STATE OF MINNESOTA
IN COURT OF APPEALS
C8-02-773

State of Minnesota,
Respondent,

vs.

Noble James Watts,
Appellant.

Filed June 10, 2003
Affirmed
Willis, Judge

Hennepin County District Court
File No. 01060478

Mike Hatch, Attorney General, 525 Park Street, Suite 500, St. Paul, MN 55103; and

Amy Klobuchar, Hennepin County Attorney, Michael K. Walz, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

John M. Stuart, State Public Defender, Ann McCaughan, Assistant Public Defender, 2221 University Avenue SE, Suite 425, Minneapolis, MN 55414 (for appellant)

Considered and decided by Anderson, Presiding Judge, Schumacher, Judge, and Willis, Judge.

U N P U B L I S H E D O P I N I O N

WILLIS, Judge

On direct appeal from a conviction of second-degree murder, appellant (1) argues that the district court erred by refusing to give a jury instruction on the lesser-included offense of first-degree manslaughter and (2) asks this court to clarify whether he is entitled to supervised release upon completion of his term of imprisonment. We conclude that the district court did not err and affirm the conviction.

FACTS

In July 2000, appellant Noble James Watts witnessed the shooting death of his friend Jamar Washington, and he later told police that the shooter was Marcus Brown. Brown was not charged with killing Washington, but Watts was afraid that word of his cooperation with the investigation would get back to Brown and that Brown would retaliate against him or his family. In May 2001, Watts was shot at as he left a party; he believed that Brown was the shooter and that it was in retaliation for Watts's cooperation with police.

On July 8, 2001, Watts got into an argument with his friend Duane Slaughter. Watts was angry that Slaughter had been "taking [him] around" persons who Watts had told police were involved in killing Washington. But Watts considered the argument "minor" and continued to spend time with Slaughter in the days that followed.

On July 10, Slaughter and Watts met and drove to a barbershop; Watts waited in the car as Slaughter went inside. As he waited, Watts saw Slaughter talking to Brown. Slaughter then got into the car and, with Watts driving, left the barbershop. As he pulled away, Watts saw Brown get into a Chevrolet Blazer.

Watts drove to his house, where his girlfriend and her minor children were present, and he and Slaughter went inside. When Watts went into a bedroom to change clothes, he saw the Blazer traveling down the alley behind the house. Fearing that Slaughter and Brown were conspiring against him, Watts asked Slaughter what he had told Brown at the barbershop. Slaughter said he told Brown that Watts should not have told police that Brown had shot Washington.

Furious, Watts lunged at Slaughter. In the scuffle, Slaughter's shirt was pulled up, and Watts saw that Slaughter had a gun in his waistband. Watts punched Slaughter and reached for the gun, but it fell to the floor. As they struggled for the gun, it fired, and the bullet grazed Watts's leg. Both men fell backward onto the floor. Watts picked up the gun and saw Slaughter take hold of an ironing board, which had an iron and scissors on it, in order to get up. Thinking Slaughter was reaching for the iron or the scissors, Watts hit Slaughter in the head with the gun "a couple of times." Watts later testified that, while his finger was on the trigger, the gun again "just went off," shooting Slaughter in the head. Slaughter died of the gunshot wound later that day.

Watts was arrested and charged with second-degree murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2000). At his trial, Watts asked the district court to instruct the jury on the lesser-included offense of first-degree manslaughter (heat of passion), in violation of Minn. Stat. § 609.20, subd. 1(1) (2000). The district court denied the request, concluding that (1) giving the heat-of-passion instruction would allow the jury to find Watts guilty of

both second-degree murder and first-degree manslaughter, which Minn. Stat. § 609.04 (2000) forbids, and (2) Watts had not offered sufficient evidence that he was reasonably provoked. The jury found Watts guilty of second-degree murder.

At sentencing, the district court found that Watts had three earlier convictions for violent crimes and that Watts posed a danger to public safety because (1) of his criminal record, (2) of his involvement with illegal drugs and gangs, (3) the crime was committed in the presence of his girlfriend's minor children, and (4) the assault on Slaughter showed particular cruelty. The court then sentenced Watts to 480 months in prison, an upward departure from the presumptive sentence of 426 months under the sentencing guidelines. The court also required Watts to serve at least two-thirds of the sentence, or 320 months, in prison and no more than one-third, or 160 months, on supervised release. This appeal follows.

D E C I S I O N

I.

Watts argues that the district court erred by refusing to give a jury instruction on first-degree manslaughter (heat of passion). First-degree manslaughter is a lesser-included offense of second-degree murder. *See State v. Galvan*, 374 N.W.2d 269, 271 (Minn. 1985). An instruction on a lesser-included offense should be given when, as a matter of law, a "rational basis" exists for the jury to (1) convict the defendant of the lesser-included offense and (2) acquit the defendant of the greater crime. *State v. Stewart*, 624 N.W.2d 585, 590 (Minn. 2001). We conduct an independent review of the record to determine whether such a rational basis exists. *See id.*

A jury may find that an intentional homicide constitutes first-degree manslaughter if (1) the killing was committed in the heat of passion and (2) "the passion was provoked by such words or acts of another as would provoke a person of ordinary self-

control under the circumstances." *Id.*; *see also* Minn. Stat. § 609.20, subd. 1(1) (2000). The first element is subjective and the second element is objective. *Stewart*, 624 N.W.2d at 590.

The first issue is whether Watts killed Slaughter in the heat of passion. We look for a heat of passion that "clouds a defendant's reason and weakens his willpower." *Id.* (quotation omitted). "Anger alone is not heat of passion." *Id.* (citation omitted). Watts testified that at the time he confronted Slaughter after he saw the Blazer outside his house, he was "feeling * * * betrayed, feeling scared, feeling trapped." He further testified that he was "very upset" when he confronted Slaughter. Such evidence is not sufficient for us to conclude that Watts acted in a heat of passion that clouded his reason and weakened his willpower and that a rational basis existed for the jury to convict him of first-degree manslaughter. Thus, the district court did not err by refusing to instruct the jury on first-degree manslaughter, and we affirm Watts's conviction.

II.

Watts also asks us to remand this case to the district court for resentencing with the instruction that he is entitled to supervised release upon completion of his term of imprisonment.

At the sentencing hearing, the state noted that Watts had two prior convictions for violent felonies and argued that "under the Statute, it means that he is not eligible for good time," meaning supervised release. The state does not dispute that the statute to which its attorney referred is Minn. Stat. § 609.1095, subd. 3 (2000), under which a person convicted of a third violent felony is ineligible for "probation, parole, discharge, or work release, until that person has served the full term of imprisonment imposed by the court."

After hearing from the attorneys, from the victims, and from Watts, the district court made findings that support an upward

departure under Minn. Stat. § 609.1095, subd. 2 (2000), from the presumptive sentence of 426 months. The district court also stated that Watts would serve at least two-thirds of the 480-month sentence, or 320 months, in prison and no more than one-third, or 160 months, on supervised release if he did not commit a disciplinary offense while in prison. With respect to supervised release, the district court said that it had considered the state's argument that supervised release "should be taken away from the outset" but that the issue was "something within the control of the Commissioner of Corrections and not myself." On appeal, Watts asks us to determine whether he is entitled to supervised release to "avoid any subjective interpretation of the law or the intentions of the sentencing court at such time when [his] scheduled release is determined."

Watts first argues that the district court did not pronounce sentence in accordance with the truth-in-sentencing provision of Minn. Stat. § 244.101, subd. 2 (2000). The record shows that the district court explained the sentence as required by the statute, indicating the minimum time to be served in prison and the maximum time on supervised release. We therefore conclude that this claim is without merit.

We furthermore note that whether Watts is entitled to supervised release is not within the control of the commissioner of corrections, as the district court said. It is the role of the courts, and not the commissioner, to make legal determinations concerning sentences. *See State v. Henderson*, 527 N.W.2d 827, 829 (Minn. 1995) (holding that courts cannot delegate determination of probation conditions to department of corrections).

Nonetheless, we fail to see how Watts has been injured by the district court's actions here. To prevail on appeal, a criminal defendant must establish both error and resulting prejudice. *Cf.*

City of St. Paul v. LaClair, 479 N.W.2d 369, 371 (Minn. 1992) ("Standing to appeal is conferred when there is injury to a legally protected right."). Because the sentence as pronounced entitles Watts to supervised release and nothing in the record indicates that he will serve less than 160 months on supervised release, unless he commits a disciplinary offense while incarcerated, Watts has not established error or prejudice. We therefore affirm his sentence.

Affirmed.