

FILED

July 2, 2024

**OFFICE OF
APPELLATE COURTS****STATE OF MINNESOTA
IN COURT OF APPEALS**

State of Minnesota,

Respondent,

vs.

Matthew David Guertin,

Petitioner.

**SPECIAL
TERM
ORDER¹**

A24-0780

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Larson,
Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

Petitioner Matthew David Guertin was charged in Hennepin County District Court on January 24, 2023, with one count of reckless discharge of a firearm and three counts of possession of a firearm without a serial number. Following his first appearance on January 25, 2023, the district court issued an order for a competency evaluation pursuant to Minn. R. Crim. P. 20.01. The district court issued an order on July 13, 2023, finding petitioner incompetent to proceed. On November 15, 2023, the district court issued a second order for a competency evaluation and again found petitioner incompetent on January 17, 2024.

¹ Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

On April 3, 2024, petitioner—who had been represented by counsel since February 2023—filed a motion in district court to discharge his counsel and proceed pro se. The district court issued an order denying this motion on April 12, 2024, concluding that petitioner was not permitted to waive his right to counsel due to the court’s having found him incompetent.

Petitioner filed a petition for discretionary review of this decision in this court on May 10, 2024. The state filed a response to the petition, asserting that the district court’s order denying self-representation was based upon established precedent and that petitioner had failed to demonstrate a compelling reason to grant discretionary review of this order. In a reply memorandum, petitioner argues that the district court’s ruling is questionable, impedes his ability to proceed with his defense, raises issues of statewide importance, and is likely to evade review if not addressed.

This court may, in the interests of justice, grant discretionary review of an order that is not otherwise appealable. Minn. R. Crim. P. 28.02, subd. 3. In determining whether to grant discretionary review, this court considers the multi-factor test articulated in *Gordon v. Microsoft Corp.*, 645 N.W.2d 393, 399-402 (Minn. 2002). See *Doe 175 v. Columbia Heights Sch. Dist.*, 842 N.W.2d 38, 47 (Minn. App. 2014) (explaining that an appellate court should consider the *Gordon* factors, to the extent that they are appropriate, when considering a petition for discretionary review outside of the class-certification context). These factors include: whether the challenged ruling is vested in the district court’s discretion; whether the ruling is questionable or involves an unsettled area of law; the

impact of the ruling on the petitioning party's ability to proceed; the importance of the legal issue; whether appellate review would benefit from development of a more complete record or the ruling would be reviewable on appeal from final judgment; and the specific circumstances of the case. *See Gordon*, 645 N.W.2d at 399-402.

“These factors are not exclusive, and this court has discretion to consider additional factors and circumstances that may apply to the particular case.” *State v. Plevell*, 889 N.W.2d 584, 587 (Minn. App. 2017). Additionally, this court will not grant discretionary review of a pretrial order unless a “compelling reason” is shown. *State v. Jordan*, 426 N.W.2d 495, 496 (Minn. App. 1988).

Here, in evaluating these considerations, we note first that the district court's ruling does not involve an unsettled area of law or a question of statewide impact. Caselaw is clear that the standard of competency for a defendant to be permitted to validly waive counsel is the same as that used for a defendant to stand trial. *See, e.g., State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997). Considering that the district court has twice determined petitioner to be incompetent to stand trial and has not since issued an order finding that he has been restored to competency, it is not manifestly unreasonable for the court to have determined that he was similarly not competent to waive his right to counsel.

Second, the ruling does not impact petitioner's ability to proceed in district court. Because he has been found incompetent, the prosecution must be suspended entirely. Minn. R. Crim. P. 20.01, subd. 6(b). Accordingly, not permitting petitioner to discharge counsel and proceed pro se at this time is of no consequence to the district court

proceedings other than those related to competency. And because denying petitioner's request for self-representation will not deprive him of any claims or rights regarding future competency determinations, discretionary review is unwarranted for this reason as well.

Third, the issue of whether the district court improperly deprived him of his right to self-representation will be reviewable on a direct appeal from any resulting judgment of conviction. *See, e.g., State v. Christian*, 657 N.W.2d 186, 190 (Minn. 2003) (reviewing for clear error the district court's denial of a motion for self-representation). And finally, the specific circumstances of petitioner's case do not provide any other discernible reason to grant this extraordinary form of relief. Accordingly, after consideration of the record and the parties' submissions, and an evaluation of the *Gordon* factors, we fail to discern a compelling reason to support discretionary review of the district court's order. *Jordan*, 426 N.W.2d at 496.

On May 28, 2024, petitioner filed four separate motions requesting that this court take judicial notice of various documents and factual assertions that petitioner argues demonstrate his competency to proceed. An order of this court issued on May 31, 2024, deferred consideration of these motions to the panel assigned to consider the merits of the petition for discretionary review. Because petitioner seeks discretionary review of the district court's order denying his request for self-representation and not the district court's underlying determination of his incompetency, and because petitioner's proffered materials are not germane to our analysis of whether discretionary review of the district court's order is appropriate, we deny petitioner's motions as unnecessary.

IT IS HEREBY ORDERED:

1. The petition for discretionary review is denied.
2. Petitioner's motions for judicial notice are denied as unnecessary.

Dated: July 2, 2024

BY THE COURT



Renee L. Worke
Presiding Judge

MINNESOTA
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