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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1025**

In the Matter of the Welfare of: C. G. H., Child

**Filed March 5, 2018
Affirmed
Larkin, Judge**

McLeod County District Court
File No. 43-JV-15-176

Douglas V. Hazelton, Halberg Criminal Defense, Bloomington, Minnesota (for appellant-C.G.H.)

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

Michael K. Junge, McLeod County Attorney, Daniel R. Provencher, Assistant County Attorney, Glencoe, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Florey, Judge.

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

LARKIN, Judge

Appellant challenges an order of the juvenile division of the district court revoking his stay of adjudication in a juvenile-delinquency case. The stay was revoked based on his admission that he violated probation by failing to complete treatment before expiration of the stay. Appellant argues that the district court lacked jurisdiction to revoke the stay, that

he received ineffective assistance of counsel in the revocation proceeding, and that he should be allowed to withdraw his guilty plea and his probation-violation admission. We affirm.

FACTS

On January 19, 2016, appellant C.G.H., a juvenile, pleaded guilty to third-degree criminal sexual conduct pursuant to a plea agreement in which the state agreed to stay an adjudication of delinquency. At the plea hearing, C.G.H.'s attorney asked him, "I have advised you, prior to putting in this plea today, that this stay of adjudication is very important for you to keep; however, if you don't stick with the terms of probation, you could lose that stay of adjudication. Do you understand that?" C.G.H. stated he understood. C.G.H. also stated that he understood that if he lost the stay of adjudication, he would be looking at severe consequences, which could affect his ability to get into college, impact his record as an adult, and require him to register as a predatory offender.

The district court accepted C.G.H.'s plea, stayed adjudication in accordance with the plea agreement, and placed C.G.H. on supervised probation for 360 days. The district court ordered several probationary conditions, including that C.G.H. remain law abiding, have no unsupervised contact with nonfamily females under the age of 16, and that his internet use be monitored.

The district court also ordered C.G.H. to follow the recommendations of a psychosexual evaluation that he had completed prior to the hearing. The evaluation recommended that C.G.H. participate in weekly individual mental-health services and family therapy.

On March 22, 2016, C.G.H. admitted that he violated probation by having unsupervised contact with a 13-year-old girl at a friend's house and admitted that he brought a knife to school. On May 23, the district court adjudicated C.G.H. a petty offender based on his admission to disorderly conduct and ordered him to complete five days of community work service. The district court continued C.G.H. on probation and ordered him to complete the A Step Beyond treatment program, in which he was enrolled. C.G.H. testified that he had attended 15 sessions of the program and could be in the program for another year.

On January 3, 2017, the probation department filed a report alleging that C.G.H. had violated probation by “[f]ail[ing] to complete the A Step Beyond program in the 360 days of probation.” The district court held a probation-violation hearing on May 2. C.G.H. admitted that he did not complete the program within his 360-day probationary period. C.G.H.’s probation agent informed the court that C.G.H. was completing the aftercare phase of his treatment program and would graduate in five months. The state informed the court, “Everyone is in agreement at this time that [C.G.H.] is doing well in the treatment program; however . . . [i]f the Court does not revoke his stay of adjudication the Court loses jurisdiction.” The state therefore recommended revocation of C.G.H.’s stay of adjudication.

On May 25, a different judge held a disposition hearing regarding the admitted probation violation. After the hearing, the district court adjudicated C.G.H. delinquent and ordered C.G.H. to remain on probation until his 19th birthday. The district court explained:

Based on the prior court's determination of the probation violation this Court must assume the violation was intentional and inexcusable. While this court may have difficulty with that determination, based on its understanding that failure to complete the program was a factor of time, not a factor of effort, that determination was made prior to this disposition hearing. By law a stay of adjudication granted this juvenile is limited to a term not exceeding 360 days from the date of disposition, that being January 16, 2016. (See Minnesota Statutes section 260B.198, subdivision 7). The pending violation hearings tolled the timeframe until this Order.

. . . As concerns the determination for an adjudication, the need for adjudication is a matter of protection for the public in that it will allow the juvenile to successfully complete his treatment regimen without the time constraints associated with a stay of adjudication. Furthermore, a failure to adjudicate would depreciate the seriousness of the underlying crime, but not of the probation violation itself.

C.G.H. appeals.

D E C I S I O N

I.

When it is in the best interests of the child to do so and not inimical to public safety and when the child has admitted the allegations contained in the petition before the judge or referee . . . [and] before a finding of delinquency has been entered, the court may continue the case for a period not to exceed 180 days on any one order. The continuance may be extended for one additional successive period not to exceed 180 days, but only with the consent of the prosecutor and only after the court has reviewed the case and entered its order for the additional continuance without a finding of delinquency.

Minn. Stat. § 260B.198, subd. 7(a) (2016).

The corresponding provisions of the Minnesota Rules of Juvenile Delinquency Procedure contain language that mirrors the statutory language. See Minn. R. Juv. Delinq.

P. 15.05, subd. 4(A)-(D). In addition, Minn. R. Juv. Delinq. P. 15.05, subd. 4(E), provides, “Adjudicating a child for an offense after initially granting a continuance without adjudication is a probation revocation and must be accomplished pursuant to Rule 15.07.” “A probation revocation proceeding to adjudicate the child on any allegation initially continued without adjudication must be commenced within the period prescribed by Rule 15.05, subdivisions 4(B) or (C), or juvenile court jurisdiction over the charges terminates.” Minn. R. Juv. Delinq. P. 15.05, subd. 4(F).

C.G.H. contends that the district court lacked jurisdiction to revoke his stay of adjudication. “When a statute provides the basis for the juvenile court’s jurisdiction over the juvenile, the issue of jurisdiction is a question of law subject to de novo review.” *State v. J.E.S.*, 763 N.W.2d 64, 67 (Minn. App. 2009). C.G.H. argues:

[The statute and rule] limit the [district court’s] ability to retain jurisdiction on a stay of adjudication following a guilty plea to one 180-day period, with the option to extend a successive 180-day period subject to certain criteria. When the [district court] stayed adjudication on its original disposition order for 360 days, it ran afoul of these criteria.

C.G.H. concludes:

Because the [district court] failed to enter an order subsequent to the original disposition order which would have *extended* [his] stay period beyond the initial 180 days, Minn. Stat. § 260B.198, subd. 7 (2016), and Minn. R. Juv. Del. P. 15.05, automatically divested the [district court] of jurisdiction 180 days after the January 19, 2016, disposition order.

C.G.H. relies on *In re Welfare of M.J.M.*, in which this court held that “[a] district court does not have jurisdiction to revoke a stay of adjudication in a juvenile delinquency matter after expiration of the [maximum] 180-day period allowed by law to continue the

stay.”¹ 766 N.W.2d 360, 361 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009). In *M.J.M.*, probation-revocation proceedings were commenced and the district court vacated a stay of adjudication after the maximum 180-day stay period had expired. *Id.* at 363. We held that rule 15 divested the district court of jurisdiction over the case 180 days after issuance of the order staying adjudication. *Id.* at 364. *M.J.M.* is distinguishable because the probation-revocation proceedings here commenced within the maximum stay period of 360 days.

C.G.H. does not cite authority establishing that if a district court does not strictly comply with the procedural requirements for extending a stay of adjudication, it loses jurisdiction before expiration of the stay. And C.G.H. acknowledges that this court has previously overlooked noncompliance with such procedural requirements. *See In re Welfare of M.A.R.*, 558 N.W.2d 274, 276 (Minn. App. 1997) (“Because the initial order contemplated a term that exceeded 90 days and allowed for an extension of the term without judicial review, the order did not comply with the precise requirements of [the statute]. Nevertheless, the state agreed to the initial 180-day term as part of the plea agreement.”).

Although the district court did not technically comply with the procedure for extending the initial 180-day stay to a 360-day stay, there was adequate compliance with the statute and rule. For example, the district court held a hearing and reviewed the case

¹ When *M.J.M.* was decided, Minn. Stat. § 260B.198, subd. 7 (2008), and Minn. R. Juv. Delinq. P. 15.05, subd. 4, provided for an initial stay period of 90 days with the option of an additional 90-day successive stay period. Thus, the maximum period for a stay of adjudication was 180 days.

within the initial 180-day period and determined that continuing the stay until the end of the 360-day period was appropriate. We fail to see how C.G.H. was harmed by the district court's approach, with which he agreed. Under these circumstances, we conclude that the district court was not without jurisdiction to revoke the stay.²

II.

C.G.H. contends that he received ineffective assistance of counsel because no reasonable attorney would have advised him to admit violating a condition that was never ordered. Specifically, C.G.H. argues that his completion of the A Step Beyond treatment program before expiration of his 360-day stay of adjudication was never ordered as a condition of probation and that, therefore, his failure to do so cannot be a violation of probation.

C.G.H.'s argument finds support in caselaw.

To find a violation of the terms of the disposition order by clear and convincing evidence, the district court must necessarily identify the specific conditions that the probationer violated, as *Austin* requires. And, as a matter of fundamental fairness, the district court must also ensure that the conditions that the probationer is alleged to have violated were actually imposed and that the juvenile had notice that violation of the conditions of probation could result in revocation.

In re Welfare of R.V., 702 N.W.2d 294, 303 (Minn. App. 2005); *see also State v. Ornelas*, 675 N.W.2d 74, 80 (Minn. 2004) (“[B]efore a probation violation can occur, the condition alleged to have been violated must have been a condition actually imposed by the court.”).

² Because we are not persuaded that the district court lost jurisdiction by proceeding in the manner that it did, we do not consider the state's argument that C.G.H. waived his jurisdictional challenge.

Our close review of the record does not indicate that the district court expressly ordered C.G.H. to complete the A Step Beyond program within the time remaining in his 360-day stay of adjudication. Indeed, the state concedes that the district court did not do so, arguing instead that the condition was implied. Thus, we are concerned that the district court's revocation was based on a condition that it never actually imposed. However, C.G.H. raises that issue in the context of an ineffective-assistance-of-counsel claim.

When assessing an allegation of ineffective assistance of counsel, appellate courts use a “two-pronged analysis, focusing on whether counsel’s performance fell below an objective standard of reasonableness and whether a reasonable probability exists that the outcome would have been different but for counsel’s errors.” *State v. Bobo*, 770 N.W.2d 129, 137 (Minn. 2009) (quotation omitted). An appellate court may review a claim of ineffective assistance of counsel for the first time on appeal if the record is sufficient. *Voorhees v. State*, 627 N.W.2d 642, 644, 649 (Minn. 2001). However, an ineffective-assistance-of-counsel claim generally should be raised in district court, rather than on direct appeal. See *State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000) (referring to postconviction proceedings). “A . . . hearing provides the court with additional facts to explain the attorney’s decisions, so as to properly consider whether a defense counsel’s performance was deficient.” *Id.* (quotation omitted). In *Gustafson*, the supreme court declined to reach the merits of an ineffective-assistance-of-counsel claim, explaining that because “the record before [the court was] devoid of the information needed to explain the attorney’s decisions,” any conclusions regarding whether the attorney’s performance was deficient would be “pure speculation.” *Id.* Instead, the supreme court preserved

Gustafson's right to pursue an ineffective-assistance-of-counsel claim in a postconviction petition. *Id.*

Here, the record does not contain any evidence regarding C.G.H.'s attorney's decisions, the reasons for those decisions, or the advice that the attorney provided. Because the record is inadequate, we decline to reach the merits of C.G.H.'s ineffective-assistance-of-counsel claim. Instead, we preserve C.G.H.'s ability to pursue an ineffective-assistance-of-counsel claim in the juvenile division of the district court.

III.

C.G.H.'s final contention is that his "plea and subsequent admission to probation violations constitute a manifest injustice and must be withdrawn." "Ordinarily, a matter of this kind may not be raised for the first time on appeal." *State v. Hemstock*, 276 Minn. 457, 458, 150 N.W.2d 562, 563 (1967). However, if a challenge to a plea is based "entirely on matters in the record, and no material fact disputes exist," this court may properly consider the issue. *State v. Anyanwu*, 681 N.W.2d 411, 413 & n.1 (Minn. App. 2004).

C.G.H. relies on Minn. R. Juv. Delinq. P. 8.04, subd. 2(B), which provides, "The court may allow the child to withdraw a guilty plea . . . at any time, upon showing that withdrawal is necessary to correct a manifest injustice." Caselaw indicates that "[a] manifest injustice exists if a guilty plea is not valid. To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010) (citation omitted). Assessing the validity of a plea presents a question of law that appellate courts review de novo. *Id.*

C.G.H. argues:

[Although] the record demonstrates [he] was aware of the rights he was giving up in both his initial plea and his probation violation admissions, it is equally clear he did not understand the consequences of giving up those rights.

There is no evidence that [he] was advised at the outset or ever understood that if treatment did not conclude within 360 days of the Court's initial disposition Order he would lose the stay of adjudication.

The requirement that a plea be intelligent “ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Id.* at 96. “‘Consequences’ refers to a plea’s direct consequences, namely the maximum sentence and fine.” *Id.* An individual does not have the right to withdraw a guilty plea based on a lack of knowledge regarding the collateral consequences of his plea. *Kaiser v. State*, 641 N.W.2d 900, 904 (Minn. 2002). C.G.H.’s challenge to the validity of his guilty plea fails because he does not claim that he did not understand the direct consequences of his plea.

As to C.G.H.’s challenge to the validity of his admission to the probation violation, we are not aware of authority imposing the requirements for a constitutionally valid guilty plea on an admission to a probation violation, and C.G.H. does not cite such authority. Even if we were to assume that the constitutional standards for a valid guilty plea apply to a probation-violation admission, C.G.H.’s challenge to his admission would fail for the same reason that his challenge to his guilty plea fails: he does not allege that he did not understand the direct consequences of his admission.

Conclusion

C.G.H. fails to establish that because the district court did not strictly comply with the procedural requirements for imposing a 360-day stay, it lacked jurisdiction when it

revoked his stay of adjudication. He also fails to establish that withdrawal of his guilty plea and probation-violation admission is necessary to correct a manifest injustice. We therefore affirm the revocation of his stay of adjudication. However, because the record is inadequate to determine C.G.H.'s claim that he received ineffective assistance of counsel in the revocation proceeding, we decline to address the merits of this claim for the first time on appeal. Instead, we preserve C.G.H.'s ability to raise the issue in the juvenile division of the district court.

Affirmed.