departure are within the district court’s discretion, we affirm.

I. *The district court’s competency finding is supported by the record.*

Bebeau contends that he was not competent to stand trial and that the district court’s finding of competency does not reflect proper consideration of the evidence in the record.

A criminal defendant is not competent to stand trial if the defendant lacks ability to (1) “rationally consult with counsel” or (2) “understand the proceedings or participate in

the defense due to mental illness or deficiency.” Minn. R. Crim. P. 20.01, subd. 2; *see also State v. Ganpat*, 732 N.W.2d 232, 238 (Minn. 2007). If the court finds that the defendant is competent, the district court’s finding must be supported by the “greater weight of the evidence.” Minn. R. Crim. P. 20.01, subd. 5(f). We independently review the record to determine if the district court gave proper weight to the evidence produced and if its findings are adequately supported by the record. *Ganpat*, 732 N.W.2d at 238 (quotation omitted).

Our independent review in this case begins with an extensive record. Bebeau submitted to three psychological evaluations, which were based on his performance on psychological tests and in-person interviews. After receiving conflicting expert reports, the district court held a contested competency hearing. At that hearing, each psychologist testified about his methodology and conclusions. Based on the reports submitted in evidence and testimony at the hearing, the district court found Bebeau competent to stand trial.

To reach this decision, the district court explained that Dr. Chmielewski’s evaluation was of limited persuasive value based on his “overreliance on [Bebeau’s] IQ score . . . to the exclusion of other factors.” While noting that Dr. Stevens did not conduct a rule-20 examination, the district court explained that Dr. Stevens’s report was relevant to suggest that Bebeau’s low IQ score was not an accurate or complete measure of his intelligence or ability to function. The district court found Dr. Lucas’s recommendation compelling because Dr. Lucas spent the most time with Bebeau and administered a battery

of tests in a manner designed to mitigate testing irregularities, including stress, anxiety, or learning disabilities, which could deflate Bebeau's scores.

Bebeau argues that the district court improperly weighed the evidence in three ways. First, he contends Dr. Stevens's testimony and report should not be accorded any weight because Dr. Stevens did not administer a rule-20 examination. But the rules of criminal procedure do not limit evidence in competency proceedings to rule-20 evaluations. Minn. R. Crim. P. 20.01, subd. 5(c). Rather, they broadly provide that "[e]vidence of the defendant's mental condition may be admitted." *Id.* Dr. Stevens's report directly addressed Bebeau's mental condition. And Bebeau did not object to the report or Dr. Stevens's testimony at the hearing. The district court appropriately considered Dr. Stevens's testimony.

Next, Bebeau argues that the district court improperly ordered a second rule-20 evaluation by Dr. Lucas. But the district court has a duty to review a defendant's competency upon the request of a party. Minn. R. Crim. P. 20.01, subd. 3; *see Bauer*, 310 Minn. at 114, 245 N.W.2d at 854 (imposing a duty on the district courts to ensure a defendant's competence to stand trial). Indeed, that is what the court did when it ordered the initial competency evaluation at the request of defense counsel. And the district court's decision to obtain a second rule-20 evaluation is supported both by the inconsistencies between the Chmielewski and Stevens reports and by the equivocal nature of Dr. Chmielewski's initial finding of incompetence. Further, the fact that Bebeau was not civilly committed as mentally ill or developmentally disabled justified further evaluation. Given the request by the state, the failure to meet commitment standards, and

Dr. Chmielewski's initial observation that competency was "perhaps a rather close call," the district court's decision to order a second rule-20 evaluation was appropriate.

Finally, Bebeau maintains that the trial court misconstrued Dr. Chmielewski's testimony and report. We disagree. Faced with conflicting opinions, the district court gave greater weight to the conclusions of Dr. Lucas. It explained its reasoning in a well-crafted opinion noting that Dr. Chmielewski placed too much emphasis on IQ scores, to the exclusion of other factors. Moreover, as the district court noted, Dr. Lucas administered several tests "in a manner designed to address potential testing irregularities" and fully considered Bebeau's background, behaviors, and interview responses in reaching the competency conclusion.

Our independent review of the record convinces us that the record supports the district court's finding that Bebeau was competent to stand trial. Bebeau was able to describe his version of the offense and understood the role of the judge, the prosecutor, and his own counsel. As Dr. Lucas explained, he has a "fairly good" understanding of courtroom functioning. He understands the nature of pleadings, plea bargaining, and possible sentences. As a result, the district court's conclusion that he is competent, that he is able to rationally consult with counsel and understand or participate in his defense, is well supported by the record.

II. The district court did not abuse its discretion by denying Bebeau's motion for a new trial.

Bebeau argues that the district court abused its discretion by denying his motion for a new trial based on newly discovered material evidence and the interests of justice. In his

post-trial motion and argument, Bebeau argued that three witnesses had material evidence that was not known to him at the time of trial. The district court denied the motion. We review the denial of a motion for a new trial for abuse of discretion. *State v. Ahmed*, 708 N.W.2d 574, 585 (Minn. App. 2006).

A new trial based on newly discovered material evidence may be granted if the defendant establishes that: (1) the evidence was not known to him or counsel at the time of trial; (2) the failure to discover the evidence was not due to a lack of diligence; (3) the evidence is material; and (4) admission of the evidence will probably produce either an acquittal or a more favorable result. *State v. Hawes*, 801 N.W.2d 659, 675 (Minn. 2011).

Bebeau argues that a new trial is warranted because of newly discovered evidence from N.B., who spoke to the victim before the incident, and A.G., who would testify that the victim attempted to sell him illegal substances the morning following the stabbing.² Bebeau claims that both N.B. and A.G. were incarcerated for portions of the relevant time period so that he was not previously aware of these testimony. But Bebeau provided no details about what information N.B. possessed so that the district court could assess whether the evidence was material and probably would have impacted the verdict. Similarly, he presented no evidence to the district court about how A.G.'s testimony that the victim tried to sell him an illegal substance would impact the verdict. The issue at trial was whether Bebeau stabbed the victim, not whether she later tried to sell drugs.

² In his motion for a new trial, Bebeau also argued that his grandmother was a third new witness, who would describe his early head injuries. He does not address this on appeal.

This lack of detail, and the corresponding inability to ascertain how, if at all, the testimony of these two witnesses might produce a more favorable result for Bebeau, convinces us that this proffered evidence does not meet the standard for “newly discovered material evidence” required in *Hawes*. Nor does this cursory information demonstrate an extraordinary situation so that the interests of justice require a new trial. *State v. Green*, 747 N.W.2d 912, 917-18 (Minn. 2008). The district court properly exercised its discretion when denying the motion for a new trial.³

III. The district court appropriately exercised its discretion by denying Bebeau’s motion for a downward dispositional departure from his sentence.

Bebeau argues that the district court abused its discretion by denying his request for a downward dispositional departure, asserting that he is particularly amenable to probation and that he is a vulnerable adult. This court applies a deferential standard of review to a district court’s denial of a defendant’s motion for a downward dispositional departure. See *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). We will reverse such a decision only if the district court abused its discretion. *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011).

The Minnesota Sentencing Guidelines provide for a presumptive sentence for a felony offense. Minn. Sent. Guidelines 2.C (2014). The presumptive sentence is “presumed to be appropriate for all typical cases sharing criminal history and offense

³ When denying the motion for a new trial, the district court also questioned whether the motion was timely. Because we conclude that the district court’s decision to deny the new trial motion was not an abuse of discretion, we do not reach this issue.

severity characteristics.” Minn. Sent. Guidelines 1.B.13. Accordingly, a district court must pronounce a sentence “within the applicable [presumptive] range unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1; *see also State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). If the district court departs from the presumptive guidelines range, it is required to state the reason or reasons for the departure. Minn. Sent. Guidelines 2.D.1.c. But if the district court does *not* depart, it *not* required to state reasons for imposing a guidelines sentence. *State v. Johnson*, 831 N.W.2d 917, 926 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013); *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

A district court may grant a downward dispositional departure from the presumptive guidelines range if a defendant has a “particular amenability to individualized treatment in a probationary setting.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982); *State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014) (requiring a defendant be “particularly” amenable to probation). In considering whether a defendant is particularly amenable to probation so as to justify a downward dispositional departure, a district court may consider, among other factors, “the defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *Trog*, 323 N.W.2d at 31. If the defendant requests a downward dispositional departure, the district court must “deliberately consider[]” the factors that are urged by a defendant in support of the motion. *Pegel*, 795 N.W.2d at 253. “[T]he mere fact that a mitigating factor is present . . . does not obligate the court to place [a] defendant on probation.” *Id.* (quotation omitted).

In this case, the district court received testimony from Bebeau's mother, aunt, and grandmother, as well as oral argument from Bebeau's attorney. The court then explained that it did not find any mitigating factors in this case. Although the district court noted that Bebeau's IQ was on the lower end of the spectrum and that he was somewhat vulnerable, the court also noted that Bebeau was found competent to stand trial and that he understood that assaulting someone is wrong. Despite this, Bebeau had not accepted responsibility for what happened and continued to maintain that he had done nothing wrong. The court found that he had not established any of the *Trog* factors. Finally, the court referenced an active arrest warrant for Bebeau in a neighboring county. In sum, the district court found that the facts of this case did not present substantial or compelling circumstances, which would demonstrate a "particular amenability to individualized treatment in a probationary setting." *Trog*, 323 N.W.2d at 31.

The district court deliberately considered the relevant factors, including those argued by Bebeau, and exercised its discretion when it denied Bebeau's motion and sentenced him to the presumptive sentence. The district court did not abuse its discretion by denying Bebeau's motion for a downward dispositional departure.

Affirmed.