FILED
May 7, 2024
OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN COURT OF APPEALS

A23-0517

State of Minnesota,

Respondent,

vs.

George Terutaka Okochi,

Appellant.

ORDER OPINION

Hennepin County District Court
File No. 27-CR-19-26905

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Klaphake, Judge.*

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. A jury found appellant George Terutaka Okochi guilty of three counts of second-degree criminal sexual conduct for sexually abusing his minor stepdaughter. Each count concerned a separate timeframe. Okochi challenges his convictions, arguing that the district court abused its discretion by denying his pretrial discovery motion for in camera review of the victim's medical, psychiatric, and therapy records, as well as records regarding the victim's request for reparations from the Minnesota Crime Victims Reparations Board (CVRB).

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

2. After the district court denied Okochi's motion seeking in camera review, but before sentencing, the Minnesota Supreme Court decided *State v. Conrad (In re Hope Coalition)*, which holds that the sexual-assault-counselor privilege in Minn. Stat. § 595.02, subd. 1(k) (2020), "does not permit disclosure of privileged records in a criminal proceeding, even for *in camera* review, without the consent of the victim." 977 N.W.2d 651, 653 (Minn. 2022). Subsequently, this court decided *State v. Ramirez (In re State)*, which extended the logic espoused in *In re Hope* to the medical-provider privilege in Minn. Stat. § 595.02, subd. 1(d) (2022), and the mental-health-provider privilege in Minn. Stat. § 595.02, subd. 1(g) (2022). 985 N.W.2d 581, 586 (Minn. App. 2023), *rev. granted* (Minn. Mar. 14, 2023) *and appeal dismissed* (Minn. July 31, 2023). In *Ramirez*, we held that "a district court may not order the production of records protected by these privileges absent an express exception." *Id.*

3. We review limits placed by the district court on the release and use of protected records for an abuse of discretion. *State v. Hokanson*, 821 N.W.2d 340, 349 (Minn. 2012). Here, the district court found that the victim's medical, psychiatric, and therapy records were privileged under Minn. Stat. § 595.02 (2022), which sets forth the aforementioned medical-provider, mental-health-provider, and sexual-assault-counselor privileges.

4. Okochi argues that *In re Hope* and *Ramirez* are "not absolute bars" to in camera review. Okochi notes that the *In re Hope* court stated that "even an unpierceable statutory privilege must yield to a defendant's constitutional rights if nondisclosure would violate those rights" and that "[t]o determine whether nondisclosure based on a statutory

privilege violates a criminal defendant's constitutional right, we weigh the state's interest in that privilege against the right." 977 N.W.2d at 661. After applying that test, the supreme court concluded that the state had "a compelling interest in protecting a victim's privacy through the sexual-assault-counselor privilege," which was not outweighed by the defendant's constitutional rights, and therefore the privilege could not be pierced. *Id.* at 662. In *Ramirez*, we held, consistent with the reasoning in *In re Hope*, that the defendant's "constitutional rights to confrontation and due process [did] not outweigh the state's interest in preserving the confidentiality of the protected records," which included medical and mental-health records. 985 N.W.2d at 587.

5. Okochi has not provided, and we do not discern, a basis to conclude that his constitutional rights outweigh the state's interest in preserving the confidentiality of the victim's medical, psychiatric, and therapy records in this case. Under *In re Hope* and *Ramirez*, the records were not available for review unless the victim consented. Thus, the district court's refusal to disclose these records was not an abuse of discretion.

6. As to the CVRB records, discoverability appears to be an issue of first impression. But as explained next, we need not decide that issue because any error in denying in camera review of those records is harmless beyond a reasonable doubt.

7. We will not reverse a conviction based on the erroneous exclusion of defense evidence if the error was harmless beyond a reasonable doubt, that is, there is no reasonable possibility that the error may have contributed to the conviction. *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017); *see State v. Davis*, 820 N.W.2d 525, 533 (Minn. 2012) ("When an error implicates a constitutional right, we will award a new trial unless the error

is harmless beyond a reasonable doubt."). An erroneous refusal to grant in camera review of discoverable material may constitute harmless error. *See State v. Galvan*, 374 N.W.2d 269, 270 (Minn. 1985) (refusing to grant a new trial based on the district court's failure to conduct an in camera review of potentially discoverable materials because "any error was nonprejudicial").

8. The victim in this case filed for and received monetary reparations from the CVRB. As part of her CVRB request, she was asked to provide a brief description of the crime and injuries. The state argues, and we agree, that any error in refusing to conduct an in camera review of these materials was harmless. As noted by the state, the defense had access to much more detailed statements from the victim, such as her typed statement about the abuse and its impact on her, as well as an extensive recorded statement that the victim gave to law enforcement. Those statements were consistent with the victim's detailed trial testimony. Though Okochi, in his trial testimony, denied sexually abusing his stepdaughter when she was a child or adolescent, he admitted to having an ongoing sexual relationship with her starting when she was 27 years old. When the victim confronted Okochi about the past sexual abuse by repeatedly sending him text messages alleging that he was a pedophile and had sexually abused her throughout her "entire life," Okochi did not deny the allegations. Instead, he told her that he was "not a hero" and that she needed "a vacation."

9. On this record, we discern no reason to suspect that the victim's brief statement describing Okochi's abuse to the CVRB would have been inconsistent with her prior statements or trial testimony such that disclosure would have resulted in a different

verdict at trial. In sum, there is no reasonable possibility that the alleged error may have contributed to the conviction, and it is therefore harmless beyond a reasonable doubt. *See Zumberge*, 888 N.W.2d at 694.

10. Okochi also challenges his sentence, arguing that the district court erroneously imposed a ten-year conditional-release period on count two. He notes that "[t]he conditional[-]release statute was passed in 1992 and first applied to criminal sexual conduct crimes that occurred on or after August 1, 1992" and that the conduct alleged in count two occurred prior to August 1992. He therefore argues that he "cannot be ordered to serve a conditional[-]release term because of those convictions because conditional release was not in effect."

11. A court "may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. Criminal offenders are subject to the statutes in effect when they committed their criminal acts. *See State v. Robinson*, 480 N.W.2d 644, 645 (Minn. 1992) (noting that "constitutional protections against ex-post facto laws" prohibit subjecting offenders to statutes that become effective after the offender's criminal acts were committed). "A sentencing judge violates the Ex Post Facto Clause if the judge sentences a defendant under a law that changed the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed." *State v. Kirby*, 899 N.W.2d 485, 493-94 (Minn. 2017) (quotation omitted).

12. The conditional-release statute was passed in 1992 and first applied to criminal-sexual-conduct crimes that occurred on or after August 1, 1992. *See* 1992 Minn. Laws ch. 571, art. 1, §§ 25, 29, at 2002-03 (initially called supervised release); 1993 Minn.

Laws ch. 326, art. 9, § 9, at 2089 (term changed to conditional release); *see also State v. Rhodes*, 675 N.W.2d 323, 327 (Minn. 2004) ("The statutory requirement of a conditional[-]release term was added in 1992 . . . ."); *State v. Wukawitz*, 662 N.W.2d 517, 522-23 (Minn. 2003) (explaining that the conditional-release statute, Minn. Stat. § 609.109, subd. 7(a) (2000), was passed in 1992 and applied to criminal sexual conduct crimes that occurred on or after August 1, 1992).

13. The state seems to concede that the ten-year conditional-release period under Minn. Stat. § 609.346, subd. 5 (1992), is inapplicable because the statute did not take effect until after the dates of the offense at issue in count two. The state argues that the district court may have relied on Minn. Stat. § 609.1352 (Supp. 1989) in imposing Okochi's ten-year conditional-release term and that "[b]ecause it is unclear what statute the district court relied upon in imposing a [ten]-year conditional[-]release term, a remand is appropriate." *See* Minn. Stat. § 609.1352, subd. 5 (permitting the imposition of a ten-year conditional-release period for certain patterned sex offenders).

14. The ten-year conditional-release period under Minn. Stat. § 609.346, subd. 5 was inapplicable to count two in this case because it took effect after the dates of the relevant offense. *See* 1992 Minn. Laws ch. 571, art. 1, §§ 25, 29, at 2002-03. We therefore reverse Okochi's sentence for count two and remand for resentencing. If the district court imposes another conditional-release period for that conviction, it should explain the legal basis for doing so to facilitate additional review, if any.

15. In a pro se supplemental brief, Okochi claims that "suppression" of certain records permitted the prosecutor to question him about things that Okochi was "prohibited

from answering," and precluded his attorney "from asking crucial questions." Okochi also asks this court to reevaluate certain evidence and asserts that an individual tried to extort him for money.

16. Okochi failed to provide any legal argument or authority to support his claims. A pro se appellant forfeits any claims made in a supplemental appellate brief if the appellant fails to provide legal arguments or citation to legal authority in support of those claims. *State v. Krosch*, 642 N.W.2d 713, 719-20 (Minn. 2002). And "[a]n assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (quotation omitted). Because Okochi failed to support his claims with legal argument or authority, and because we discern no obvious, prejudicial error, his pro se claims are forfeited.

IT IS HEREBY ORDERED:

1. The district court's discovery orders and the judgments of conviction are affirmed.

2. Okochi's sentence on count two is reversed and remanded for resentencing.

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

Dated: 5/7/24

BY THE COURT

Michelle A. Larkin

Judge Michelle A. Larkin