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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0898**

State of Minnesota,
Respondent,

vs.

Abdifatah Abdullahi Hassan,
Appellant.

**Filed May 26, 2020
Affirmed in part, reversed in part, and remanded
Kirk, Judge***

Anoka County District Court
File No. 02-CR-18-4143

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

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

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

Considered and decided by Segal, Chief Judge; Rodenberg, Judge; and Kirk, Judge.

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

UNPUBLISHED OPINION

KIRK, Judge

The district court ordered a competency examination for appellant Abdifatah Abdullahi Hassan after the state charged him with attempted first-degree criminal sexual conduct and kidnapping. Two examiners concluded that Hassan was competent. Based on the experts' reports, the district court found Hassan to be competent, and Hassan pleaded guilty. On appeal, Hassan challenges his convictions on the basis that his guilty pleas were invalid. He alternatively seeks to vacate the district court's sentence imposing a ten-year conditional-release term. Because the district court followed proper procedures in determining that Hassan was competent and because there was an adequate factual basis for the attempted first-degree criminal-sexual-conduct plea, we affirm Hassan's convictions. But because a ten-year conditional-release term cannot be imposed for an attempt offense, we reverse and remand for the district court to vacate the conditional-release term.

FACTS

The state charged Hassan with five counts, including attempted first-degree criminal sexual conduct and kidnapping. *See* Minn. Stat. §§ 609.342, subd. 1(e)(i), .25, subd. 1(2), .17, subd. 1 (2016). The complaint alleged that in June 2018, Hassan approached an adult woman at a bus stop, began conversing with her, and made a sexual inquiry, which she turned down. They got on the bus together, and when the woman got off, Hassan followed her. He eventually grabbed the woman, dragged her behind a pillar, pulled out his penis, and tried to force her to perform oral sex. The woman repeatedly screamed "No!" and he

tried to cover her mouth and nose, causing her nose to bleed. A bystander called the police, and officers arrived shortly thereafter, ordered Hassan to the ground, and detained him.

At an omnibus hearing Hassan's attorney requested a competency examination under Minnesota Rule of Criminal Procedure 20.01 and an examination to determine the possibility of a mental-illness defense under rule 20.02. The district court ordered the examinations.

Dr. Mark Kleiman examined Hassan and submitted rule 20 reports to the district court. In his rule 20.01 report, Dr. Kleiman opined that Hassan was competent to stand trial. This conclusion was based on observations made in his interview with Hassan, during which Dr. Kleiman noted that Hassan could describe the charges against him in general terms, understood different actors' roles in the judicial system, could explain the concept of a plea bargain, and recognized the importance of telling the truth under oath. Dr. Kleiman nonetheless diagnosed Hassan with schizophrenia and alcohol-use disorder, noting that Hassan had a long history of delusions, paranoia, hallucinations, and suicidal thoughts, and that he even expressed "some delusional beliefs about his case." Dr. Kleiman concluded that Hassan was "technically competent in terms of his factual knowledge of the court" and in his ability "to participate in his own defense," but that he would remain in that condition "only when he is remaining consistent in taking his psychotropic medication." In his rule 20.02 report, Dr. Kleiman concluded that Hassan was "not criminally responsible for his conduct" at the time he committed the offense, meaning that a mental-illness defense would be available to him.

At the review hearing, both parties challenged Dr. Kleiman's evaluation. Hassan contested the finding of competence under rule 20.01, and the state contested the finding supporting a mental-illness defense under rule 20.02. Per the parties' agreement, the district court ordered a second rule 20 examination and appointed Dr. Chimnoy Gulrajani as the examiner.

Before the second examination occurred, Anoka County Social Services petitioned for Hassan to be civilly committed. The commitment court found that, while Hassan was in jail awaiting trial, he was experiencing hallucinations, had threatened suicide, and believed that people in the jail were trying to kill him. On one occasion, Hassan had been found with a sheet wrapped around his neck and tied in a knot. On October 30, 2018, the district court ordered Hassan to be civilly committed to the Commissioner of Human Services as a person who is mentally ill. The initial commitment period was to last no longer than six months.

In November 2018, Dr. Gulrajani submitted his rule 20 reports to the district court. He concluded in his rule 20.01 report that Hassan was competent to stand trial, opining that he "had the ability to rationally consult with counsel" and "possessed the ability to understand the proceedings and participate in his defense." Dr. Gulrajani observed during his interview of Hassan that Hassan was able to "rationally engage" with him, showed an understanding of the charges, was aware of the plea options, and could "comprehend, retain and recall new information provided to him." In his rule 20.02 report, Dr. Gulrajani concluded that Hassan did not understand the nature of the offense at the time he committed it, but attributed it to alcohol intoxication rather than schizophrenia.

After Dr. Gulrajani submitted his reports, the district court conducted a review hearing. Neither party objected to the reports being received into evidence. The district court found Hassan competent.

A plea hearing was held in February 2019, at which Hassan agreed to plead guilty to attempted first-degree criminal sexual conduct and kidnapping, and the state agreed to dismiss the remaining three counts. Hassan entered a *Norgaard* plea by which he claimed that he could not remember the offense due to intoxication but agreed that the state's evidence was sufficient to find him guilty. Hassan reviewed the plea petitions and the district court conducted a plea colloquy. The prosecutor then summarized the evidence supporting the crimes. The district court found that Hassan had knowingly and voluntarily waived his rights and that there was an adequate factual basis for the offenses, and it accepted Hassan's guilty pleas.

The district court sentenced Hassan to 72 months in prison on the attempted first-degree criminal-sexual-conduct conviction, to be served concurrent with a 48-month sentence on the kidnapping conviction. The district court also imposed a ten-year conditional-release period for the criminal-sexual-conduct conviction. Hassan appeals.

D E C I S I O N

Hassan challenges his convictions, arguing that his guilty pleas were invalid because the district court did not ensure that Hassan was competent when he entered into them and because the record lacked an adequate factual basis for the attempted first-degree criminal-sexual-conduct count. He alternatively seeks to vacate the ten-year conditional-release

term, arguing that the district court cannot impose a conditional-release term for an attempt crime. We grant relief on the conditional-release argument, but otherwise affirm.

I

Hassan argues that his guilty pleas were invalid because the district court did not take proper measures to ensure that he was competent when he entered his pleas. A criminal defendant cannot plead guilty or be convicted if he is incompetent. *See Pate v. Robinson*, 383 U.S. 375, 378, 86 S. Ct. 836, 838 (1966); Minn. R. Crim. P. 20.01, subd. 2. A defendant is considered incompetent if a mental illness or cognitive impairment renders him unable to either “rationally consult with counsel” or “understand the proceedings or participate in the defense.” Minn. R. Crim. P. 20.01, subd. 2(a)-(b). Here, the state bore the burden of proof to show by a preponderance of the evidence that Hassan was competent. *See State v. Ganpat*, 732 N.W.2d 232, 238 (Minn. 2007).

A district court’s failure to follow adequate procedures to protect a defendant’s right not to be convicted while incompetent deprives him of his due-process rights. *See Pate*, 383 U.S. at 378, 86 S. Ct. at 838; *State v. Bauer*, 245 N.W.2d 848, 854-55 (Minn. 1976). Whether the district court followed adequate procedures is a different question than whether the defendant is incompetent, and it requires the reviewing court to determine the narrower issue of whether the district court should have conducted further inquiry. *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011). When the evidence relating to the defendant’s mental condition is undisputed and the district court did not further inquire into the defendant’s competence, we review the record “to determine whether the district court gave

proper weight to the information suggesting incompetence.” *State v. Camacho*, 561 N.W.2d 160, 174 (Minn. 1997).

Minnesota Rule of Criminal Procedure 20.01 lays out the procedures that the district court must follow for competency proceedings. If the district court determines, on its own initiative or upon motion of either party, that there are reasons to question the defendant’s competence, then it must order a competency evaluation. Minn. R. Crim. P. 20.01, subd. 3. In felony cases, the district court must determine probable cause then appoint an examiner, who will evaluate the defendant’s mental condition and submit a report to the district court. *Id.*, subds. 3(b), 4(a). If a party timely objects to the competency report, the district court must hold a competency hearing, at which the parties may introduce evidence. *Id.*, subd. 5(a)(1), (3). But if no party files any objections, the district court may determine the issue of competency based on the examiner’s report. *Id.*, subd. 5(b). If the district court finds “by the greater weight of the evidence that the defendant is competent,” then criminal proceedings resume. *Id.*, subds. 5(c), 6(a).

A review of the record shows that the district court complied with the competency procedures under rule 20.01. Upon Hassan’s request, the district court ordered a rule 20.01 competency evaluation and appointed an examiner. The examiner, Dr. Kleiman, submitted his report, which concluded that Hassan was “technically competent” but expressed reservations about Hassan’s ability to participate in his own defense unless he were taking medication. Hassan’s attorney orally contested the report’s finding of competence without filing a written objection as required by the rule, and the district court ordered a second competency evaluation. The second examiner, Dr. Gulrajani, also concluded that Hassan

was competent, expressing greater confidence than Dr. Kleiman regarding Hassan's ability to participate in his own defense. Following submission of Dr. Gulrajani's report, the district court conducted a review hearing and found Hassan competent. Because neither party filed any objections to the second report, the district court properly made its competency determination based solely on Dr. Kleiman's and Dr. Gulrajani's reports. In light of the fact that both examiners concluded that Hassan was competent and that Hassan did not object to the second report, the district court followed the proper procedures in reaching its competency determination.

Hassan maintains that the district court erred by ordering a second competency evaluation rather than holding a contested hearing as rule 20.01, subdivision 5(a)(1) requires. The argument overlooks that Hassan filed no written objection to the competency report, as the rule directs. And as the district court noted in its order, the second examination was the result of the parties' mutual agreement, with Hassan requesting a second examiner to conduct a rule 20.01 competency examination and the state requesting the same second examiner to conduct a rule 20.02 mental-illness examination. Moreover, rule 20.01 permits the appointment of multiple examiners. *See id.*, subd. 4(a) ("The court must appoint at least one examiner . . . to examine the defendant and report to the court on the defendant's mental condition."). Because Hassan agreed to the appointment of Dr. Gulrajani as a second examiner, and did not object to his report after he submitted it, we see no error in the district court ordering a second examination. Hassan also insists that the district court did not require the state to prove that Hassan was competent, but the district

court made its competency decision based on the two experts' reports, both of which concluded that Hassan was competent.

Hassan argues that other circumstances raised “substantial questions” about his competence and should have alerted the district court to take additional measures to ensure that he was competent. We are not persuaded. Hassan points to his civil commitment, hospitalization, and suicide attempts while the second competency evaluation was pending. These facts were accounted for in Dr. Gulrajani’s report, as he interviewed Hassan a few weeks after the start of the civil commitment, and the expert report discussed the mental-health problems that Hassan experienced while in the county jail after his arrest. By relying on Dr. Gulrajani’s report, the district court gave proper weight to Hassan’s civil commitment and other mental-health issues. We also note that civil commitment and incompetency are governed by different standards. A person is to be civilly committed “[i]f the court finds by clear and convincing evidence that the proposed patient is a person who is mentally ill, developmentally disabled, or chemically dependent,” and “that there is no suitable alternative to judicial commitment.” Minn. Stat. § 253B.09, subd. 1(a) (2018). Incompetency, on the other hand, requires a showing that the defendant, “due to mental illness or cognitive impairment,” is unable to rationally consult with counsel or understand the proceedings or participate in the defense. Minn. R. Crim. P. 20.01, subd. 2. A different showing is necessary to find incompetence, as a defendant’s mental illness is only one element. The district court could properly conclude that Hassan was mentally ill and subject to civil commitment but still able to rationally consult with counsel, understand the proceedings, and participate in his defense.

Hassan further argues that statements that he made at the plea hearing indicated that he did not understand the proceedings or was mentally ill, circumstances which followed the district court's earlier competency finding but preceded this plea. He points to portions of the transcript in which Hassan gave confused responses to the district court's questioning. These appear to be isolated instances. Hassan otherwise responded coherently to the district court's questions, and he indicated that he understood his plea and the terms of the plea agreement. Hassan's conduct at the plea hearing did not necessitate additional procedures to examine his competency.

The district court had already ordered two examinations, and both examiners determined that Hassan was competent. The district court relied on the two reports and gave proper weight to the other evidence before it when finding Hassan competent. And the circumstances following the district court's November 2018 determination of Hassan's competency did not require the district court to reevaluate its competency finding or conduct further inquiry by initiating a second round of competency proceedings. We reject Hassan's request to invalidate his guilty pleas on this basis.

II

Hassan next argues that his guilty plea was invalid for the attempted first-degree criminal-sexual-conduct count because it was not accurate with respect to the specific-intent element. For a guilty plea to be valid, it must be accurate, voluntary, and intelligent. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). Whether a guilty plea is valid is a question of law that we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

For a guilty plea to be accurate, a proper factual basis must be established. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). Ordinarily, an adequate factual basis is established by the district court questioning the defendant and asking him to explain in his own words the circumstances surrounding his commission of the crime. *Id.* When, as here, the defendant enters a *Norgaard* plea, he pleads guilty but claims a loss of memory, due to amnesia or intoxication, regarding the circumstances of the offense. *Id.* at 716-17 (citing *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867 (Minn. 1961)). To establish an adequate factual basis for a *Norgaard* plea, “the record must establish that the evidence against the defendant is sufficient to persuade the defendant and his or her counsel that the defendant is guilty or likely to be convicted of the crime charged.” *Id.* at 716. A factual basis must be established for all elements of the offense to which the defendant is pleading guilty. *State v. Jones*, 921 N.W.2d 774, 779 (Minn. App. 2018), *review denied* (Minn. Feb. 27, 2019).

To convict a defendant of first-degree criminal sexual conduct causing personal injury, the state must prove that the defendant engaged in sexual penetration of another person, that he caused personal injury to the victim, and that he used force or coercion to accomplish the act. Minn. Stat. § 609.342, subd. 1(e)(i). Because Hassan was charged with attempting this offense, the state had to prove that he intended to commit the crime and that he did an act that was a substantial step towards commission of the crime. Minn. Stat. § 609.17, subd. 1. Hassan maintains that the record did not contain any evidence showing that he intended to cause personal injury to the victim. We are not persuaded.

We first question an implicit premise underlying Hassan’s argument. Attempt-based charges require proof of specific intent to commit a crime, see *State v. Bakdash*, 830

N.W.2d 906, 615 (Minn. App. 2013), *review denied* (Minn. Aug. 6, 2013). But we question whether any showing of Hassan's specific intent to cause his victim personal injury was necessary when the record shows she suffered a personal injury. The state's summary of alleged facts in which Hassan caused personal injury *and* used force, and it was the lacking element of penetration for which Hassan's specific intent to commit the crime was relevant.

Regardless, a criminal defendant possesses the requisite intent if he "either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2016). Intent "is generally proved by inferences drawn from a person's words or actions in light of all the surrounding circumstances." *State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996). And such inferences regarding intent are sufficient to show that a proper factual basis was established for a guilty plea. *See Nelson v. State*, 880 N.W.2d 852, 859-60 (Minn. 2016) (determining that defendant's statements made during plea colloquy regarding the circumstances of the offense were sufficient to support a finding that defendant intended to kill victim). The facts presented here were sufficient to infer that Hassan possessed the necessary intent.

The state established the factual basis for the offenses by having the prosecutor summarize the evidence that the state intended to present, including the victim's expected testimony. This was a permissible method to show a strong factual basis. *See State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007) (recognizing that, when a defendant pleads guilty but does not admit guilt, a factual basis may be supported through an interrogation of the defendant of the underlying conduct and the evidence that would be introduced at trial, the introduction of documents or witness statements, or both parties' stipulation to a factual

statement submitted to the court). The prosecutor here explained that the victim would testify that Hassan grabbed her, that he forcibly dragged her behind a pillar, that she screamed repeatedly and tried to get away from him, that he covered her mouth and nose with his hand and caused her to nose to bleed, that he tried to push her head towards his penis, and that she sustained bruises and cuts as she resisted him. Based on Hassan's use of force against the victim and her continual resistance, a jury could infer that Hassan either had a purpose to cause injury to the victim or that he believed that she would be injured as a result of his actions. We note also that a complaint may provide the factual basis supporting a plea and that we may consider a complaint to assess the accuracy of a defendant's plea. *See Sanchez v. State*, 868 N.W.2d 282, 289 (Minn. App. 2015), *aff'd*, 890 N.W.2d 716 (Minn. 2017). The complaint likewise described Hassan's use of force, his victim's resistance, and her injuries. Because there was an adequate factual basis to establish all elements of attempted first-degree criminal sexual conduct, including the intent element, Hassan's guilty plea on this count was accurate.

III

Hassan also argues that the ten-year conditional-release term must be vacated because conditional release cannot be imposed for an attempt offense. We may at any time correct a sentence that is not authorized by law. Minn. R. Crim. P. 27.03, subd. 9. A sentence is unauthorized if it is contrary to law or statute. *Munt v. State*, 920 N.W.2d 410, 414 (Minn. 2018). We review de novo whether a sentence is unauthorized. *See id.*

A conviction for first-degree criminal sexual conduct carries with it a mandatory ten-year conditional-release period. Minn. Stat. § 609.3455, subd. 6 (2016). The district

court imposed this period when it sentenced Hassan for attempted first-degree criminal sexual conduct. The supreme court held in *State v. Noggle*, however, that section 609.3455, subdivision 6, does not authorize the imposition of a ten-year conditional-release term for an attempt crime. 881 N.W.2d 545, 551 (Minn. 2016). The state concedes that the district court erred by imposing the conditional-release term. We therefore reverse the district court's sentence and remand with instructions to vacate the ten-year conditional-release term.

Affirmed in part, reversed in part, and remanded.