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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0940**

Michael Opeoluwa Adebayo, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 10, 2019
Affirmed
Cochran, Judge**

Ramsey County District Court
File No. 62-CR-17-4154

Herbert A. Igbanugo, Jason A. Nielson, Igbanugo Partners Int'l Law Firm, Minneapolis,
Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

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St. Paul, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Hooten, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant Michael Opeoluwa Adebayo filed a petition for postconviction relief,
asserting that his plea was invalid. On appeal, Adebayo challenges the postconviction

court's decision to deny his petition without holding an evidentiary hearing. Because Adebayo failed to allege facts in his petition that, if true, would entitle him to relief, we affirm.

FACTS

The state charged appellant Michael Opeoluwa Adebayo with simple robbery under Minn. Stat. § 609.24 (2016) for an incident that occurred on February 9, 2017. The complaint alleged that Adebayo was “dancing around” the aisle on a light rail train, appeared nervous, and kept looking at K.M., a passenger on the train. As the train doors began to close at a stop, Adebayo grabbed K.M.'s phone and ran off the train. K.M. chased after Adebayo and caught him. Adebayo punched and kicked K.M. before K.M. was able to take his phone back from Adebayo. K.M. called 911, reported the incident, and described Adebayo.

Adebayo later admitted to police that he took K.M.'s phone. Adebayo told police that he had decided to “play a game” with K.M. because he thought that K.M. was someone that he knew from high school. He stated that he realized K.M. was not his classmate just before K.M. tackled him. When Adebayo was shown a video recording of the incident, he denied fighting K.M. He claimed that K.M. was “leaching onto” him and that he gave the phone back to K.M.

Adebayo pleaded guilty to simple robbery on July 28, 2017. The plea was entered pursuant to an agreement that called for a stay of imposition of sentence. Adebayo's public defender (the public defender) was not available at the plea hearing, so another public defender (the substitute attorney) appeared with Adebayo. At the plea hearing, the district

court asked Adebayo whether he was “pleading guilty to this charge freely and voluntarily,” and Adebayo responded “correct.” The district court asked Adebayo whether he was “thinking clearly today,” and Adebayo responded “yes.”

Adebayo also submitted a plea petition at the plea hearing. The petition included a series of statements about the circumstances of the plea and Adebayo’s understanding of the rights given up by entering a guilty plea. Adebayo checked a box on the petition that indicated that he had been a patient in a mental hospital, but there was no indication on the petition of when he had been hospitalized. At the plea hearing, he also testified that he went over the petition line by line with his attorney that afternoon and that he understood the constitutional rights that he was waiving by pleading guilty.

Adebayo then testified about the charged incident and the facts that made him guilty of simple robbery. Adebayo explained that he and other people from his high school “play games” with each other on the bus lines. He claimed that he was not “100-percent” himself that day and that he was acting in an “e-got-tic” way, meaning that he was acting with an “overbearing ego.” He admitted that he took K.M.’s phone but stated that he gave it back to K.M. after he “rethought the situation.” At that point, the district court interrupted Adebayo’s testimony and said to Adebayo’s attorney that it could not accept a guilty plea from Adebayo if he claimed to be innocent. Without consulting with his attorney, Adebayo immediately responded to the court, “Oh, I did, definitely, then. I did, I did take the phone out of the individual’s hand. I did steal his phone.” In response to questioning, Adebayo stated that he did not know K.M., that he used some manner of force to take K.M.’s phone,

and that he ran off the train. The district court accepted Adebayo's guilty plea and scheduled a sentencing hearing.

A presentence-investigation report (PSI) was prepared before the sentencing hearing. Adebayo told the PSI writer that he took K.M.'s phone because he thought he knew K.M. and that he was "just playing." Adebayo told the PSI writer that he enjoyed working out, music, and "switching characters." When asked about his future goals, Adebayo told the PSI writer, "I am a confirmed being of the earth; a said being and travel experiment. It's a different motion of advancement. Man vs. wild." Adebayo also told the PSI writer that he had been hospitalized for mental-health issues about two months before the PSI interview. He said that he spent five days in the hospital before being released.

The PSI writer also spoke with Adebayo's aunt. The aunt expressed concern about Adebayo's mental health. She indicated that she recently took Adebayo to the hospital because Adebayo had been engaging in irrational behavior within the past year and because Adebayo had been "ranting about things that make no sense." She claimed that Adebayo refused to take medications at the hospital and that he was released after several days.

Based on the interviews with Adebayo and his aunt, the PSI writer indicated that Adebayo "appears to have mental health issues that have not been addressed." Consequently, the PSI writer recommended that Adebayo complete a mental-health evaluation as a condition of probation.

The district court sentenced Adebayo on September 20, 2017. The public defender appeared with Adebayo. She asked the district court to place Adebayo on a shorter

probation period in light of the mental-health concerns noted by the PSI writer.¹ The district court stayed imposition of the sentence for five years and placed Adebayo on probation. As a condition of probation, the district court ordered Adebayo to complete a mental-health evaluation and follow the recommendations of the evaluation. Adebayo indicated that he understood that he had to comply with the mental-health evaluation. The district court explained that it was ordering the mental-health evaluation, in part, based on Adebayo's family members' concerns expressed in the PSI. Adebayo replied, "Um, in terms of family, you know, I don't feel that they're efficient enough to make that statement." At the end of the sentencing hearing, the district court asked Adebayo if he understood the sentence, and Adebayo replied, "Yes, I do." The district court asked Adebayo if he had any questions, and Adebayo replied, "No, I do not."

After sentencing, Adebayo retained a private attorney and filed a petition for postconviction relief. In the petition, Adebayo alleged that his plea was not valid because he suffered from mental-health problems. He further alleged that his plea was not valid because he received ineffective assistance of counsel based on his attorney's failure to request a competency evaluation during the criminal proceedings. He asked the postconviction court to allow him to withdraw his guilty plea. He did not request a hearing on the petition.

In support of the petition, Adebayo submitted several exhibits. Exhibits 1 and 2 are the transcripts of the plea and sentencing hearings in this matter. Exhibit 3 is a transcript

¹ The PSI writer recommended a probation period of ten years. The public defender asked for five years.

of a November 13, 2017 bond hearing and a November 16, 2017 master calendar hearing in a federal immigration matter involving Adebayo. These hearings occurred approximately two months after the district court sentenced Adebayo in this matter. Adebayo made combative and illogical statements at the federal hearings. Adebayo expressed a belief that there was a conspiracy against him. The immigration court ultimately scheduled a hearing to assess Adebayo's competency.

Exhibit 4 is an affidavit signed by the public defender dated November 27, 2017. The public defender stated that while she represented him, Adebayo "behaved somewhat strangely and would occasionally make comments that did not seem to be logical during [her] representation of him." But the public defender also said that she was "unaware that he was experiencing delusional thoughts that there was a conspiracy against him." She stated that had she known that Adebayo was having delusional thoughts, she would have requested a competency evaluation.

Exhibit 5 is the PSI prepared in this case. Exhibit 6 is a collection of police reports related to the February 9, 2017 simple robbery to which Adebayo pleaded guilty.

Exhibit 7 is a hospital visit summary. The summary shows that Adebayo was hospitalized for five days in April 2017. Adebayo was diagnosed with "adjustment disorder with mixed disturbance of conduct and emotion" and "intermittent explosive disorder." Adebayo was not prescribed any medications.

In January 2018, Adebayo submitted two additional documents to supplement his postconviction petition. First, Adebayo submitted a collection of medical records generated while he was incarcerated in the Sherburne County Jail from October to

December 2017. The medical records indicate that, as of October 26, 2017, Adebayo was showing signs of mental illness. The medical records also show that while incarcerated, his thought content revealed evidence of paranoid delusions and thought disorder. Second, Adebayo submitted a transcript of a December 15, 2017 competency hearing in the federal immigration court matter. At the end of the hearing, the immigration court found that Adebayo was incompetent based on his bizarre behavior and statements at the hearings, including his statements that the immigration court judge did not understand the proceedings and was incompetent.

In January 2018, the state filed a memorandum opposing Adebayo's postconviction petition. The postconviction court took the matter under advisement but did not hold a hearing on the petition. The district court judge who considered Adebayo's postconviction petition was the same judge who presided over Adebayo's plea and sentencing hearings.

In April 2018, the postconviction court issued a detailed order denying Adebayo's petition. The postconviction court concluded that there were no signs of incompetency at the plea hearing and that, based on the evidence submitted, Adebayo's plea was accurate, voluntary, and intelligent. The postconviction court found that Adebayo appeared to understand the rights he was giving up and the nature of the proceedings. The postconviction court noted that Adebayo testified that he was thinking clearly when he pleaded guilty, that he entered into the plea negotiation freely, and that he stated that he understood the rights that he was giving up at the plea hearing. The postconviction court also noted that there were no indications at the sentencing hearing that Adebayo was not tracking or comprehending the proceedings.

The postconviction court also indicated that, while the PSI writer and Adebayo's family expressed concerns for Adebayo's mental health, there was no reason for the district court to believe that Adebayo was legally incompetent at the plea hearing or the sentencing hearing, given Adebayo's apparent ability to understand and participate in the proceedings. The postconviction court discussed the distinction between being mentally ill and being incompetent for the purpose of a criminal proceeding.

The postconviction court also noted that the severity of a mental-health condition can vary over short periods of time. The court recognized that Adebayo was incompetent in December 2017, but concluded that Adebayo's incompetency in December 2017 was not evidence that Adebayo was incompetent at the plea hearing in July 2017 or the sentencing hearing in September 2017. The postconviction court also found that the Sherburne County Jail medical records and the immigration court hearing transcripts were not relevant to whether Adebayo was competent at the plea hearing and sentencing hearing because they were based on behaviors that occurred after Adebayo's criminal case concluded.

Finally, the postconviction court determined that the public defender's affidavit did not demonstrate that the plea was invalid. The postconviction court noted that the public defender expressly stated in her affidavit that she was not aware that Adebayo was experiencing any delusional thoughts during the criminal proceedings, and also stated that she would have requested a competency evaluation for Adebayo if she had known he was experiencing such thoughts. The postconviction court found that there was "no reason advanced that [the public defender] should have known, nor any evidence presented that

[Adebayo] actually was experiencing delusions during the period of his plea hearing or sentencing hearing.” The postconviction court ultimately concluded that Adebayo had not demonstrated that he had received ineffective assistance of counsel because he did not show that the public defender’s failure to request a competency evaluation was unreasonable under the circumstances and because Adebayo did not show that there was a reasonable probability that a competency evaluation would have revealed that Adebayo was incompetent to proceed.

This appeal follows.

DECISION

Adebayo argues that the postconviction court erred in denying his postconviction petition without a hearing. A court must hold an evidentiary hearing on a postconviction petition “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2016). To determine whether an evidentiary hearing is required, the postconviction court must consider the facts alleged in the petition as true and view them in “the light most favorable to the petitioner.” *Andersen v. State*, 913 N.W.2d 417, 422-23 (Minn. 2018) (quotation omitted). If the petition, evidence, and record “conclusively show that the petitioner is not entitled to relief,” the court may deny the petition without a hearing. *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013). But if there are material facts in dispute and “the allegations in the petition, if true, would entitle the petitioner to relief, then the court must schedule an evidentiary hearing.” *Id.* Any doubts regarding whether to grant a hearing should be resolved in favor of a hearing. *Campbell v. State*, 916 N.W.2d 502, 508 (Minn.

2018). We review a postconviction court’s decision to not hold an evidentiary hearing for an abuse of discretion, reviewing factual findings for clear error and legal issues de novo. *Swaney v. State*, 882 N.W.2d 207, 214 (Minn. 2016).

I. The postconviction court acted within its discretion in dismissing Adebayo’s claim that his plea was invalid because he received ineffective assistance of counsel without holding an evidentiary hearing.

Adebayo contends that the postconviction court abused its discretion in dismissing his claim that his plea was invalid due to ineffective assistance of counsel when it dismissed his claim without holding an evidentiary hearing. Adebayo argues that he alleged facts that, if proved, would entitle him to relief and that there are “disputed medical facts regarding his mental health that needed to be resolved in order to reach the merits of his post-conviction claim.” We are not persuaded.

To be entitled to an evidentiary hearing on a claim of ineffective assistance of counsel, a petitioner must allege facts that, if proved by a fair preponderance of the evidence, would satisfy the two-prong *Strickland* test. *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012). Under the *Strickland* test, a petitioner claiming ineffective assistance of counsel arising out of the plea process must show that (1) his attorney’s representation fell below an objective standard of reasonableness and (2) “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994) (quoting *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068 (1984)).

Adebayo argues that the public defender’s failure to request a competency evaluation under Minn. R. Crim. P. 20.01 fell below an objective standard of

reasonableness given the evidence supporting his postconviction petition. He argues that he was prejudiced by the public defender's failure to request a competency evaluation because he may have been found incompetent had the court ordered the evaluation.

The reasonableness of an attorney's performance is measured against the "representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances." *Schleicher v. State*, 718 N.W.2d 440, 447 (Minn. 2006) (quotation omitted). There is a strong presumption that an attorney's performance was reasonable. *Id.*

"A defendant has a due process right not to be tried or convicted of a criminal charge if he or she is legally incompetent." *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011). "The prosecutor, defense attorney, and the court share the duty to protect the right of a defendant not to be tried or convicted while incompetent." *Id.* A defendant is incompetent if, due to mental illness or cognitive impairment, he lacks the ability to rationally consult with counsel or understand the proceedings or participate in the defense. Minn. R. Crim. P. 20.01, subd. 2. If defense counsel doubts a defendant's competency at any time, she must make a motion challenging competency. *Id.*, subd. 3. A defendant who is incompetent must not plead guilty or be sentenced. *Id.*, subd. 2. Evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether there is reason to doubt the defendant's competence. *State v. Camacho*, 561 N.W.2d 160, 172 (Minn. 1997).

Because Minn. R. Crim. P. 20.01 requires a defense attorney to make a motion challenging competency if she, at any time, doubts a defendant's competency, Adebayo's

attorneys' performance was ineffective if a reasonably competent attorney would have doubted Adebayo's competency and requested a competency evaluation under similar circumstances.

We must determine whether Adebayo alleged facts in his petition and supporting exhibits that, if proved, showed that his attorneys' failure to request a competency evaluation fell below an objective standard of reasonableness. If he did, the postconviction court erred in denying the petition without holding an evidentiary hearing.

In support of his postconviction petition, Adebayo provided Sherburne County Jail medical records and the federal immigration court transcripts. These documents did not exist until after the sentencing hearing and relate to events occurring after Adebayo's sentencing. Neither the public defender nor the substitute attorney could have known about these events while the criminal case proceeded. Consequently, Adebayo's attorneys could not be ineffective for failing to act on them, and they are irrelevant to determining whether the attorneys provided ineffective assistance.

The evidence presented with the petition that is arguably relevant to whether Adebayo's attorneys should have requested a competency evaluation is (1) the behavior alleged in the complaint and police reports (specifically, the fact that Adebayo was "dancing" on the light rail and purportedly believed that he was "playing a game" with K.M., whom he believed he knew); (2) the fact that Adebayo was hospitalized in April 2017 and diagnosed with "adjustment disorder with mixed disturbance of conduct and emotion" and "intermittent explosive disorder"; (3) the public defender's statement that Adebayo "behaved somewhat strangely and would occasionally make comments that did

not seem to be logical”; (4) Adebayo’s use of the word “e-got-tic” at the plea hearing and his testimony that he was not “100-percent” himself on the day of the charged incident; (5) Adebayo’s statements in the PSI that he enjoyed “switching characters” and, “I am a confirmed being of the earth; a said being and travel experiment. It’s a different motion of advancement. Man vs. wild”; (6) Adebayo’s aunt’s statements describing Adebayo’s irrational behavior and expressing a concern for Adebayo’s mental-health; and (7) Adebayo’s misuse of the word “efficient” at the sentencing hearing.

These allegations and supporting evidence, if proved and viewed in a light most favorable to Adebayo, demonstrate that Adebayo was suffering from mental-health problems at around the same time that he pleaded guilty and was sentenced in this matter. But while mental-health problems sometimes overlap with legal incompetency, the two are not the same, as the postconviction court correctly noted.²

Even considering the evidence presented by Adebayo about his mental condition around the time of the plea and sentencing hearings, there is strong evidence in the record that Adebayo was legally competent at both the plea and sentencing hearings. In totality, Adebayo’s responses to questions at both hearings were reasonable and coherent. Though some of Adebayo’s testimony included yes-or-no responses to leading questions, Adebayo also provided testimony that was spontaneous and logical. After the district court told Adebayo’s attorney that it would not accept a guilty plea from Adebayo if Adebayo

² We also recognize that there is no evidence in the record that describes the symptoms of the two mental-health diagnoses that Adebayo received in April 2017, or how those diagnoses might affect Adebayo’s competency to proceed in a criminal case.

maintained his innocence, Adebayo, on his own initiative, stated, “Oh, I did, definitely, then. I did, I did take the phone out of the individual’s hand. I did steal his phone.” This statement demonstrates that Adebayo was able to understand why the court was hesitant to accept his guilty plea and that Adebayo was able to provide a rational response as to why he was in fact guilty of the crime to which he was pleading guilty. In other instances, Adebayo disagreed with leading questions that his attorney posed and offered his own explanation of the charged incident. Adebayo was polite and respectful at both criminal hearings in contrast to his behavior during the subsequent immigration hearings. Considering Adebayo’s demeanor and apparent ability to understand the plea and sentencing proceedings, the other evidence of his mental health presented with his petition was not significantly probative of his alleged incompetency at the time of his plea.

Moreover, Adebayo’s decision to accept a plea offer and his ability to consult with his attorney are further evidence that a reasonable attorney, under similar circumstances, would not have doubted Adebayo’s competency despite the signs of mental illness. Adebayo’s decision to accept a plea offer that called for a stay of imposition was a rational choice given the video evidence that purportedly depicted the February 9 incident. Adebayo filled out a plea petition with his attorney and reviewed it with her line-by-line before he pleaded guilty—further demonstrating that Adebayo was able to rationally consult with his attorney. Adebayo testified that he understood the rights that he was waiving when he pleaded guilty—demonstrating that, at the time of the hearings, Adebayo was able to understand the proceedings.

In light of Adebayo's lucid demeanor and logical statements at the hearings, and his apparent ability to make rational decisions and consult with his attorneys, we conclude that Adebayo failed to allege facts that, if proved, showed that a reasonably competent attorney under similar circumstances would have doubted Adebayo's competency and requested a competency evaluation. Thus, Adebayo's petition failed to allege facts that, if proved, would satisfy the first prong of the *Strickland* test for ineffective assistance of counsel. Consequently, we conclude that the postconviction court acted within its discretion when it dismissed his claim that his plea was invalid because he received ineffective assistance of counsel without first holding an evidentiary hearing.

II. The postconviction court acted within its discretion in dismissing Adebayo's claim that his plea was not accurate and intelligent without holding an evidentiary hearing.

Adebayo also asserted in his postconviction petition that his plea was not valid because it was not accurate or intelligent. The postconviction court also dismissed these claims without holding an evidentiary hearing.

A defendant does not have an absolute right to withdraw his guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But, a court must allow withdrawal if it is necessary to correct a manifest injustice. *Id.* A manifest injustice exists if a guilty plea is not valid. *Id.* at 94. A valid plea is accurate, voluntary, and intelligent. *Id.* The validity of a plea is a question of law that appellate courts review de novo. *Id.*

A. Adebayo did not allege facts that, if proved, demonstrate that his plea was not accurate.

Adebayo argues that his plea was not accurate because his testimony did not establish the requisite mental state for simple robbery. He argues that because he testified at the plea hearing that he was playing a “game” with K.M. when he took K.M.’s phone, that his later testimony that he stole the phone was not sufficient to establish that he had the requisite mental state.

“The accuracy requirement protects a defendant from pleading guilty to a more serious offense than that for which he could be convicted if he insisted on his right to trial.” *Id.* An accurate plea must be established on a proper factual basis. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012). A proper factual basis exists “if the record contains a showing that there is credible evidence available which would support a jury verdict that defendant is guilty of at least as great a crime as that to which he pled guilty.” *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (quotation omitted).

The mens rea element required to establish a simple robbery under Minn. Stat. § 609.24 is that the defendant have knowledge that he is not entitled to take personal property from the person. *State v. Sandve*, 156 N.W.2d 230, 232 (Minn. 1968). Adebayo’s plea would be inaccurate if he genuinely believed that he was entitled to take the phone from K.M. But Adebayo testified that he knew he was not entitled to take the property from K.M., and agreed that he “ripped” the phone out of K.M.’s hands. Adebayo also testified that he stole the phone from K.M. Adebayo’s testimony therefore satisfied the

mental element of simple robbery. Consequently, the postconviction court acted within its discretion when it dismissed Adebayo's postconviction petition on this basis.

B. Adebayo did not allege facts that, if proved, demonstrate that his plea was unintelligent.

Adebayo argues that his plea was not intelligent because he was not competent at the plea hearing. He argues that the postconviction court abused its discretion in denying this claim without an evidentiary hearing because there were "disputed medical facts regarding his mental health that needed to be resolved in order to reach the merits" of his claim.

A plea is intelligent if the defendant "understands the charges against him, the rights he is waiving, and the consequences of his plea." *Raleigh*, 778 N.W.2d at 96. As discussed above, the allegations made by Adebayo and the supporting evidence, viewed in a light most favorable to Adebayo's claims, were not sufficient to cause a reasonably competent attorney to doubt that Adebayo was competent. The postconviction court accepted Adebayo's evidence and allegations as true in dismissing this claim, and thus Adebayo's argument that disputed facts required an evidentiary hearing is without merit. Considering the same evidence and factors, we conclude that Adebayo failed to allege facts that, if proved, would demonstrate that he did not understand the charges against him, the rights he was waiving, or the consequences of his plea. On the contrary, the record conclusively demonstrates that Adebayo's plea was intelligently entered. Adebayo's decision to enter a plea negotiation, his ability to consult with his attorney and complete a plea petition, and his testimony at the plea hearing all demonstrate that Adebayo understood the proceedings,

the rights he waived, and the consequences of his plea. Accordingly, the postconviction court acted within its discretion when it dismissed Adebayo's postconviction claim that his plea was not intelligent without first conducting an evidentiary hearing.

Affirmed.