

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0780**

State of Minnesota,
Respondent,

vs.

Richard Edmund Lee,
Appellant.

**Filed May 3, 2021
Reversed and remanded
Cochran, Judge**

Chisago County District Court
File No. 13-CR-18-850

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

Janet Reiter, Chisago County Attorney, Brian J. Duginske, Lacy E. Schumacher, Assistant
County Attorneys, Center City, Minnesota (for respondent)

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

Considered and decided by Cochran, Presiding Judge; Gaïtas, Judge; and
Peterson, Judge.*

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the district court's decision that he was competent to be sentenced. Because the record does not support the district court's conclusion that the state proved that appellant was competent, we reverse.

FACTS

In September 2018, the State of Minnesota charged appellant Richard Edmund Lee with second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2016). In April 2019, a jury found Lee guilty. Lee does not challenge the jury's verdict. Instead, he argues that he was not competent to be sentenced by the district court.

After the verdict, the district court ordered that Lee undergo a mental-health assessment for purposes of sentencing. The district court also allowed Lee to remain on conditional release. Before the assessment was performed, Lee sustained injuries in a car accident and had to be hospitalized. During the hospitalization, doctors found signs of cognitive impairment. In August 2019, a doctor administered a neuropsychological evaluation to Lee. That evaluation demonstrated borderline to moderate impairments in memory, complex attention, and executive function. Later that month, the district court ordered that Lee undergo a competency examination pursuant to Minnesota Rules of Criminal Procedure 20.01 and 20.02.¹

¹ Rule 20.01 pertains to whether the defendant is competent at the time of trial or sentencing. Minn. R. Crim. P. 20.01, subd. 2. Rule 20.02 pertains to whether the defendant was competent at the time of the offense. Minn. R. Crim. P. 20.02, subd. 8.

In October 2019, approximately six months after the jury found Lee guilty, a psychologist conducted the rule 20 examination. As part of the process, the psychologist reviewed Lee's recent neuropsychological evaluation, the criminal complaint, police records, and information from people who knew him. She also interviewed Lee. She diagnosed Lee with an intellectual disability as well as a neurocognitive disorder associated with dementia. With regard to the rule 20.01 competency criteria, the psychologist opined that Lee did "not have the ability to consult with a reasonable degree of rational understanding with defense counsel" and that he did "not have the capacity to understand the criminal proceedings and participate in the defense." The psychologist ultimately opined that Lee was not competent to proceed to sentencing due to his lifelong intellectual disability as well as his neurocognitive disorder.

The day after the psychologist filed her rule 20 report, the state objected to the findings in her report and requested a contested hearing. The district court held a contested competency hearing in November 2019. At the hearing, the state explained that it objected to the psychologist's conclusion that Lee was not competent because "everything in the competency assessment seems to make clear that Mr. Lee understood what he was charged with, understood the procedure, but simply had some difficulty communicating with his attorney." The state argued that the evaluation supported a conclusion that Lee was competent.

At the competency hearing, the state called the psychologist who conducted the rule 20 examination but no other witnesses. The psychologist testified that Lee was able to remember the offense and relate his version of the events to her. She testified that Lee

was able to discuss the roles of various court personnel, such as his defense counsel and the judge, and that he had a basic understanding of what happens at a sentencing proceeding. But she expressed concern that Lee was not able to effectively consult with his attorney or fully retain information communicated to him by his attorney due to his cognitive impairments. And when asked about potential probation conditions that could be imposed as part of his sentence, she testified that Lee exhibited a basic understanding of probation and would be able to follow simple probationary conditions but it would be “extremely difficult” for Lee to abide by multiple probation conditions.

On cross-examination by Lee’s counsel, the psychologist explained that Lee suffers from both dementia and an intellectual disability. She also clarified that his dementia had progressed to a point that he exhibited deficits in his short-term memory but not his long-term memory. She explained that Lee generally understood the court process and the roles of court personnel because those concepts were engrained in his long-term memory. But the psychologist testified that Lee’s short-term-memory deficits were likely to impair his ability to consult with counsel. She explained that because of Lee’s memory deficits, “[w]hen he meets with defense counsel and defense strategy is discussed . . . it’s unlikely he can retain all of the information from one day to the next.” And, in response to a question from the district court, the psychologist opined that “it would be extremely difficult” for Lee to comprehend and participate in a sentencing hearing. She also expressed that because “he is going to continue to decline,” he would never be competent to be sentenced.

On redirect examination, the state did not ask the psychologist any questions about Lee's ability to consult with counsel. Instead, the state sought to clarify the psychologist's testimony regarding sentencing and Lee's ability to comply with potential probation conditions. The psychologist testified that, in her opinion, Lee would have difficulty understanding a sentence and was likely to have difficulty abiding by it. She also acknowledged that Lee could understand simple probation conditions, like a condition to remain law abiding and a condition prohibiting possession of a firearm. At the conclusion of the hearing, the district court asked the parties to brief the issue of Lee's competency.

In its brief, the state argued that the psychologist's testimony established that Lee was competent to be sentenced because he understood the roles of every major participant in the court process and understood the maximum penalties of his sentence. The state further argued that because it was only seeking two conditions of probation—remaining law abiding and not possessing firearms—and the doctor specifically testified that Lee could understand those conditions, the report and the doctor's testimony showed that Lee was competent. But the state did not argue that the psychologist's report or testimony demonstrated that Lee was able to rationally consult with his counsel.

Lee's defense counsel argued that the state had failed to meet its burden of showing that Lee was competent by a preponderance of the evidence because the doctor's report concluded that Lee was not competent. Because the state had not countered the psychologist's report and testimony concluding that Lee was incompetent—and that he could not be restored to competence—Lee's counsel argued that the district court was required to “issue an order finding [Lee] incompetent.”

In December 2019, the district court issued its order finding that Lee was competent to be sentenced. In its order, the district court noted that, under Minn. R. Crim. P. 20.01, subd. 2, “[a] defendant is incompetent and must not . . . be sentenced if the defendant due to mental illness or cognitive impairment lacks ability to: (a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense.” In determining whether Lee was competent to be sentenced, the district court expressly found the psychologist’s testimony and written report to be credible. And, even though the psychologist opined that Lee was not competent to proceed with sentencing, the district court concluded that the psychologist’s written report and testimony “establishe[d] that [Lee] at present is competent to proceed.” The district court reached this conclusion “because [Lee] demonstrated in his examination” with the psychologist that he understood: 1) the nature of the charge against him; (2) the roles of key court participants; (3) the court hearings and the trial that occurred; (4) that he was convicted and was to be sentenced; and (5) the range of possible punishments he was facing. The district court also concluded that “the greater weight of the evidence establishes” that Lee was able to rationally consult with counsel, but the court did not cite any evidence to support its conclusion in this regard. Lee now appeals the district court’s order concluding that he was competent to proceed to sentencing.

DECISION

The Minnesota Rules of Criminal Procedure require the suspension of criminal proceedings, including sentencing, where a defendant is not legally competent. “A defendant is incompetent and must not . . . be sentenced if the defendant due to mental

illness or cognitive impairment lacks ability to: (a) rationally consult with counsel; *or* (b) understand the proceedings or participate in the defense.” Minn. R. Crim. P. 20.01, subd. 2 (emphasis added). When the state is the party “asserting that the defendant is competent, the [s]tate bears the burden of proving competency” by the greater weight of the evidence. *State v. Curtis*, 921 N.W.2d 342, 348 (Minn. 2018) (discussing Minn. R. Crim. P. 20.01, subd. 5). Because the rule requires suspension of the proceedings if the defendant lacks either capacity, the state must prove that the defendant has the ability to both “rationally consult with counsel” and “understand the proceedings or participate in the defense.” Minn. R. Crim. P. 20.01, subd. 2; *Curtis*, 921 N.W.2d at 348. A defendant is competent to proceed where he “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and has a rational as well as a factual understanding of the proceedings against him.” *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011) (quotation omitted).

On review of a competency determination, we “independently review the record to determine if the district court gave proper weight to the evidence produced and if its finding of competency is adequately supported by the record.” *Curtis*, 921 N.W.2d at 346 (quotations omitted). In conducting our review, we bear in mind that the state has the burden of proof at a competency hearing to show that the defendant is competent. *Id.* at 346-48 (citing *State v. Ganpat*, 732 N.W.2d 232, 238 (Minn. 2007)). “In the absence of such proof by a preponderance of the evidence, a defendant must be found incompetent under the plain language of” Minn. R. Crim. P. 20.01, subd. 5. *Id.* at 348.

Lee argues that the evidence did not prove that he was competent to be sentenced because the psychologist concluded that he was not competent under the standard set forth in rule 20.01. The state contends that the evidence supports the district court's determination of competency. The state further contends that this court should afford the district court's weighing of the evidence great deference. The state's position fails to recognize that *Curtis* requires this court to "independently review" the district court's competency determination "to determine if the district court gave proper weight to the evidence produced and if its finding of competency is adequately supported by the record." *Id.* at 346 (quotations omitted). Based on our independent review of the record, we conclude that the district court's determination of competency was not adequately supported by the record.

The district court found that the "greater weight of the evidence establishes [Lee] at present is competent to proceed." The district court found that the state met its burden because the psychologist's testimony demonstrated that Lee understood the charge, the roles of court personnel, the hearings that had previously occurred, that he had been convicted, and the range of possible punishments. We agree that the psychologist's testimony established that Lee was able to "understand the proceedings or participate in the defense"—the second part of the rule 20.01 analysis. Minn. R. Crim. P. 20.01, subd. 2(b). But the psychologist's testimony did not establish that Lee was able to "rationally consult with counsel" as is required by the first part of the rule 20.01 analysis. Minn. R. Crim. P. 20.01, subd. 2(a).

Instead, the psychologist's testimony and report established that Lee lacked the ability to rationally consult with counsel. In her report, the psychologist specifically opined that Lee did not have the ability to consult with a reasonable degree of rational understanding with defense counsel. The psychologist emphasized that Lee struggled with communicating effectively with defense counsel as a result of his intellectual and neurocognitive impairments. And, at the competency hearing, when asked for her opinion as to whether Lee could consult with his attorney, the psychologist replied that given his cognitive impairments, "consulting with his attorney, even up to this point, has been extremely difficult for him." With respect to Lee's prior conversations with counsel, the psychologist testified that for "many of the conversations that they had, he was not able to either comprehend or retain the information that they discussed and that continued to contribute to some of the struggles they had throughout the court process." The psychologist testified that it would not be impossible for Lee to communicate with his attorney, but that he was unlikely to be able to "fully retain that information and move forward." On cross-examination by Lee's counsel, the psychologist explained that Lee's deficits in short-term memory would impair his ability to retain information communicated to him by defense counsel. The psychologist further testified in response to questions by the district court that Lee would never be competent to be sentenced because of the progressive nature of his neurocognitive disorder.

In its order, the district court expressly found the psychologist credible. And, the district court further found that the psychologist concluded in her report that Lee "struggle[d] with short-term memory, problems with concentration, and organization of his

thoughts.” The district court also found that the psychologist concluded that Lee “does not have the ability to consult with a reasonable degree of rational understanding with defense counsel.” Yet, the district court went on to conclude that “[t]he greater weight of the evidence supports that [Lee] has sufficient present ability to rationally consult with his counsel.” The district court, however, did not specify *any* evidence that would support this conclusion. And, based on our independent review, we conclude that the district court’s determination regarding Lee’s ability to rationally consult with counsel is not adequately supported by the record.

The state relies on *State v. Mills* to support its contention that the record is adequate. 562 N.W.2d 276 (Minn. 1997), *overruled on other grounds by State v. McCoy*, 682 N.W.2d 153, 160 n.6 (Minn. 2004). In *Mills*, the defendant was diagnosed with a “personality disorder not otherwise specified with borderline and histrionic features.” *Id.* at 282. The court-appointed psychiatrist opined that the defendant “did not have a thinking disorder and, while she could be dramatic and disruptive . . . , such behavior simply demonstrated an unwillingness, rather than an inability, to cooperate with counsel.” *Id.* But here, Lee exhibited cognitive decline and impairment to his short-term memory instead of a personality disorder. The psychologist’s conclusions here go to Lee’s ability to communicate with counsel, not his willingness to do so. *Mills* does not persuade us that the district court’s determination regarding Lee’s ability to rationally consult with counsel was adequately supported by the record.

In sum, the district court’s conclusion that the psychologist’s testimony established that Lee was competent—despite the psychologist’s ultimate conclusion that he was

incompetent—focuses heavily on the extent to which the psychologist’s testimony established that Lee understood the proceedings. But that is only one half of the state’s burden under Minn. R. Crim. P. 20.01, subd. 2. And the record does not support the district court’s conclusion that the state proved by the greater weight of the evidence that Lee was able to rationally consult with counsel. Accordingly, we reverse Lee’s sentence for second-degree assault and remand to the district court with instructions to vacate that sentence.

Reversed and remanded.