# State v. Leckner

Unpublished opinion (2020)

Minnesota Court of Appeals

A19-1007 | June 15, 2020

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**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-1007**

State of Minnesota,
Respondent,

vs.

Christopher Dwayne Leckner,
Appellant.

**Filed June 15, 2020**
**Reversed and remanded**
**Cochran, Judge**

Koochiching County District Court
File No. 36-CR-18-790

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

Jeffrey S. Naglosky, Koochiching County Attorney, International Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Johnson, Judge; and Cochran, Judge.

## UNPUBLISHED OPINION

**COCHRAN**, Judge

Appellant Christopher Dwayne Leckner challenges the district court's denial of his motion for a dispositional sentencing departure, arguing that he was deprived of his Source PDF page 2 constitutional right to an impartial fact-finder. Because the district court impermissibly based its sentencing decision on information obtained during its independent investigation of facts outside the record, we reverse and remand for resentencing.

## FACTS

While heavily intoxicated, Leckner stabbed his girlfriend three times. The state charged Leckner with one count of first-degree assault under Minn. Stat. § 609.221, subd. 1 (2018) and one count of second-degree assault under Minn. Stat. § 609.222, subd. 2 (2018). Leckner pleaded guilty to the first-degree assault charge in exchange for the state's dismissal of the second-degree assault charge and the state's agreement to seek a sentence of no more than 150 months. It was also understood that Leckner would argue for a departure from the sentencing guidelines.

Before sentencing, a dispositional advisor from the public defender's office prepared a report that was provided to the district court. In the report, the advisor noted that Leckner suffered from a long history of mental health and substance abuse issues. The advisor discussed, at length, the availability of mental health and substance abuse treatment in Minnesota prisons. She noted that although there is access to mental health treatment in prisons, the access is "often limited to 'severe' and 'serious' mental illness treatment," making access to mental health care "sporadic." In her opinion, there was "no way to ensure that Mr. Leckner would receive any treatment" if incarcerated because only those assessed with a "significant mental illness" qualify for treatment and Leckner was not in that category. The advisor recommended that the district court stay any prison sentence Source PDF page 3 and place Leckner on probation on the condition that he enter into long-term inpatient treatment for mental health and substance abuse issues.

The district court held a sentencing hearing in March 2019. At the hearing, Leckner sought a dispositional departure consistent with the recommendation of the dispositional advisor. Leckner testified in support of his request. His father, his sister, and his doctor also testified. The state did not call any witnesses but did read a statement from the victim into the record.

Leckner, who was 33 years old at the time of the hearing, testified that he has suffered from mental health problems since he was young. He further testified that he has spent most of his adult life in prison. He explained that he was first incarcerated from 2005 to 2012 and did not receive mental health treatment during that time. Instead, he was in solitary confinement for two years where he suffered from auditory hallucinations. When he was released from prison, he was not placed on parole or probation. He subsequently served another five years in prison from 2013 to 2018. During that period of incarceration, Leckner spent 50 out of the 60 months in solitary confinement. He testified that he did not receive any mental health treatment during that more recent term of incarceration other than monthly visits by an outpatient therapist, which he did not find to be helpful. Leckner agreed that he needed structured treatment and asserted that he would succeed on probation if given the opportunity for treatment. Leckner's father and sister agreed that Leckner needed treatment.

Leckner's psychiatrist, who has treated Leckner since he was young, also testified. The doctor explained that Leckner suffers from a borderline personality disorder and has Source PDF page 4 poorly regulated emotions that make it difficult for him to think through problems in the moment. The doctor opined that solitary confinement—where Leckner spent the majority of his prior prison sentences—could contribute to auditory hallucinations because people with borderline personality disorder have difficulty with abandonment. The doctor confirmed that long-term, structured inpatient treatment for mental health and chemical dependency would be better for Leckner's rehabilitation than prison.

The state opposed Leckner's request for a dispositional departure. The state argued that confinement was necessary to protect the public. And the state asserted that there are "excellent" treatment programs in prison but presented no evidence to support its assertion.

In response, Leckner's attorney argued that a departure was warranted because Leckner suffers from mental health and substance abuse issues that require long-term, structured treatment for

mental health and chemical dependency. Leckner's attorney reiterated that Leckner was unlikely to receive treatment in prison, that he has not received meaningful treatment in prison in the past, and that prison has only made his condition— and offenses—worse. His attorney also emphasized that while mental health programs are available in prison, most offenders will not receive such treatment unless they are assessed as having a significant mental illness, and Leckner had not received such an assessment. And, Leckner himself stated that the Stillwater prison, one of two prisons where Leckner was likely to be sent, did not offer mental health treatment. According to Leckner, that facility offered only chemical dependency treatment.

At the end of the hearing, the district court informed the parties that it was not going to pronounce a sentence that day. Instead, the district court judge stated that he would Source PDF page 5 "personally . . . go and speak with the department of corrections programming office," and invited counsel for both the state and Leckner to attend. The district court judge continued the sentencing hearing, and subsequently visited the Stillwater correctional facility.

The district court reconvened the sentencing hearing approximately three weeks later. The district court allowed Leckner an opportunity to speak. Leckner repeated his arguments for a dispositional departure and informed the district court of eight community-based hospitals that provided the treatment he sought. Leckner emphasized the lack of programming available in prison and reiterated that his mental health problems were not treated during his previous periods of incarceration.

The district court then addressed Leckner's request for a dispositional departure. The district court judge acknowledged that Leckner wanted to participate in long-term mental health treatment and noted that Leckner argued that prison would not afford him that opportunity. But the judge disagreed with Leckner's assertion that he would not receive treatment if he were incarcerated. The district court judge stated: "One of the reasons I continued this case was to go down and check out the prisons. And I went to Stillwater." The district court judge also noted that he had visited other correctional facilities in the past. The judge concluded:

> Whereas there is a contrast, a great contrast, between what prison can offer and what the community can offer in terms of meeting your folk's [sic] needs . . . . *And the contrast, Mr. Leckner, after having been there is that you get more services in prison than you could ever get in the public. I was there, Mr. Leckner. I saw the services that you say you can't get.* I walked through those facilities. I saw the places where you can get support services, health help group, evaluations, Source PDF page 6 short-term/long-term treatment, long-term treatment for mental health.

(Emphasis added.). The district court then denied Leckner's motion for a dispositional departure and sentenced Leckner to 150 months' imprisonment, which is within the presumptive sentencing range.

Leckner appeals.[1]

## DECISION

We review a district court's sentencing decision for an abuse of discretion. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). We conclude that the district court abused its discretion by its independent investigation of facts outside the record and its reliance on those facts in its sentencing decision.

In *State v. Dorsey*, the Minnesota Supreme Court established a bright-line rule that "judges may not engage in independent investigations of facts in evidence." 701 N.W.2d 238, 251 (Minn. 2005). In *Dorsey*, the district court questioned the veracity of a factual statement made by Dorsey's key witness, investigated the fact independently, and revealed the results of the investigation in open court. *Id.* at 243-44. The supreme court ruled that the district court deprived Dorsey of the right to an impartial judge and fact-finder because: (1) the judge's comments indicated that she did not believe the testimony of the witness based on facts not in evidence, and (2) the judge independently Source PDF page 7 investigated a fact not in the record. *Id.* at 250. The supreme court concluded that "when a judge possesses extra-record knowledge that is prejudicial to a defendant in a criminal trial, the judge may not disclose that knowledge. Rather, the judge must either disqualify herself or set the knowledge aside and consider only the evidence adduced in deciding the case." *Id.* at 252.

Relying on *Dorsey*, Leckner argues that the district court's independent investigation of facts and reliance on those facts in its sentencing decision deprived him of a fair sentencing hearing. Leckner notes that defendants have a constitutional right to a trial by an impartial jury. U.S. Const. amend. VI; *see also* Minn. Const. art. 1, § 6. Leckner emphasizes that courts have long extended that right to court trials and that the Minnesota Supreme Court has further extended that right to other hearings. Leckner contends that the district court's independent investigation of facts outside the record interfered with his right to a fair sentencing hearing before an impartial fact-finder. We agree.

We recognize that the independent investigation at issue in this case occurred during sentencing, not at trial like in *Dorsey*. But, in *State v. Schlienz*, that supreme court noted that a judge must "maintain the integrity of the adversary system at *all* stages of the proceedings." 774 N.W.2d 361, 367 (Minn. 2009) (emphasis added) (concluding that an ex parte communication made prior to a plea-withdrawal hearing violated defendant's right to an impartial judge) (emphasis added). And we are not aware of any authority creating an exception for sentencing hearings. Accordingly, the rule in *Dorsey* against independent investigation of facts applies here.

*Source PDF page 8*

As in *Dorsey*, the district court's conduct in this case of investigating and relying on information outside the record to determine the accuracy of evidence in the record deprived Leckner of his right to a fair hearing before an impartial judge. As Leckner points out, the district court continued the sentencing hearing to visit the Stillwater prison, one of two prisons where Leckner could have been incarcerated. And the district court did so to discover information in response to Leckner's evidence about the lack of treatment opportunities in Minnesota prisons. Although programming available in Minnesota prisons often is relevant to sentencing, that relevance does not authorize the district court to continue a sentencing hearing to conduct an independent investigation by seeking and obtaining information from the department of corrections staff to resolve a disputed issue on a particular case. Such an act is in sharp contrast to the bright-line rule that "judges may not engage in independent investigations of facts in evidence." *Dorsey*, 701 N.W.2d at 251.

In reaching this conclusion, we are not suggesting that judges should not visit correctional facilities for general educational purposes outside of the context of a particular case, as there are beneficial reasons to do so.[2] And, we are confident that the district court in this case was motivated by its desire to fully consider the options available to Leckner to impose a fair sentence. But, the district court's deliberate decision to continue the sentencing hearing to independently gather additional information and the court's subsequent reliance on that information, for the specific purpose of making a sentencing Source PDF page 9 decision, denied Leckner his right to an impartial decision maker. *See Dorsey*, 701 N.W.2d at 252 ("[W]hen a judge possesses extra-record knowledge that is prejudicial to a defendant in a criminal trial, the judge may not disclose that knowledge. Rather, the judge must either disqualify herself or set the knowledge aside and consider only the evidence adduced in deciding the case."). Because the district court's impartiality may reasonably be questioned, we reverse and remand for resentencing before a different district court judge assigned by the chief judge.

**Reversed and remanded.**

## Court's footnotes

1 The state did not file a respondent's brief. We therefore decide this case on the merits. Minn. R. Civ. App. P. 142.03.

2 We expressly recognize that such experiences are valuable and support the continuation of those general educational opportunities.