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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1351**

State of Minnesota,
Respondent,

vs.

Ismahan Mohamed Abdi,
Appellant.

**Filed June 3, 2019
Affirmed
Bratvold, Judge**

Benton County District Court
File No. 05-CR-18-1245

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

Todd A. Kelm, Sauk Rapids City Prosecutor, Ashley M. Bukowski, Assistant City
Prosecutor, Kelm & Reuter, P.A., Sauk Rapids, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

In this appeal from a final judgment of conviction of failure to yield, appellant argues that we must reverse her conviction because she did not validly waive her right to counsel before she pleaded guilty. We affirm.

FACTS

On June 19, 2018, appellant Ismahan Mohamed Abdi was in a car accident on Highway 23 in Benton County. She failed to yield to another vehicle that had the right of way. The state charged Abdi with “failing to yield upon entering a roadway, a misdemeanor offense,” in violation of Minn. Stat. § 169.20, subd. 4 (2016).

Before her arraignment hearing, Abdi completed a “Misdemeanor Statement of Rights” form, which explained Abdi’s constitutional rights, including her right to counsel.¹ On the form, Abdi checked the boxes indicating that she wished to plead guilty to the charged offense, gave up her trial rights, and did “not request a court-appointed attorney and waive[d] . . . the right to an attorney.” Abdi signed and dated the form.

The district court called Abdi’s case for arraignment, she appeared without counsel, and the district court stated the charge against her. The district court asked Abdi if she understood the charge and she responded “Yes.” The district court continued a discussion with Abdi, as follows:

¹ Specifically, the form provided, “I have the right to be represented by an attorney at all times and an attorney will be appointed without cost to me if I cannot afford to pay for an attorney” and “I have the following constitutional rights . . . for the case to be continued for me to obtain or speak to an attorney.”

The Court: I've got a form here, Ms. Abdi, that's called a Misdemeanor Statement of Rights. It looks like you signed the bottom of the second page. Do you remember looking at that form before the hearing?

Abdi: Yeah.

The Court: That tells you about all your rights, Ms. Abdi. You are presumed innocent of the charge. The state has to prove your guilt beyond a reasonable doubt. You could have a trial if you'd like in front of a judge or a jury.

At a trial, you could ask questions of any witnesses the prosecuting attorney might call to testify. You could have witnesses come in and testify for you using a subpoena. You have the right to remain silent. So that means if you decide not to testify at a trial, that would not be used against you. You have a right to an attorney. If you cannot afford one, one would be appointed to represent you at no cost.

Do you understand all of those rights?

Abdi: Yes.

The Court: The form that I have indicates that you wish to plead guilty to the offense; is that correct?

Abdi: Yeah.

The Court: Do you understand that by doing that you'd be giving up your right to a trial and all the rights that go along with it? Do you understand that?

Abdi: Yes.

The Court: Okay. Do you have any questions at all about your rights before we proceed?

Abdi: No.

The court asked the state what it recommended with regard to sentencing, and the state responded that it "would be looking for a \$300 fine, no executed jail, and restitution." The

district court then asked Abdi about her plea to the charged offense and Abdi stated that she pleaded guilty to failing to yield upon entering a roadway.

After placing Abdi under oath, the district court and prosecutor questioned her about the offense. Abdi testified that she was driving at about 2:30 p.m. on June 19, 2018, trying to cross a state highway while on 35th Avenue in Sauk Rapids. Abdi agreed that the “lane was not clear,” the “other vehicle had the right of way,” and the two cars collided, causing property damage. Abdi also testified that she was hurt in the accident and went to the hospital. The district court found “an adequate factual basis and a knowing, intelligent, and voluntary waiver of [Abdi’s] rights.” The court then adjudicated Abdi guilty of the offense, imposed a sentence of 90 days in jail and a \$1,000 fine, but stayed “all of the jail and all but \$300 of the fine,” and placed Abdi on “informal probation for one year.” Abdi appeals.

D E C I S I O N

Abdi argues that the district court failed to ensure that she “knowingly, intelligently, and voluntarily waived her right to counsel,” and this failure amounted to “a structural error requiring reversal.” The state argues that Abdi waived her right to counsel both in writing and on the record, and asks this court to affirm.

The United States and Minnesota Constitutions guarantee a criminal defendant’s right to counsel. U.S. Const. amend. VI; Minn. Const. art. 1, § 6; *see also Gideon v. Wainwright*, 372 U.S. 335, 343-45, 83 S. Ct. 792, 796-97 (1963). The Minnesota Rules of Criminal Procedure require the district court to advise a defendant appearing without counsel of the right to counsel, that the court will appoint counsel if the defendant is financially unable, and that the defendant has a right to request counsel at any stage.

See Minn. R. Crim. P. 5.04, subd. 1. The rules also establish how a defendant may waive the right to counsel in a misdemeanor or gross misdemeanor case. See *id.* Rule 5.04, subdivision 1(3), provides that defendants who “appear without counsel, do not request counsel, and wish to represent themselves, must waive counsel in writing *or* on the record.” *Id.*, subd. 1(3) (emphasis added). Rule 5.04 also states that “[t]he court must not accept the waiver unless the court is satisfied that it is voluntary and has been made by the defendant with full knowledge and understanding of the defendant’s rights.” *Id.*

The district court’s duty is “to ensure a knowing and intelligent waiver of the right to counsel.” *State v. Krejci*, 458 N.W.2d 407, 412 (Minn. 1990). This court reviews the district court’s finding of a valid waiver of counsel under the clearly-erroneous standard. *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009). “A finding is clearly erroneous when there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred.” *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012). The denial of the right to counsel “is a structural error.” *Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009). Structural error “does not require a showing of prejudice to obtain reversal.” *State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997).

We conclude that the district court did not clearly err in determining that Abdi validly waived her right to counsel before she pleaded guilty. The statement-of-rights form provided Abdi with an explanation of her right to counsel, and the district court reiterated those rights to Abdi at the hearing. Abdi waived her right to counsel by completing and signing the form, which stated that she wanted to proceed without an attorney. Abdi also stated on the record that she understood her right to counsel and wanted to waive that right,

along with her other trial rights, by pleading guilty. After following the steps outlined in rule 5.04, subdivision 1, the district court determined that Abdi's waiver was voluntary and was "a knowing and intelligent" waiver of her trial rights. Abdi has provided no basis for this court to conclude that a mistake was made. Accordingly, we conclude that there was no structural error in this case.

Still, Abdi argues that the record does not establish a valid waiver of counsel for four reasons. First, Abdi contends that the district court failed to "determine whether [she] knowingly and intelligently waived her right to counsel." We disagree. As stated above, the district court explicitly found "a knowing, intelligent, and voluntary waiver of [Abdi's] rights."

Second, Abdi argues that the district court did not ensure that Abdi "was actually aware of the punishment for pleading guilty to the charges, the potential disadvantages of waiving counsel, or inquire as to whether her decision was coerced." The statement-of-rights form, completed before the hearing, described the maximum sentence for a misdemeanor offense, which is "a fine of \$1,000 and applicable surcharges, 90 days in jail, or both." The record shows that, before the district court asked Abdi to enter a plea, the court asked the state what it would recommend for sentencing, and the state said it was "looking for a \$300 fine, no executed jail, and restitution." Also before the plea, the district court informed Abdi that, if she proceeded with her guilty plea and without an attorney, she would be giving up her "right to a trial and all the rights that go along with it." Thus, Abdi's second challenge lacks merit because the record establishes that she was aware of the punishment for her offense as well as her loss of trial rights by pleading guilty.

Third, Abdi appears to argue that her waiver was insufficient because the district court did not sufficiently inquire on the record during the hearing. But rule 5.04 states that a defendant charged with a misdemeanor or gross misdemeanor may waive counsel “in writing *or* on the record.” Minn. R. Crim. P. 5.04, subd. 1(3) (emphasis added). Even so, the district court *did* explain Abdi’s constitutional rights on the record before it accepted her waiver. *See Camacho*, 561 N.W.2d at 173 (“[I]n order to determine whether a waiver of counsel is knowing and intelligent, a court 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.”). After carefully reviewing the entire record, we conclude that the district court’s inquiries of Abdi were sufficient.

Finally, Abdi asserts that the supreme court’s reasoning in *State v. Jones* supports her argument that her waiver was insufficient. In *Jones*, the supreme court determined that the district court failed to “address the nature of the charges or the advantages and disadvantages of a decision to waive counsel,” and thus, the appellant did not give a knowing, intelligent, and voluntary waiver of his right to counsel. 772 N.W.2d at 504-05.² This aspect of *Jones* is inapposite because, here, the district court described the charges against Abdi, discussed her constitutional rights, and informed her that if she pleaded guilty

² In *Jones*, the supreme court affirmed the conviction after concluding that appellant forfeited his right to counsel by his “extremely dilatory” conduct, and affirmed the district court’s decision that appellant had given up his right to an attorney without an express waiver. *Id.* at 505-06.

and went ahead with her waiver, she would be “giving up [her] right to a trial and all the rights that go along with it.”

In sum, the district court did not clearly err in finding that Abdi’s waiver of counsel was knowing, intelligent, and voluntary.

Affirmed.