State v. Knopik

Nonprecedential opinion (2023)

Minnesota Court of Appeals

A22-0766 | January 17, 2023

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STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0766

State of Minnesota,
Respondent,

vs.

Jeri Jerome Knopik,
Appellant.

Filed January 17, 2023
Affirmed
Smith, Tracy M., Judge

Meeker County District Court
File No. 47-CR-21-282

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

Brandi L. Schiefelbein, Meeker County Attorney, John P. Fitzgerald, Assistant County Attorney, Litchfield, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from his sentence, appellant Jeri Knopik argues that (1) the district court conducted an independent investigation of facts in violation of Knopik's constitutional right to have an impartial judge preside over his sentencing hearing, (2) the Source PDF page 2 district court judge was disqualified from presiding over his sentencing hearing because her conduct created a reasonable question about her impartiality, and (3) the district court abused its discretion in denying his request for a downward dispositional departure. We affirm.

FACTS

On April 1, 2021, Knopik was charged with felony second-degree burglary under Minnesota Statutes section 609.582, subdivision 2(a)(1) (2020), and misdemeanor fifth-degree drug possession under Minnesota Statutes section 152.025, subdivision 2(1) (2020). The district court set Knopik's conditions of pretrial release. The relevant conditions were posting $500 cash or a $5,000 bond, abstaining from mood-altering drugs, submitting to random testing, remaining in contact with probation, and having no contact with the victim of the burglary. Knopik posted $500 cash bail on April 2, and, on April 13, Knopik's corrections agent reported that he failed to comply with random testing in violation of his release conditions.

On May 4, Knopik appeared before the district court for a hearing on the alleged violation. The same judge that had set the conditions of pretrial release presided over this hearing and over Knopik's subsequent pretrial hearings, violation hearings, plea hearing, and sentencing hearing.

At the May 4 violation hearing, Knopik admitted to the alleged violations. The district court mentioned that it had discussed with counsel the possibility of drug court for Knopik for the charges in this Meeker County file and charges in another file:

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> So I did speak with counsel in chambers about the two files. They're talking about trying to resolve the matter. We talked about Mr. Knopik and Drug Court. It looks like he may be a candidate for Drug Court. Unfortunately, his address is not in the Eighth Judicial District where Drug Court is. It's in Andover, which is Anoka County. So, if he's a candidate for Drug Court it would have to happen in Anoka County, and they would have to accept him there.

Later during the hearing, Knopik expressed his interest in drug court and that he "was hoping somebody could answer [his] question about applying for it." The district court explained that he should talk to his public defender and that "every Drug Court has a different process." The district court reinstated Knopik's pretrial release conditions and set a pretrial-hearing date for July 20.

At the July 20 pretrial hearing, the district court verified that Knopik's counsel had received discovery and that Knopik had sufficient time to review the evidence. When the district court asked Knopik's counsel how he wanted to proceed, Knopik's counsel explained that he believed "there are some discussions afoot regarding Drug Court" but that the situation was complicated because Knopik did not live in Meeker or Kandiyohi County and thus might not be eligible for drug court for this case. Knopik's counsel explained that they were "trying to figure out how to get around that." The district court judge noted that she had been a drug court judge and offered to reach out to the drug court team:

> THE COURT: If that's something you're interested in doing, then what I would do is do that. I'd contact the coordinator, the judge, the prosecutor, defense attorney. I'd copy, obviously both you and [the state] so you could see the message I sent, then I'd let it take care of itself from there. Is that something you want me to try and do here?

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> [KNOPIK'S COUNSEL]: I—I believe Mr. Knopik recognizes the fact that he needs a very structured intense experience.
>
> THE COURT: Okay.
>
> [KNOPIK'S COUNSEL]: That's why he's interested in it.
>
> THE COURT: Does that sound like something you want me to do here, Mr. Knopik?
>
> KNOPIK: Yes, Your Honor.

After the district court confirmed that it would reach out to the drug court team, it reiterated that it did not know how Knopik's residence would impact which county's drug court he would be eligible for.

Following the hearing, the district court completed a drug court referral for the Eighth Judicial District drug court. Knopik was then ordered to appear for his first drug court appearance at the Kandiyohi County courthouse in Willmar. Knopik failed to appear. On September 14, he appeared back before the district court about his failure to appear in drug court.

At the September 14 hearing, Knopik's counsel explained that Knopik was no longer interested in drug court. But, after the district court told Knopik that it would "send a message that [Knopik was] declining Drug Court," Knopik asserted that he was still interested in drug court but that he did not want to attend drug court in Willmar. The district court explained that, although it had informed the Eighth Judicial District drug court about Knopik's interest in transferring to a different drug court, the district court did not have control over transfers. The district court also reminded Knopik that it had explained to him the potential issues with his residence before referring him. However, although the state requested an increase in bail and the district court stated that it was "less than happy with Source PDF page 5 [Knopik's] inability to make communications," the district court reinstated the previous release conditions.

That same day, Knopik's corrections agent reported that Knopik had tried to contact the victim of the burglary, in violation of his pretrial release conditions. At a violation hearing the next day, Knopik admitted to the violation. The district court, consistent with the state's request, increased Knopik's conditional bail amount to $1,000 cash or a $10,000 bond.

On October 26, Knopik appeared before the district court for another violation hearing after his corrections agent reported that Knopik had a positive urinalysis for THC, had left treatment and failed to re-engage, and had failed to maintain contact with probation. Knopik admitted to the violations, and the district court noted that this set of violations was Knopik's "third one in the space of five weeks." After the state requested that the district court revoke conditional release, the district court explained that it had given Knopik multiple chances but said, "At this point, I'm focusing on public safety and appearing for court because that's what I need to do." The district court then revoked release with conditions and set unconditional bail at $50,000 cash or bond.

On November 15, Knopik entered a guilty plea to felony third-degree burglary under Minnesota Statutes section 609.582, subdivision 3. After accepting Knopik's plea, the district court reinstated unconditional release but, at Knopik's request, also permitted release with conditions—specifically, that Knopik could be released directly into inpatient treatment without posting bail. Knopik instead posted an unconditional bond on November 29 and was released. He began treatment at a residential facility on January 11.

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Knopik's sentencing hearing was held on March 4, 2022, and, like previous hearings, was held by videoconference. At the hearing, the district court asked the corrections agent appearing on behalf of the presentence investigation (PSI) writer whether there were updates to the PSI report; at that time, the agent reported that there were not. Knopik then requested a dispositional departure based on his particular amenability to probation and chemical-dependency treatment. Knopik testified that he had been at a residential treatment center since January 11, that he was a "respected peer leader," and that he had been sober from methamphetamine since March 31, 2021.

After Knopik's testimony, the district court reported that it had received a communication via a "chat" in the videoconference platform:

> There was a chat that I thought was to everyone, but it was I think only to me, but even if it was to everyone it involves information about Mr. Knopik that I think is—shouldn't be to me. That's called ex parte, so I'm not allowed to have this information unless everyone knows it and so I'll just say it. It indicates that Mr. Knopik is no longer a peer leader in treatment because he tested positive for THC, so that's the information that was shared.
>
> So I don't know if you want to address that, [Knopik's counsel]? Otherwise, I'll just hear from the State.

Knopik's counsel raised no objection and asked Knopik whether the statement was true. Knopik affirmed that it was true and provided an explanation. The district court expressed its frustration with Knopik's THC-related violations but noted that it had been several months since Knopik's last violation. The state then opposed the departure motion, noting the pretrial violations, Knopik's late entry to treatment, and the new information about the positive THC test.

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After a recess, the district court stated that it "went back to review some more of the documents" and "asked for a [urinalysis]." The district court stated that it also asked the corrections agent to provide two things: (1) "whenever it happened that there was a positive test for THC and the removal from the peer piece" because the district court realized it had not asked for clarification and (2) "a little bit more information about the treatment program." The district court then said:

> So, I asked her those two questions. And so I'm gonna allow everyone to respond to those if they want to. I was told that the incident with the THC and the peer removal happened a couple of weeks ago. So that would mean a positive test today. And then the treatment place is—she doesn't know that much about it, but she—she did have other individuals that have been in it and

> they do work with people who relapse. So those are the— that's the information she could provide me.

Knopik's counsel did not object, and Knopik explained that he had stepped down as peer leader two days before the hearing and had tested positive seven days before the hearing.

The district court denied Knopik's departure motion. The district court commented that it had been "a rocky road for Mr. Knopik with this court." It noted that Knopik had been in five different treatment programs in the previous year. It also observed that he had delayed entry into treatment after posting his bond, had tested positive for THC, and had "some honesty issues" because, in the district court's view, the positive THC test and the loss of peer leadership had been "intentionally hidden." The district court stated that it found Knopik's failure to appear at drug court "troubling," explaining it "wouldn't have cared about that" if Knopik had been successful with his own treatment but Knopik had three pretrial violations. The district court concluded:

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> So, there are reasons that I don't find particular amenability here or substantial compelling reasons. And it gives me no happiness to do this, but the law is what it is and in order to depart I need to make those findings.

The district court then imposed the presumptive sentence of 30 months in prison.

Knopik appeals.

DECISION

Knopik argues that his sentence must be reversed and the case remanded for resentencing by a different judge for three independent reasons. He argues that (1) the district court violated his constitutional right to an impartial judge by conducting an independent investigation during the sentencing hearing, (2) the district court judge was disqualified from presiding over his sentencing hearing because the judge's conduct created a reasonable question about the judge's impartiality, and (3) the district court relied on an improper consideration when considering his departure motion. We review each argument in turn.

I. The district court did not violate Knopik's right to an impartial judge.

Knopik argues that his sentence must be reversed and the case remanded because the district court conducted an independent investigation at his sentencing hearing. He contends that the district court's conduct was analogous to that in *State v. Dorsey*, in which the supreme court held that the district court judge's independent factual investigation deprived the defendant of his constitutional right to a fair trial and an impartial fact-finder. 701 N.W.2d 238, 249 (Minn. 2005).

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Appellate courts review a district court's ruling on a constitutional question de novo. *Id.* "An impartial trial requires that conclusions reached by the trier of fact be based upon the facts in evidence," and the trier of fact may not "reach[] conclusions based on evidence sought or obtained beyond that adduced in court." *Id.* at 249-50.

In *Dorsey*, the judge, sitting as fact-finder in a bench trial, openly questioned the veracity of a factual assertion made by the defendant's key witness because of the judge's extra-record knowledge acquired from other cases. *Id.* at 250. Specifically, the factual question involved the date of death of an individual known to the judge from other cases, which was relevant to evaluating the credibility of the defense witness's testimony. After raising the question, the judge independently investigated that extra-record information and revealed the results of her investigation, which introduced a material fact favorable to the state into the proceedings. *Id.* And, when later finding the defendant guilty, the judge found the defense witness's testimony not credible in part because of the discrepancy between that testimony and the information that the judge confirmed during her independent investigation. *Id.* at 244-45. The supreme court explained that the judge's conduct meant the judge was not impartial, recognizing a "bright-line rule that judges may not engage in independent investigations of facts in evidence" because of "the bedrock principle in our criminal justice system that judges may not investigate or rely upon extra-record knowledge when sitting as the finder of fact." *Id.* at 251.

Knopik contends that the district court judge likewise violated his right to an impartial judge during the sentencing hearing by sharing the "chat" communication and requesting information from the corrections agent. We disagree.

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First, the district court judge's sharing of the "chat" communication is distinguishable from the conduct in *Dorsey*. The judge in *Dorsey* shared extra-record knowledge acquired from an unrelated matter and then introduced a material fact—which contradicted the defense witness's testimony—based on the judge's independent investigation. *Id.* at 250. Here, the district court judge reviewed an unsolicited electronic communication sent only to the judge during a videoconference sentencing hearing that indicated that Knopik had tested positive for THC and lost his peer-leader position. The judge promptly shared the substance of the communication with the parties and offered the opportunity for a response from Knopik's counsel. Without raising any objection, Knopik's counsel asked Knopik whether the communication was true and Knopik confirmed that it was.

Our conclusion that the district court judge acted properly by divulging the communication is guided by the Minnesota Code of Judicial Conduct. The judicial code of conduct, consistent with *Dorsey*, states that "[a] judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed." Minn. Code Jud. Conduct Rule 2.9(C). But the judicial code of conduct also provides that, "[i]f a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision to notify the parties of the substance of the communication and provide the parties with an opportunity to respond." Minn. Code Jud. Conduct Rule 2.9(B).[1] The Source PDF page 11 district court judge's conduct—sharing the substance of the inadvertently received, unsolicited "chat" communication and allowing responses from the parties—fell within and comported with the latter obligation; it did not constitute an independent investigation in violation of the former.

Second, the district court's request to the corrections agent for follow-up information in the context of the sentencing hearing is distinguishable from the judge's independent investigation into a disputed evidentiary fact in *Dorsey*. Unlike in *Dorsey*, where the judge independently investigated public records, the corrections agent here was present at the sentencing hearing on behalf of the PSI writer. At the outset of the hearing, the district court properly asked the agent whether the agent had "any additions, changes, or corrections to the [PSI] report." The district court's later request for clarification from the agent regarding Knopik's recent drug use and his removal from a peer-leader position was in keeping with that initial inquiry. And Knopik admitted that he tested positive and was no longer a peer leader.

We recognize that the right to an impartial judge extends to sentencing. *See State v. Schlienz*, 774 N.W.2d 361, 367 (Minn. 2009). We also recognize that a judge must make certain determinations necessary to sentence a defendant. When departing from a Source PDF page 12 presumptive sentence, as Knopik requested, a district court must have "identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent'g Guidelines 2.D.1 (2020). And, in the context of a felony conviction, a district court must, "before sentence is imposed, cause a presentence investigation and written report to be made to the court concerning the defendant's individual characteristics, circumstances, needs, potentialities, criminal record and social history." Minn. Stat. § 609.115(a) (2022). Although it may have been preferable to request clarification from the probation agent during the first part of the hearing rather than during a recess, we do not believe that request constituted the sort of "independent investigation" contemplated by *Dorsey*.

In addition, the district court's conclusion complied with *Dorsey*'s requirement that the trier of fact's conclusions be based on "facts in evidence." 701 N.W.2d at 249. Although the district court initially shared the "chat" communication, it did not independently verify its truthfulness and rely on its own results in denying Knopik's dispositional departure. Rather, after seeking clarification from the corrections agent, the district court relied on Knopik's admission that he had tested positive for THC and was no longer a peer leader.

Under these circumstances, we conclude that the district court did not conduct an impermissible independent investigation. Because we conclude that Knopik's right to an impartial judge was not violated, we do not consider whether an independent investigation at a sentencing hearing would require automatic reversal even when the error was unpreserved at trial. *See Pulczinski v. State*, 972 N.W.2d 347, 359 n.9 (Minn. 2022) (suggesting that it is an open question whether every type of structural error requires automatic reversal when the error was not preserved at trial).

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II. The district court was not disqualified from presiding over Knopik's sentencing hearing.

Knopik also argues that his sentencing must be reversed and remanded because the district court judge was disqualified from presiding over his sentencing hearing because of an appearance of partiality. Under the rules of criminal procedure, "[a] judge must not preside at a trial or other proceeding if disqualified under the Code of Judicial Conduct." Minn. R. Crim. P. 26.03, subd. 14(3). A judge is disqualified under the code of judicial conduct "in any proceeding in which the judge's impartiality might reasonably be questioned." Minn. Code Jud. Conduct Rule 2.11(A). Whether a judge violated the code of judicial conduct is a legal question reviewed de novo. *State v. Malone*, 963 N.W.2d 453, 464 (Minn. 2021).

"Impartiality" is the "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues." *Troxel v. State*, 875 N.W.2d 302, 314 (Minn. 2016); Terminology, Minn. Code Jud. Conduct. "Whether a judge's impartiality may reasonably be questioned is an objective consideration that evaluates whether a reasonable examiner, with full knowledge of the facts and circumstances, would question the judge's impartiality." *Malone*, 963 N.W.2d at 464 (quotation omitted). Appellate courts presume that a judge properly discharges their duties. *Id.*

First, Knopik argues that the judge was biased in favor of Knopik participating in drug court. He claims that this bias meant the judge ignored important procedural matters Source PDF page 14 to get Knopik into drug court and personally resented Knopik when he failed to appear in drug court. Knopik's claim is unsupported by the record.

The record instead indicates that the judge referred Knopik to drug court pursuant to Knopik's wishes and appropriately considered his failure to appear in drug court in the context of his other pretrial violations. At the July 20 pretrial hearing, after the district court confirmed that Knopik's counsel received discovery and asked Knopik whether he wanted more time to review the evidence, Knopik's counsel initiated the conversation about drug court. The district court referred Knopik to the Eighth Judicial District drug court only after confirming with Knopik and his counsel that Knopik wanted drug court.[2] Then, at the hearing about Knopik's failure to appear in drug court, the district court reinstated the same release conditions despite the state's request to increase bail. And, at the sentencing hearing, Knopik's failure to appear in drug court was just one of several reasons that the district court cited when finding that Knopik was not particularly amenable to treatment or probation. Although the district court's commentary at the sentencing hearing indicated frustration with Knopik's failure to appear and excuses about failing to appear, the district court explained that it "wouldn't have cared about that either if [Knopik] could have been successful on [his] own and [his] treatment path. None of these actions by the district court suggest bias on the part of the judge.

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Second, Knopik asserts that the district court judge created a question about her impartiality by "taking on the prosecutor's role" when the judge discussed Knopik's admitted pretrial violations with him at a violation hearing and discussed an admitted positive urinalysis at the sentencing hearing. We disagree. A judge is expressly authorized to question witnesses. Minn. R. Evid. 614(b). And a judge's candid discussion of the reasons for revoking pretrial release with conditions or denying a departure motion does not mean that the judge acted improperly. *See Malone*, 963 N.W.2d at 468 ("A district court judge is not prohibited from expressing a frank opinion to a probationer about that person's compliance—or lack thereof—with probation conditions."). The district court judge's active engagement during the proceedings does not create a reasonable question about her impartiality.

Finally, Knopik analogizes the circumstances here to *State v. Cleary*, 882 N.W.2d 899 (Minn. App. 2016). There, we found a reasonable question about the district court judge's impartiality when the same judge that terminated the appellant from drug court later revoked his probation based on that termination. *Id.* at 901, 908. Knopik claims that he was in a "de facto drug court" because he was "in and out of custody, in and out of compliance, and in and out of treatment" and spoke to the district court about his issues with addiction. But *Cleary* is inapposite. Our holding in *Cleary* was based on the unique and personal relationship between the appellant and the judge in drug court and the drug court judge's direct involvement in the appellant's sole probation violation—termination from drug court. *Id.* at 905-06. Here, the district court played the traditional role of a judge by setting relevant pretrial release conditions. Knopik's failure to comply with those Source PDF page 16 conditions and to remain in treatment was the result of his conduct, not the district court's involvement.

In sum, the record shows that the district court acted properly by referring Knopik to drug court at his request, neutrally considering his pretrial violations, and approaching his departure motion with an open mind. We conclude that a reasonable examiner would not question the district court judge's impartiality.

III. The district court did not abuse its discretion by denying Knopik's motion for a dispositional departure.

Knopik's final argument is that his sentence must be reversed and the case remanded for resentencing because the district court judge abused its discretion by relying on an improper consideration—namely, Knopik's decision to post an unconditional bond—when denying his dispositional departure motion.

A district court's decision to deny a departure motion is reviewed for an abuse of discretion. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A dispositional departure is generally based on the characteristics of the defendant that show that the defendant is particularly amenable to probation. *Id.* This court will reverse a district court's imposition of a presumptive sentence only if warranted by "compelling circumstances." *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982). A "reviewing court may not interfere with the sentencing court's exercise of discretion, as long as the record

shows the sentencing court carefully evaluated all the testimony and information presented before making a determination." *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985).

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Criminal defendants have a constitutional right to post bail prior to conviction. Minn. Const. Art. I, § 7. When opposing Knopik's departure motion, the state indicated its concern that Knopik chose to post bond rather than immediately enter inpatient treatment without bail. The prosecutor then highlighted Knopik's delayed entry into treatment, positive urinalysis for THC, and criminal history score, and concluded, "[B]ased on the lack of any supervision prior to and leading up to the sentencing hearing today, based on the late entry into treatment I have to oppose the departure motion at this point." Knopik contends that the district court relied on his decision to post unconditional bail because the district court explained that it agreed "with the state that there were some choices that were made that allow some lapses instead of doing an initial treatment program right away."

But, as Knopik acknowledges, his decision to delay entry into treatment after posting his bond was relevant to his amenability to treatment. And we disagree that the district court's reference to Knopik's "choices" implies that the court penalized Knopik for posting an unconditional bond. Rather, the record shows that the district court carefully considered Knopik's treatment history and pretrial conduct when denying his departure motion. We discern no abuse of discretion in the district court's determination that Knopik was not particularly amenable to treatment and probation and that a substantial and compelling reason for departure was not present.

Affirmed.

Court's footnotes

1 Knopik argues that rule 2.9(B)'s reference to ex parte communications only encompasses communications made by a party and thus does not include the communication here. We do not believe such a narrow reading of "ex parte" is consistent with the plain language of the rule, which requires notification to "the parties" when the judge receives an ex parte communication. The official comments also indicate a more expansive definition of "ex parte." *See* Minn. Code Jud. Conduct Rule 2.9 cmt. 3 (referencing "lawyers, law teachers, and other persons who are not participants in the proceeding"), 4 (referencing "treatment providers, probation officers, social workers, and others"), 5 (referencing disqualified and appellate judges).

2 Knopik argues that the district court referred him "sua sponte" to Kandiyohi County and that this referral changed the venue of his criminal case. But the record shows that the district court completed an Eighth Judicial District drug court referral form, which includes both Meeker and Kandiyohi County. Although the district court ordered Knopik to appear at Kandiyohi County courthouse or by videoconference for drug court, Knopik returned to Meeker County for his subsequent hearings after his failure to appear at drug court.