

*This opinion is nonprecedential except as provided by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
A24-1415**

State of Minnesota,
Respondent,

vs.

Demetrius Santana Perez Solis,
Appellant.

**Filed August 4, 2025
Affirmed in part, reversed in part, and remanded
Reyes, Judge**

Mower County District Court
File No. 50-CR-21-2413

Keith Ellison, Attorney General, Jamal Zayed, Assistant Attorney General, St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

REYES, Judge

Following his conviction of two counts of third-degree criminal sexual conduct, appellant challenges the district court's (1) decision to close the courtroom for a portion of

voir dire and (2) imposition of conditional-release terms on his stayed prison sentences. We affirm on the closure issue but reverse and remand for resentencing.

FACTS

On May 24, 2020, 20-year-old appellant Demetrius Santana Perez Solis anally penetrated 13-year-old A.G. at his home. Then, sometime in late August or early September of 2020, while driving A.G. to a friend’s house, appellant drove down a dirt road, tried to remove A.G. from the vehicle, and vaginally penetrated her. During both incidents, A.G. attempted to stop appellant from penetrating her. Respondent State of Minnesota charged appellant with two counts of first-degree criminal sexual conduct and two counts of third-degree criminal sexual conduct.

The case proceeded to trial in April 2024. The juror questionnaires asked prospective jurors about their experiences with sexual abuse and stated: “If you prefer to talk about these questions and topics with the judge and lawyers in private, check this box and sign below instead of filling out the attached questionnaire in writing.” Prior to calling in the prospective jurors, the district court stated that its “practice in [criminal sexual conduct cases]” is to close the courtroom and individually question prospective jurors who wish to speak in private if they or someone close to them had an experience with sexual abuse. The district court noted its concern that if it “question[s] [them] in front of the other jurors, the jurors can hear all that. . . . And it might taint them.” The district court explained that, in its experience, victims of sexual abuse can be “visibly angry, upset, mad” and “the trauma is evident.” The district court noted that it has had “numerous cases appealed where [it employed this practice] [and the parties] would have brought it up, if it was an issue . . .

and nobody ever brought it up.” The district court further stated that it would “certainly make a record” of its reasons for courtroom closure.

In response to questions by the district court in open court at the beginning of voir dire, prospective juror A stated that his friend was convicted of criminal sexual conduct, that he did not think his friend was treated fairly, that he had a niece who was molested as a baby, and that it would be hard for him to be impartial in this case. Prospective juror B stated that she wanted to talk about her experiences privately. Prospective juror C had checked the box on her juror questionnaire to request individual voir dire. The district court and the attorneys decided to question those three prospective jurors individually.

The district court made the following comments about closing the courtroom for individual voir dire of the three prospective jurors:

The reason for questioning them outside the presence of the public, or in closed session, is they have either -- well, [juror B] indicated that she wants to do that. [Juror A], our concern is he is going to say something that will taint the rest of the Jury. [Juror C] also asked to be -- to answer in private. The reason to do that, of course, is that -- well -- well, with [juror C] and [juror B] it involves their personal experience with either -- their own personal sexual abuse or somebody they know that is close to them.

A couple things. One is that we don't want the other jurors to hear any of that or hear any of those details. The other thing is that -- well, one, they both asked to be questioned individually, and the reason for that is so that they can -- so they are able to speak freely without having to be concerned about anyone else or any other jurors hearing what they have to say. So in the interest of making sure that they are candid and answer honestly, we are closing the courtroom or keeping the public out of this part just so that they can answer fully and freely and [we] can insure that we have a fair jury.

The district court excluded the public from the individual voir dire of prospective jurors A, B, and C. Neither party objected to the courtroom closure.

Prospective juror A stated the reasons why he thought that he could not be impartial in this case. The state moved to strike for cause, without objection, which the district court granted. Prospective juror B stated the reasons why she felt she could not be impartial in this case. Appellant's counsel moved to strike for cause, without objection, which the district court granted. However, prospective juror C explained that she checked the box on the questionnaire only because she thought she was supposed to, not because she had any concerns about the issues in this case. The district court then reopened the courtroom and continued voir dire.

Prospective juror D stated in open court that he had "family members who have gone through a similar situation" to what occurred in this case, and he requested to speak to the court and attorneys in private in his jury questionnaire. The district court excluded the public, stating that the "[s]ame reasons that I stated before for excluding the public apply here, also. It is exactly what I found before." Again, neither party objected. The district court then questioned prospective juror D in private. Prospective juror D stated that he was not sure whether he could be impartial in this case. Appellant's counsel moved to strike prospective juror D for cause, without objection, which the district court granted. The district court conducted the remainder of voir dire and trial in open court.

The jury found appellant guilty of two counts of third-degree criminal sexual conduct, counts III and IV, and acquitted him of first-degree criminal sexual conduct,

counts I and II. Following the jury’s verdict, the district court stated that “[a]ll four verdicts th[e]n shall be entered on the record” and scheduled a sentencing hearing for June 2024.

At the sentencing hearing, the district court sentenced appellant on count III to 36 months in prison, stayed for 15 years, with a ten-year conditional-release term. The district court sentenced appellant on count IV to 48 months in prison, stayed for 15 years, with a lifetime conditional-release term “because that is a second conviction.” This appeal follows.

DECISION

I. Even if we assume that the district court committed error that was plain when it closed the courtroom for a portion of voir dire, the closure did not affect appellant’s substantial rights under these particular facts.

Appellant argues that the district court’s exclusion of the public while questioning three prospective jurors, A, B, and D, violated his constitutional right to a public trial. We are not convinced.

Both the United States Constitution and the Minnesota Constitution provide criminal defendants with the right to a public trial. U.S. Const. amend VI; Minn. Const. art. I, § 6. This public-trial right extends to voir dire. *See State v. Petersen*, 933 N.W.2d 545, 547 (Minn. App. 2019). But a criminal defendant’s public-trial right is not absolute, and courtroom closure may be justified if the district court finds that the four factors identified in *Waller v. Georgia*, 567 U.S. 39, 48 (1984), known as the *Waller* factors, are met: “(1) the party seeking to close the hearing . . . advance[s] an overriding interest that is likely to be prejudiced, (2) the closure is no broader than necessary to protect that interest, (3) the district court considers reasonable alternatives to closing the proceeding, and (4) the

district court makes findings adequate to support the closure.” *Petersen*, 933 N.W.2d at 550 (quotations omitted) (alteration in original). The *Waller* factors are also found in Minn. R. Crim. P. 26.02, subd. 4(4)(c). While a district court’s denial of a criminal defendant’s public-trial right is a structural error, if the defendant does not object at trial, an appellate court’s review is limited to a plain-error analysis. See *Pulczynski v. State*, 972 N.W.2d 347, 356 (Minn. 2022); *Petersen*, 933 N.W.2d at 550.

Appellant properly acknowledges that, because he did not object at trial, this court applies a plain-error standard of review. Under a plain-error analysis, an appellant must establish (1) error, (2) that is plain, and (3) that affected appellant’s substantial rights. *Pulczynski*, 972 N.W.2d at 356. “An error is plain if it is clear and obvious; usually this means an error that violates or contradicts the case law, a rule, or an applicable standard of conduct.” *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010). “The defendant bears a heavy burden of persuasion on the third prong, which is satisfied if the defendant shows that the error was prejudicial and affected the outcome of the case.” *State v. Word*, 755 N.W.2d 776, 782 (Minn. App. 2008). If a defendant satisfies all three prongs, then an appellate court “may correct the error *only* when it seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Pulczynski*, 972 N.W.2d at 356 (emphasis in original).

Assuming without deciding that the district court committed plain error by failing to address the first three *Waller* factors, we conclude that any plain error did not affect

appellant's substantial rights.¹ Appellant's brief argues that he need not do a substantial-rights analysis, and offers no analysis, because "structural errors – like the denial of the right to a public trial, defy analysis for harm, [and] courts assume such errors are harmful for purposes of the plain error test." (Quotations omitted). But this argument is contrary to *Pulczynski*, which states that appellate courts apply plain-error review to unobjected-to claims of a violation of a public-trial right. 972 N.W.2d at 356. When analyzing the third prong of the plain-error test, we look at whether the error was prejudicial and whether it affected the outcome of the case. *State v. Barnslater*, 786 N.W.2d 646, 653 (Minn. App. 2010).

First, the district court's error did not prejudice appellant. To the contrary, appellant benefitted from the error and struck two jurors for cause. We also note that appellant did not object to the state's striking the other individually questioned prospective jurors for cause. Second, appellant presents no evidence to show that the courtroom closure affected the outcome of the case. The prospective jurors subject to the courtroom closure were not selected for the jury, so they could not have affected the outcome of the case. We therefore conclude that the district court's error did not affect appellant's substantial rights. Accordingly, his plain-error argument fails.

¹ We strongly encourage district courts, when determining whether to close the courtroom, to analyze explicitly all four *Waller* factors.

II. The district court erred when it imposed conditional-release terms on appellant's stayed prison sentences.

Appellant argues that the district court erred when it imposed conditional-release terms on his stayed prison sentences for third-degree criminal sexual conduct. We agree.

“The court may at any time correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd. 9. The courts may only impose sentences which the legislature has prescribed. *State v. Pflepsen*, 590 N.W.2d 759, 764 (Minn. 1999). Minn. Stat. § 609.3455 (2024) requires that a person convicted of third-degree criminal sexual conduct serves a conditional-release term only “after . . . release[] from prison.”

A jury found appellant guilty of two counts of third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(b) (2020), a crime to which section 609.3455 applies. Instead of executing appellant's sentences, which would have required him to go to prison, the district court placed appellant on probation and stayed his sentences for 15 years. Under section 609.3455, the ten-year conditional-release term is imposed only “when a court commits an offender to the custody of the commissioner of corrections.” This court in *State v. Thong*, 892 N.W.2d 842, 846 (Minn. App. 2017), explained that “a person is committed to the custody of the commissioner when the person's sentence is executed.”²

² The state argues that the *Thong* decision compels us to conclude that the district court did not err when it imposed conditional-release terms on appellant's stayed sentences. 892 N.W.2d at 846. But *Thong* is distinguishable from the case at-hand. First, *Thong* is a felony driving-while-intoxicated case, not a criminal-sexual-conduct case, and does not involve section 609.3455. *Id.* at 844. Second, the district court executed Thong's sentence after it revoked his probation, which made imposing the five-year conditional-release term appropriate. *Id.* at 845-46. The state's reliance on *Thong*, given the facts of this case, is misguided.

Because appellant's sentences were stayed and not executed, he was never committed to the commissioner of corrections, and the district court improperly imposed a conditional-release term on both sentences.³ We therefore reverse and remand to the district court to resentence appellant consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

³ Appellant also argues that the district court erred when it imposed a lifetime conditional-release term on count IV. Because we agree with appellant that the district court erred in imposing conditional-release terms on his stayed sentences, we need not reach this argument. We nevertheless note that caselaw is clear that, when a district court convicts an appellant simultaneously of multiple sex offenses and appellant has "no other convictions at the time of his adjudication that would subject him to lifetime conditional release under section 609.3455," imposing a lifetime conditional-release term is improper and remand to the district court for resentencing is required. *State v. Brown*, 937 N.W.2d 146, 157 (Minn. App. 2019); see Minn. Stat. § 609.3455, subds. 6, 7(b).