

*This opinion is nonprecedential except as provided by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
A21-0460**

State of Minnesota,
Respondent,

vs.

Kent William Edwards, Sr.,
Appellant.

**Filed April 11, 2022
Affirmed
Bryan, Judge**

Dakota County District Court
File No. 19AV-CR-20-1180

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

Alina Schwartz, Campbell Knutson, P.A., Eagan, Minnesota (for respondent)

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

Considered and decided by Jesson, Presiding Judge; Bryan, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal from his conviction for violating a harassment restraining order
(HRO), appellant challenges the validity of his decision to waive his trial rights and the

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

validity of the underlying HRO. We affirm appellant's conviction because appellant does not establish that the asserted error affected his substantial rights and because his challenges to the validity of the HRO are not properly before this court.

FACTS

On January 24, 2020, respondent State of Minnesota charged appellant Kent William Edwards Sr. with a gross misdemeanor for violating the terms of a harassment restraining order in violation of Minnesota Statutes § 609.748, subdivision 6(a), (c) (2020). According to the complaint, on September 5, 2019, Edwards agreed to the issuance of an HRO which protected his son and prohibited Edwards from coming within four blocks of his son's home and places of employment. On December 25, 2019, around 11:27 p.m., Edwards was in his vehicle at a gas station on Kenrick Avenue in Lakeville, Minnesota. Law enforcement officers there checked information regarding Edwards's vehicle and learned that Edwards had an active warrant. While in custody, law enforcement also learned of the HRO. At the time of his arrest, Edwards was within four blocks of his son's place of employment.

On October 24, 2020, Edwards moved to dismiss the charge, arguing that the HRO statute does not authorize geographical restrictions. Two days later, Edwards appeared before the district court, waived his trial rights, and stipulated to the state's evidence.¹

¹ Commonly referred to as a *Lothenbach* plea, this type of plea was incorporated into the Minnesota Rules of Criminal Procedure in 2007. *State v. Myhre*, 875 N.W.2d 799, 802 (Minn. 2016); *see also* Minn. R. Crim. P. 26.01, subd. 4 (allowing a defendant to stipulate to the prosecution's case, avoid a contested trial, and preserve appellate review of a dispositive pretrial ruling).

Edwards's attorney discussed the case with Edwards on the record, commenting that he did not have a strong factual defense, but they had identified a potential legal issue:

Counsel: Mr. Edwards, you and I talked that this case turns on what is, essentially, a legal and not a factual determination in this matter, correct?

Edwards: Correct.

. . . .

Counsel: We also talked about the—more or less, the futility of trying to contest the facts of this case, correct?

Edwards: Yes, sir, correct.

Edwards's attorney then explained Edwards's options: they could proceed "by essentially stipulating—that is agreeing—to the truth of the essential facts of the State's case and preserving for legal determination the viable legal issue on which [Edwards's] case turns," or they could proceed with a contested jury trial, where the state's witnesses would testify that they "found [Edwards] within a certain distance of the place of employment," and the state would provide proof that Edwards was served with the HRO. Edwards agreed to proceed with a stipulated trial and waived the following rights: the "right to a trial by jury," "the right to have six jurors be able to return a verdict of guilty, only if its unanimous and it's proven beyond a reasonable doubt," "the right to admit evidence of [his] own in this case," the right "to not testify and to have no adverse inference drawn from the fact of [his] silence," and "the right to have a compulsory process of the court to bring any reluctant witnesses before it and provide favorable testimony." Edwards understood that there would be no factual dispute regarding guilt or innocence:

Counsel: So in doing this procedure, you're giving all of that up, and the sole issue before the Court is the legal issue as I've raised it. Do you understand that?

Edwards: Yes, sir.

Counsel: Is that what you want to do?

Edwards: Yes, sir.

Edwards then stipulated to the following facts: he had a previous conviction for a violation of an HRO; he was present and served in court with the HRO; the HRO was issued without findings of harassment based on the parties' agreement; Edwards knew of the condition that prohibited him from being a certain distance from his son's place of employment; and that on December 25, 2019, he was within the distance prohibited by the HRO.

The district court reiterated the trial rights that Edwards was waiving: the right to have a trial, the right "to have the prosecution's witnesses testify in open court in [his] presence," and the right for his counsel "to question the State's witnesses or cross-examine them at trial." The district court explained that it would "make a decision on whether [Edwards was] guilty or not based on the stipulated facts that [he was] admitting to, as well as the law that [Edwards's attorney] had argued in his motion." The district court also explained there would be no jury. Edwards agreed that he had enough time to talk with his attorney, and Edwards and the prosecutor acknowledged that the pretrial issue was dispositive. Edwards did not raise any objections to this waiver.

The district court took the matter under advisement and denied Edwards's motion, concluding "that the specificity requirement set forth [in] Minn. Stat. § 609.748, subd. 8(a)(1), permitted, if not necessitated, the use of a geographical restriction in this particular

HRO.” The order also explained that the case was “proceeding on stipulated facts pursuant to *State v. Lothenbach*” and that Edwards “admitted to engaging in conduct on December 25, 2019, that violated an active [HRO].” Based on the admitted facts, the district court convicted Edwards of a gross misdemeanor violation of an HRO. Edwards appeals.

DECISION

I. Validity of the Waiver of Trial Rights

Edwards argues that his conviction should be reversed because the waiver did not strictly satisfy the requirements of Minnesota Rule of Criminal Procedure 26.01, subdivision 4.² We affirm the conviction because we conclude that the asserted error did not affect Edwards’s substantial rights.

Rule 26.01, subdivision 4, allows a defendant to stipulate to the prosecution’s case and avoid a contested trial yet preserve the right to obtain appellate review of a dispositive pretrial ruling. Among other specified acknowledgements, the rule includes a provision regarding the defendant’s acknowledgement “that appellate review will be of the pretrial issue, but not of the defendant’s guilt, or of other issues that could arise at a contested trial.” Minn. R. Crim. P. 26.01, subd. 4(f).

² Edwards also argues that his waiver was invalid because he was uninformed that the offense was a gross misdemeanor as opposed to a misdemeanor. We disagree and conclude that the record is clear: Edwards knew the correct offense level. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010) (stating that the defendant bears the burden of demonstrating invalidity of a guilty plea). The complaint classifies the offense as a gross misdemeanor, the statement of rights Edwards signed is titled “Felony-Gross Misdemeanor First Appearance Statement of Rights,” and Edwards acknowledged that he had discussed the charges with his attorney.

We review unobjected-to violations of Rule 26.01, subdivision 4, under the plain-error standard. *Myhre*, 875 N.W.2d at 804. To meet the plain-error standard, an appellant must establish the following three factors: (1) there was an error; (2) the error was plain; and (3) the error affected the appellant’s substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998); Minn. R. Crim. P. 31.02 (providing for plain-error review). An error affects substantial rights if “the error was prejudicial and affected the outcome of the case.” *Id.* at 741. “An error is prejudicial if there is a reasonable likelihood that the error had a significant effect on the proceeding.” *State v. Little*, 851 N.W.2d 878, 884 (Minn. 2014). In the context of a waiver of trial and *Lothenbach* plea, an error is prejudicial if there is a reasonable likelihood that the defendant would have proceeded to a jury trial had he been informed that he could not appeal the determination of guilt. *See Myhre*, 875 N.W.2d 799, 808-09 (concluding that “[b]ecause he cannot show prejudice to his substantial rights, Myhre is not entitled to relief based on this error”). If the first three prongs are satisfied, appellate courts must consider “whether [to] address the error to ensure fairness and the integrity of the judicial proceedings.” *Griller*, 583 N.W.2d at 740.

In this case, we agree with Edwards that the waiver made no acknowledgement of the limited appellate review, as stated in subdivision 4(f). Assuming without deciding that the first two factors have been met, *see State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (an error is plain when it “contravenes case law, a rule, or a standard of conduct”), we conclude that the third factor has not been satisfied for two reasons. First, the Minnesota Supreme Court has “never required strict compliance with the provisions of either Rule 26.01, subdivision 4, or *Lothenbach*.” *Myhre*, 875 N.W.2d at 804. Instead, appellate courts

have “tolerated a substantial amount of procedural error when the record shows that the parties clearly intended to achieve the outcome contemplated by either Rule 26.01, subdivision 4, or *Lothenbach*.” *Id.* Here, the parties did not intend to preserve any factual determinations regarding guilt or innocence for appeal, and the facts admitted by Edwards were sufficient to support the finding of guilt.

Second, Edwards does not explain what factual issue regarding guilt or innocence he hoped to preserve for appeal. In fact, during the plea colloquy, Edwards and his counsel expressed a belief that there was no strong factual defense and that disputing the facts would be “more or less” futile. Absent any effort to make an explanation on appeal regarding what factual dispute Edwards had hoped to preserve, we conclude that the failure to address Edwards’s appellate rights did not prejudice him.

II. Validity of the Underlying HRO

Edwards argues that the relevant statute does not authorize geographical restrictions in HROs, and thus the underlying HRO is invalid.³ In addition, Edwards argues that the HRO is invalid because it did not contain any finding of harassment.

We decline to address these arguments because Edwards is not permitted to challenge the validity or constitutionality of the underlying HRO in a subsequent, criminal proceeding. *See State v. Romine*, 757 N.W.2d 884, 889-90 (Minn. App. 2008) (declining to review the constitutionality of an order for protection, stating, “a party’s failure to appeal

³ Edwards initially argued that the district court lacked subject matter jurisdiction over the charged offense because the HRO statute did not authorize a geographical restriction. On appeal, however, Edwards frames the issue not as one regarding the district court’s jurisdiction, but rather as a challenge to the validity of the underlying HRO.

the issuance of a court order precludes a collateral attack on that order in a subsequent proceeding”); *State v. Harrington*, 504 N.W.2d 500, 502-03 (Minn. App. 1993) (refusing to consider collateral attack on HRO in reviewing an appeal taken from appellant’s criminal conviction for violating the HRO), *rev. denied* (Minn. Sept. 30, 1993). Following the issuance of the HRO, Edwards could have appealed the order within 60 days, challenging the geographical restriction or its validity in the absence of a finding of harassment. Minn. R. Civ. App. P. 104.01. We affirm the denial of the motion to dismiss because Edwards did not appeal the issuance of the HRO within the applicable timeframe, and pursuant to *Romine* and *Harrington*, Edwards was precluded from challenging the validity of the underlying HRO in his criminal proceeding.

Affirmed.