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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1470
A17-1502**

In the Matter of the Welfare of: S. J. D. K., Child

**Filed June 25, 2018
Reversed and remanded
Smith, John, Judge***

Wabasha County District Court
File No. 79-JV-13-289

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Karen S. Kelly, Wabasha County Attorney, Wabasha, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Smith, John, Judge.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We reverse appellant S.J.D.K.'s juvenile delinquency adjudication and remand for further proceedings because the district court failed to comply with Minn. R. Juv. Delinq.

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

P. 14 when, without a trial, it revoked the previously imposed continuance for dismissal and entered a delinquency adjudication.

FACTS

In 2012, a delinquency petition was filed in Dodge County, charging S.J.D.K. with first-degree criminal sexual conduct. The petition alleged that in January 2012, S.J.D.K. engaged in sexual penetration of a three-year-old victim.¹ S.J.D.K. entered into an agreement for a continuance for dismissal under Minn. R. Juv. Delinq. P. 14.01, subd. 1 (rule 14), and probation entered condition recommendations on June 26, 2012. On April 8, 2013, a second delinquency petition was filed in Wabasha County charging S.J.D.K. with first-degree criminal sexual conduct. This charge involved sexual contact with a victim under the age of five.

Due to the second petition being filed, Dodge County filed a motion to revoke S.J.D.K.'s previously granted continuance. The Dodge County case was transferred to Wabasha County, and S.J.D.K. was set for disposition on both charges in Wabasha County. In May 2013, the parties agreed to adjudicate only one charge, and entered into a new agreement for a continuance for dismissal under rule 14 on the Wabasha County charge. At the hearing, the court asked S.J.D.K. to provide a factual basis for the offense charged in Wabasha County. S.J.D.K. stated that he “touch[ed] [victim] in her vagina area” for “sexual gratification.” The court asked S.J.D.K. if he understood the agreement, and

¹ The appellate record provides limited information about the Dodge County charge. The state’s brief to this court cites to Dodge County file number 20-JV-12-99, but that file is not in the record before us.

S.J.D.K. stated that he understood that the agreement could be terminated if he violated the court order. The district court approved the rule 14 agreement.

Additionally, S.J.D.K. signed a written rule 14 agreement. The agreement required S.J.D.K. to “cooperate with supervised probation, including treatment, counseling, training or education as deemed appropriate by his probation agent,” “comply with probation supervision agreement,” and “remain law-abiding in all respects.” The agreement also provided that if the agreement was terminated:

- [T]he proceedings shall be reinstated and the matter shall be set for a Disposition Hearing. If the matter goes to a dispositional hearing, the child understands the Court
 - a. Will require him to register as a sex offender.
 - b. May place him out of the home, either as part of a consequence program or other program deemed appropriate.
 - c. Require such other terms of probation as deemed appropriate.

S.J.D.K. violated the conditions of his supervised probation numerous times over the next several years. After each violation, S.J.D.K. was reinstated and the continuance for dismissal remained in place. In August 2017, S.J.D.K. again violated his conditions and the state filed a petition to revoke the rule 14 continuance for dismissal. At a hearing on August 30, 2017, the district court orally determined that S.J.D.K. had violated his release and revoked the continuance. Specifically, the district court determined that S.J.D.K. “us[ed] the internet, contact[ed] young girls, some as young as 12, ask[ed] them for pictures, [and] responded by telling them the pictures were ‘sexy.’” On September 25, 2017, in its written order, the district court found that S.J.D.K. had violated the terms of his probation, rescinded the “previously-imposed continuance for dismissal,” and

adjudicated S.J.D.K. delinquent. In addition, the district court required S.J.D.K. to comply with all predatory-offender registration requirements and placed him in “long-term programming” at the Minnesota Correctional Facility (MCF) in Red Wing.

D E C I S I O N

On appeal, S.J.D.K argues his federal and state constitutional rights to due process, a fair trial, and confrontation, were violated when the juvenile court revoked the rule 14 continuance for dismissal, adjudicated him delinquent, and ordered him to register as a predatory offender, without first establishing his guilt.

Minn. R. Juv. Delinq. P. 14.01, subd. 1, permits the prosecutor and the juvenile’s counsel, subject to the district court’s approval, to agree to suspend a juvenile proceeding

for a specified period without a finding that the allegations of the charging document have been proved after which it will be dismissed as provided in rule 14.07 on condition that the child not commit a delinquency or juvenile petty or juvenile traffic offense during the period of the continuance.

Further, the rule allows the agreement to “include stipulations concerning the existence of specified facts or the admissibility into evidence of specified testimony, evidence, or depositions if the suspension of prosecution is terminated and there is a trial on the allegations.” Minn. R. Juv. Delinq. P. 14.01, subd. 1.

The rule 14 agreement in this case provided that S.J.D.K. “shall admit on the record to the allegations contained in the Delinquency Petition,” specifically that he “put his hand down [the victim’s] pants” and “touched [the victim’s] genital area.” At the hearing in Wabasha County, S.J.D.K. stated that he “touch[ed] [victim] in her vagina area” for “sexual

gratification.” The agreement provided that if it was terminated, “the proceedings shall be reinstated and the matter shall be set for a Disposition Hearing. If the matter goes to a dispositional hearing, the child understands the Court . . . [w]ill require him to register as a sex offender.” S.J.D.K. admitted that he violated the conditions of his release. The district court rescinded the “previously-imposed continuance for dismissal,” required S.J.D.K. to comply with all predatory-offender registration requirements, and placed him in “long-term programming” at the MCF in Red Wing. S.J.D.K. argues that the district court’s action was unconstitutional because it was done without a “trial, guilty plea hearing, or [his] waiver of his constitutional rights to due process and fair trial.”

S.J.D.K. did not object to the district court’s adjudication at the dispositional hearing. Normally, we will not review an issue that was not objected to at trial. *See State v. Patterson*, 587 N.W.2d 45, 52 (Minn. 1998). However, we have the discretion to consider an unobjected-to issue on appeal if the issue represents plain error affecting substantial rights. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998); Minn. R. Crim. P. 31.02. “The plain error standard requires that the defendant show: (1) error; (2) that was plain; and (3) that affected substantial rights.” *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings. *Id.*

First, we must consider whether there was an error in the district court’s termination of the rule 14 agreement. S.J.D.K. argues that the district court conflated rule 14, in which “the prosecution is suspended without any finding of guilt,” with Minn. R. Juv. Delinq. P. 15.05, which “requires a finding that the allegations in the charging document have been

proved.” S.J.D.K. argues that there was no finding of guilt in his case, because the statements made at the rule 14 proceeding were only to establish a factual basis for his rule 14 agreement. In sum, S.J.D.K. contends:

The district court lacked authority to combine rules 14 and 15 to the derogation of [S.J.D.K.’s] constitutional rights by having [him] stipulate to an admission without any of the protections of a guilty plea, and later construe the stipulation as a guilty plea and then adjudicate [him] delinquent four years later and, thus, four years after a stay of adjudication jurisdiction would have terminated.

We agree and conclude that the district court erred in its revocation of the rule 14 continuance for dismissal. Under the rule, if a juvenile commits a “material violation” of a continuance-for-dismissal agreement, the juvenile court, upon the state’s motion and after a hearing, “may order the agreement terminated and the juvenile proceeding resumed.” Minn. R. Juv. Delinq. P. 14.04, subd. 2. The rule provides that the juvenile is entitled to a trial upon any such resumption of the proceeding. *See* Minn. R. Juv. Delinq. P. 14.01, subd. 1 (requiring a “trial on the allegations” if the “suspension of prosecution is terminated”). Rule 14 is not an adjudication or a plea of guilty. In fact, the rule specifically states that an agreement “suspend[s]” the proceedings “without a finding that the allegations of the charging document have been proved.” The rule contemplates further proceedings, including a finding of guilt, if the agreement is terminated. After admitting he violated his probation terms, S.J.D.K. was entitled to a trial to determine his guilt, and was not afforded one. Therefore, the district court erred.

Next, because rule 14 entitles S.J.D.K. to a trial to determine his guilt in the alleged offense, the error is plain. *State v. Little*, 851 N.W.2d 878, 884 (Minn. 2014) (providing

that error is plain if it is clear or obvious in that “it contravenes case law, a rule, or a standard of conduct”).

The third prong of the plain-error analysis considers whether the error affected S.J.D.K.’s substantial rights. An error affects substantial rights if “it was prejudicial and affected the outcome of the case.” *Id.* (quotation omitted). An error is prejudicial if there is a reasonable likelihood that the error had a significant effect on the proceeding. *Id.* Under the facts of this case, we conclude that the district court’s failure to hold a trial to determine S.J.D.K.’s guilt or obtain a guilty plea affected S.J.D.K.’s substantial rights. To be valid, a juvenile’s guilty plea must have been entered intelligently, voluntarily, and accurately. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). To be accurate, the plea must be supported by a proper factual basis. *Id.* A plea is intelligently and voluntarily made if the defendant knows and understands the trial rights he is waiving and the consequences of his plea. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). Rule 14 requires only, “a showing of *substantial likelihood* that the allegations could be proved,” and does not constitute a guilty plea. Minn. R. Juv. Delinq. P. 14.01, subd. 2 (emphasis added). The district court did not satisfy the requirements for a guilty plea when it established the basis for the rule 14 agreement, nor did it resume proceedings for a trial on the allegations once it revoked the rule 14 agreement. Thus, we determine that S.J.D.K.’s substantial rights were affected.

Based on the error, we reverse S.J.D.K.'s adjudication and remand for proceedings consistent with rule 14 to ensure the fairness and integrity of the judicial proceeding.

Finally, S.J.D.K. argues that a lifetime predatory-offender registration requirement for a juvenile offender is unconstitutional. Having concluded that the district court erred in its application of rule 14, we decline to address the constitutionality of the predatory-offender registration requirement. *See State v. Hoyt*, 304 N.W.2d 884, 888 (Minn. 1981) (observing that courts do not decide constitutional issues where unnecessary to decide a case).

Reversed and remanded.