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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0839**

State of Minnesota,
Respondent,

vs.

Bradley Justin Miles,
Appellant.

**Filed April 16, 2018
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge**

Pipestone County District Court
File No. 59-CR-16-44

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

Damain Sandy, Pipestone County Attorney, Pipestone, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and
Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Following a jury trial at which he represented himself, appellant Bradley Justin Miles challenges his convictions of a number of offenses arising from his holding captive

and assaulting his ex-wife. Miles argues that his waiver of the right to counsel was not voluntary because the district court abused its discretion in denying his request for substitute counsel. Miles also challenges his sentence on his kidnapping conviction, arguing that the district court erred in using a severity level of nine. Because the district court did not abuse its discretion in denying Miles's request for substitute counsel and because Miles's waiver of the right to counsel was voluntarily made, we affirm his convictions. Because the district court used an incorrect severity level, we reverse his sentence and remand for resentencing.

FACTS

On January 28, 2016, the state charged Miles with one count of terroristic threats and one count of misdemeanor domestic assault. The complaint alleged that, two days earlier at around 7:00 p.m., Miles arrived at his ex-wife R.C.'s workplace in Sioux Falls, South Dakota, intoxicated and with their three children in the van. R.C. got in the van, and Miles started yelling at her and told her that he was going to kill her. Miles punched R.C. twice in the arm and choked her until she almost passed out. Miles drove backroads to Jasper, Minnesota, where R.C. and the children lived. Miles continued driving around, until he got the van stuck in the snow. R.C. and the children walked back to their house, as did Miles, arriving around 10:00 p.m. R.C. felt unable to leave, as Miles questioned her when she tried to move. Miles slept on a mattress in the living room. The following morning, R.C. put a note in one of the children's backpacks, stating that she had been beaten and was being held against her will by her ex-husband and asking that the police be

sent to her home. A teacher found the note and called law enforcement, who went to the house and arrested Miles.

The district court appointed a public defender to represent Miles on the day he was charged. On February 9, Miles filed a request for discovery. Trial was thereafter scheduled for June 9 and 10. About a week before trial, Miles requested a continuance so that he could file a reverse-*Spreigl* motion.¹ The district court granted Miles's request.

The state filed an amended complaint, adding one count of kidnapping, one count of false imprisonment, and one count of domestic assault by strangulation. Miles pleaded not guilty to all five charges. On October 4, Miles filed his reverse-*Spreigl* motion. On November 22, the district court denied the motion and rescheduled the trial for December 1 and 2.

The day before the scheduled trial date, the state served late discovery responses of evidence it had obtained from the Sioux Falls Police Department. On December 1, Miles made an oral motion to dismiss the case for violation of discovery rules and violation of due process because of the length of time he had been in custody without a trial. The state responded that it had only learned of the existence of the new evidence a few days earlier and asked the district court to grant a continuance rather than dismiss the case. The district court took the motion under advisement and struck the trial from the calendar. On

¹ A reverse-*Spreigl* motion is a motion by a defendant to introduce evidence of another person's prior bad acts. *State v. Palubicki*, 700 N.W.2d 476, 485 (Minn. 2005) (citing *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965)). Miles wanted to introduce evidence that his ex-wife had previously made a false report of domestic assault.

December 6, Miles asserted a speedy-trial demand. The district court later denied Miles's motion to dismiss and rescheduled the trial for February 2 and 3, 2017.

On December 29, 2016, Miles filed a written motion to dismiss for undue delay. However, at the motion hearing on January 10, 2017, Miles requested a continuance of the hearing. The district court denied the request because of "the timeline here for trial" and instead heard oral argument from counsel on the motion to dismiss. In addition, Miles addressed the district court personally, saying that he wanted "to file a motion for ineffective counsel." Miles alleged that the public defender had not filed a motion for discovery and never demanded a speedy trial, which Miles asked for "back in February when [Miles] met [the public defender]." Miles also alleged that he had not been able to talk to his counsel since January 5, 2017. Miles said that he was "asking for new counsel" or, in the alternative, a continuance of the trial so he could find private representation.

On January 12, the district court denied the motion to dismiss and denied Miles's request for substitute counsel.

On January 23, Miles's public defender filed a motion to withdraw. The following day, the district court held an off-the-record hearing on the motion and granted the motion subject to a review hearing. On January 31, the district court held a review hearing to "ask [Miles] questions about whether [he was], in effect, waiving [his] right to an attorney" and to "explain things to [Miles] . . . with the hope of being fair to both parties." The district court informed Miles that "[he was] entitled to a public defender but not a public defender of [his] choice." The court explained that it had denied the motion for substitute counsel conditionally and had wanted the review hearing to happen before making a final decision

on whether to discharge the public defender. The court informed Miles that its understanding was that Miles had indicated to the public defender that Miles did not want the public defender to represent him. Miles responded, “That’s true.” The district court further asked, “So do you understand that the practical impact of that decision is that you would be representing yourself if this matter goes to trial on Thursday?” Miles replied, “Yes.” The district court then asked Miles if he was waiving his right to counsel and stated that if Miles did waive the right, the court would read a waiver form to him and Miles would have an opportunity to sign it. The district court read the waiver form, but Miles refused to sign it, stating that he “[didn’t] want to agree to [the waiver] because [he] want[ed] to seek [his] own counsel.” The district assigned advisory counsel but pushed the trial back to allow Miles time to retain private counsel.

The jury trial began on February 9, and Miles represented himself. After both parties rested, the state informed the district court that “the evidence is insufficient to establish great bodily harm” for kidnapping and requested that the special question on that issue be removed from the verdict form. The district court agreed, stating that “[t]here has been no evidence of . . . great bodily harm,” and removed the question relating to great bodily harm. The jury was asked to answer the remaining special question on whether the victim was “released in a safe place.”

The jury found Miles guilty of all charges and answered “no” to the released-in-a-safe-place special question.

On March 7, based partly on a severity level of nine, the district court sentenced Miles to 117 months in prison for kidnapping. The district court did not impose a sentence for the other four convictions.

Miles appeals.

D E C I S I O N

I. Miles’s waiver of the right to counsel was voluntarily made because the district court did not abuse its discretion in denying Miles’s request for substitute counsel.

Miles argues that his waiver of the right to counsel was involuntary because the district court abused its discretion in denying his request for substitute counsel without determining whether Miles’s claims against his original public defender amounted to “exceptional circumstances” warranting the appointment of substitute counsel.

A. The district court did not abuse its discretion in denying Miles’s request for substitute counsel.

“The decision to grant or deny a request for substitute counsel lies within the [district] court’s discretion.” *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2006). “The right to counsel includes a fair opportunity to secure an attorney of choice, but an indigent defendant does not have the unbridled right to be represented by the attorney of his choice.” *State v. Worthy*, 583 N.W.2d 270, 278 (Minn. 1998). “A court will grant an indigent’s request for different counsel only if exceptional circumstances exist and the demand is timely and reasonably made.” *Id.* (quotation omitted). Exceptional circumstances “are those that affect a court-appointed attorney’s ability or competence to represent the client.” *State v. Gillam*, 629 N.W.2d 440, 449 (Minn. 2001). When the defendant “voices serious

allegations of inadequate representation,” the district court should conduct a “searching inquiry” before ruling on a defendant’s request for substitute counsel. *Clark*, 722 N.W.2d at 464. However, “a defendant’s general dissatisfaction with appointed counsel does not amount to an exceptional circumstance.” *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013) (quotation omitted).

Miles argues that the district court’s denial of his request for substitute counsel was an abuse of discretion because the district court applied the erroneous ineffective-assistance-of-counsel standard rather than the exceptional-circumstances standard. This argument is unconvincing. The district court denied Miles’s request for substitute counsel because it found “no indication from the record that defense counsel’s performance [fell] below an objective standard of reasonableness nor that the defendant ha[d] been prejudiced by counsel’s performance.” Although the district court described the ineffective-assistance-of-counsel standard, its determination on the public defender’s performance was effectively a determination concerning “a court-appointed attorney’s ability or competence to represent the client.” *Gillam*, 629 N.W.2d at 449. By concluding that the public defender’s performance did not fall below an objective standard of reasonableness, the district court implicitly found that no exceptional circumstances existed.

Miles argues that the district court failed to conduct “a proper searching inquiry” to “determine whether Miles’s claims about his attorney’s performance were accurate,” asserting that the district court’s order denying his request for substitute counsel “contained no findings whether Miles’s claims were accurate.” However, the district court did conduct

a sufficient inquiry by hearing out Miles regarding his concerns and considering Miles's complaints in light of the record and the public defender's performance on the case.

In addition, the court's implicit finding that no exceptional circumstances existed is supported by the record. Miles provided four reasons to support his request for substitute counsel. First, Miles claimed that his public defender had "not filed a motion for discovery." However, the record demonstrates that the public defender had filed a discovery motion on February 9, 2016. Second, Miles claimed that his public defender never demanded a speedy trial, which Miles asked for "back in February." The first time Miles asserted a speedy trial demand was on December 6, 2016. But even after that demand, Miles asked for continuances. In addition, before his December 6 speedy-trial demand, Miles had sought continuances, including to file a reverse-*Spreigl* motion. The record supports the determination that any delay in the case was not an exceptional circumstance affecting Miles's counsel's ability or competence. The third reason advanced by Miles was the public defender's lack of communication with him. Miles's own testimony undermines this argument. At the January 10, 2017 hearing, Miles claimed that he had not been able to talk to his public defender since January 5. However, at the January 31 review hearing, Miles claimed that the public defender "hasn't communicated with [him] since December 1st." Moreover, at the same hearing, Miles admitted that the public defender "came and talked to [him] last week." These contradictory statements do not support Miles's claim of an exceptional circumstance. Fourth, Miles claimed that the public defender "made oral motions" to dismiss for violations of due process and discovery rules at the December 1, 2016 hearing, and "has not filed [written] motions." This claim

also fails because Miles's counsel did file a written motion to dismiss for undue delay on December 29 and, in any event, Miles's general dissatisfaction with how the public defender presented a motion does not amount to an exceptional circumstance.

Finally, Miles argues that the district court erred by holding an off-the-record hearing on defense counsel's motion to withdraw. However, at that time, the district court granted the public defender's motion to withdraw subject to a review hearing, which the district court held a week later. Therefore, even though the district court held an initial off-the-record hearing, its decision granting the motion was not final until the review hearing, which was held on the record.

We conclude that the district court did not abuse its discretion in denying Miles's request for substitute counsel.

B. Miles's waiver of the right to counsel was voluntary.

This court reviews the district court's "finding of a valid waiver of a defendant's right to counsel" under the clearly-erroneous standard. *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009) (quotation omitted). However, "[w]hen the facts are undisputed," the question of whether a defendant validly waived his right to counsel "is a constitutional one that is reviewed de novo." *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012). Because the facts are not disputed here, we review the question de novo.

A defendant's waiver of the right to counsel must be knowing, intelligent, and voluntary. *Id.* at 884. "[T]o ensure a knowing, intelligent, and voluntary waiver-of-counsel, district courts should comprehensively examine the defendant regarding the defendant's comprehension of the charges, the possible punishments, mitigating

circumstances, and any other facts relevant to the defendant's understanding of the consequences of the waiver." *Id.* at 885-86 (quotation omitted). "A district court's failure to conduct an on-the-record inquiry regarding waiver, however, does not require reversal when the particular facts and circumstances of the case demonstrate a valid waiver." *Id.* at 886.

Miles suggests that he did not waive the right to counsel because he refused to do so orally or in writing. Miles also argues that, even if he did waive counsel, his waiver was not voluntary. We reject both contentions.

After the district court denied Miles's motion for substitute counsel, Miles informed his public defender that he did not want to be represented by him, and the public defender moved for permission to withdraw. The district court held a review hearing on that motion. At the hearing, the district court told Miles, "[Y]ou're entitled to a public defender but not a public defender of your choice." Afterwards, the district court asked, "[M]y understanding is that you indicated to [the public defender] that you do not want him to represent you. Is that true?" Miles replied, "That's true." In addition, the district court stated to Miles, twice, that "the practical effect" of his decision to discharge the public defender was that he "would be representing [him]self," and Miles responded that he understood this effect.

The district court, at the hearing, carefully explained the nature of the charges, all offenses included within the charges, the range of punishments, possible defenses, and any mitigating circumstances that may exist. The district court also informed Miles that "a jury trial is a complicated proceeding" and that "an attorney representing [him] at trial can be a

benefit to a criminal defendant.” The district court also read aloud the waiver form. The district court satisfied the requirements of Minn. R. Crim. P. 5.04, subd. 1(4). Miles refused to sign the waiver form, but, on these facts, he nevertheless waived his right to counsel. See Minn. R. Crim. P. 5.04, subd. 1(4) (providing that, “[i]f the defendant refuses to sign the written waiver form, the waiver must be made on the record”); *Jones*, 772 N.W.2d at 504-05 (recognizing methods of waiver); *Worthy*, 583 N.W.2d at 276 (holding that the defendants waived their right to counsel by dismissing their counsel knowing they did not have a right to different court-appointed attorneys.)

Miles argues, however, that any waiver of the right to counsel was not voluntary because, being indigent, he only had two options: “proceeding with his appointed attorney, against whom he had made complaints, or representing himself.” A defendant’s request for another attorney before choosing self-representation “will not by itself undermine the knowing, voluntary, and intelligent nature of the defendant’s waiver of counsel,” particularly when the defendant “is aware that he has no right to a different attorney and must proceed pro se upon rejection of the appointed attorney’s assistance.” *State v. Camacho*, 561 N.W.2d 160, 173 (Minn. 1997). The mere fact the Miles had to represent himself at trial does not make his waiver involuntary.

Miles asserts, however, that his waiver was involuntary because the district court did not “carefully examine” his complaints about counsel. But, as discussed above, the district court did make a sufficient inquiry into Miles’s complaints and the determination that exceptional circumstances did not exist to warrant substitute counsel was supported by the record.

We conclude that Miles's waiver was voluntarily made, and, as a result, we affirm Miles's convictions.

II. The district court used an incorrect severity level in sentencing Miles for kidnapping.

Miles argues that the district court erred in using a severity level of nine to sentence him for kidnapping when the evidence was insufficient to prove that the victim had suffered great bodily harm. The state agrees.

The district court's interpretation of the sentencing guidelines is subject to de novo review. *State v. Campbell*, 814 N.W.2d 1, 4 (Minn. 2012). A sentence that is unauthorized by law may be corrected at any time. Minn. R. Crim. P. 27.03, subd. 9. A criminal sentence that is contrary to the requirements of the applicable sentencing statute is unauthorized by law. *State v. Cook*, 617 N.W.2d 417, 419 (Minn. App. 2000), *review denied* (Minn. Nov. 21, 2000).

Miles was convicted of kidnapping in violation of Minn. Stat. § 609.25, subd. 1(3) (2014). Subdivision 2 of that statute, which sets a 40-year maximum sentence, applies "if the victim is not released in a safe place" or "if the victim suffers great bodily harm during the course of the kidnapping." *Id.*, subd. 2(2) (2014). Miles's offenses occurred in January 2016, so the 2015 sentencing guidelines apply. *See* Minn. Sent. Guidelines (2016) ("Effective August 1, 2016"). For a kidnapping conviction, the sentencing guidelines provide a severity level of nine if the victim suffered great bodily harm and a severity level of eight if the victim was not released in a safe place. Minn. Sent. Guidelines 5.A (2015).

The victim testified at trial that Miles “took the back of his arm . . . and smashed it on the side of [her] face,” “punched [her] in the arm [twice]” and “choked [her],” and she “could feel swelling in [her] jaw [and] arm.” After both parties rested, the state informed the district court that “the evidence is insufficient to establish great bodily harm” for kidnapping and requested that the second special question—asking about great bodily harm—be removed from the verdict form. The district court agreed, stating that “[t]here has been no evidence of . . . great bodily harm,” and removed that special question from the verdict form. In answer to the remaining special question, the jury found that the victim had not been released in a safe place. Therefore, the correct severity level for sentencing is eight. Because Miles had a criminal history point of one, the presumptive sentence is 58 months with a range of 50 to 69 months. Minn. Sent. Guidelines 4.A (2015).

Because the district court applied the incorrect severity level, we reverse Miles’s sentence and remand to the district court for resentencing.

Affirmed in part, reversed in part, and remanded.