**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A24-0334**

State of Minnesota,
Respondent,

vs.

Nurbayan Obssa Hassan,
Appellant.

**Filed March 31, 2025**
**Affirmed**
**Connolly, Judge**

Hennepin County District Court
File No. 27-CR-23-23387

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

Kristyn M. Anderson, Minneapolis City Attorney, Cody Goodchild, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

**NONPRECEDENTIAL OPINION**

**CONNOLLY**, Judge

Appellant challenges his conviction for driving while impaired (test refusal), arguing that he is entitled to a new trial because he did not validly waive his right to

counsel. In his pro se brief, he also challenges both evidentiary rulings and the sufficiency of the evidence. We affirm.

## FACTS

On November 2, 2023, appellant Nurbayan Hassan was charged with gross misdemeanor driving while impaired (test refusal). The next day, the district court appointed the public defender's office to represent appellant. On November 27, after extensive discussion with a first district court judge (the first judge), appellant's request to discharge the public defender was granted.

In December 2023, appellant appeared pro se at a pretrial hearing before a second district court judge (the second judge). Appellant asked to represent himself and, after the hearing, both he and the second judge signed and dated a waiver of counsel. The waiver stated:

> I understand I have an absolute right to have an attorney represent me in this case.
>
> . . . .
>
> I understand if the [c]ourt allows me to represent myself:
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> I will be responsible for preparing my case for trial and trying my case;
>
> I will be bound by the same rules as an attorney;
>
> If I fail to do something in a timely manner, or make a mistake because of my unfamiliarity with the law, I will be bound by those decisions and must deal with them myself.
>
> I will not have an attorney to review the evidence, investigate the charges, obtain statements from witnesses, do legal research, draft motions, make written or oral arguments to the [c]ourt, question witnesses, make objections, argue to a jury, or take any other action to prepare or assist my case.

The next hearing was before a third district court judge (the third judge) on January 22, 2024. Appellant waived a jury trial and told the third judge he wanted to proceed without an attorney. The third judge determined that an evidentiary hearing would be more appropriate than a motion hearing and offered appellant information about the Legal Rights Center so he could obtain an attorney before the evidentiary hearing.

At a later bench trial on February 7, 2024, appellant again appeared pro se before the third judge who asked him about his waiver of counsel. Appellant told the third judge he was representing himself and had no further questions. The third judge denied appellant's motions to dismiss the case, reinstate his driver's license, return his license plates, and recover a towing fee; found him guilty; and sentenced him, stating: "You are sentenced to the Hennepin County Adult Corrections Facility for 364 days. Execution of this sentence is stayed for four years. You are ordered to serve 90 days." The sentence was stayed pending appeal.

On appeal, appellant challenges the validity of his waiver of his right to counsel; he also submits various issues in a pro se brief.

## DECISION

### I. Validity of waiver of counsel

> The clearly erroneous standard controls our review of a district court's finding that a defendant has knowingly, intelligently, and voluntarily waived his right to counsel. A finding is clearly erroneous when there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred. When the facts are undisputed, however, the question of whether a waiver-of-counsel was knowing and intelligent is a constitutional one that is reviewed de novo.

*State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012) (citations omitted). For a waiver to be valid, "the record must demonstrate among other things that the waiver is made with eyes open," which includes "knowing the possible punishments for the offense." *Id.* at 888. A defendant who has knowingly and intelligently waived his right to counsel "must be allowed to represent himself despite his lack of the legal ability to conduct a good defense." *State v. Bonkowske*, 957 N.W.2d 437, 440 (Minn. App. 2021). An invalid waiver requires reversal of a conviction as a remedy. *Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009).

The requirements for waiving counsel for defendants charged with felonies differ from the requirements for waiving counsel for defendants charged with misdemeanors or gross misdemeanors. For defendants charged with felonies:

> [t]he court must ensure that defendants . . . who appear without counsel, do not request counsel, and wish to represent themselves, enter on the record a voluntary and intelligent written waiver of the right to counsel. If the defendant refuses to sign the written waiver form, the waiver must be made on the record. Before accepting the waiver, the court must advise the defendant of the following:
> (a) nature of the charges;
> (b) all offenses included within the charges;
> (c) range of allowable punishments;
> (c) there may be defenses;
> (d) mitigating circumstances may exist; and
> (e) all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel.

Minn. R. Crim. P. 5.04, subd. 1(4). In contrast, defendants

> charged with a misdemeanor or gross misdemeanor punishable by incarceration who appear without counsel, do not request counsel, and wish to represent themselves, must waive counsel in writing or on the record. The court must not accept the waiver unless the court is satisfied that it is voluntary and has been made with full knowledge and understanding of the defendant's rights.

*Id.*, subd. 1(3). In both situations, "[t]he court may appoint the district public defender for the limited purpose of advising and consulting with the defendant as to the waiver." *Id.*

However, "circumstances [can] demonstrate a valid waiver even if the district court does not obtain a written waiver" and "a district court's failure to conduct an on-the-record inquiry regarding waiver . . . does not require reversal when the particular facts and circumstances of the case demonstrate a valid waiver." *State v. Gant,* 996 N.W.2d 1, 7-8, (Minn. App. 2023) (quotation and citations omitted). Because the district court erred "by conducting a felony sentencing hearing with a pro se defendant who did not expressly or impliedly waive the right to counsel," the court of appeals in *Gant* "reverse[d] and remand[ed] for a new sentencing hearing consistent with this opinion." *Id*. at 12.

*Gant* sets out four factors to consider in determining the validity of a waiver: (1) the defendant's "previous representation by counsel," (2) whether "standby counsel" was available, (3) the "district court engagement" with the defendant, and (4) the defendant's "prior experience" with the criminal justice system. *Id.* at 8-10. Appellant relies extensively on these factors to argue that his waiver was invalid. But *Gant* is distinguishable for two reasons.

First, *Gant* concerned a waiver of counsel for the sentencing hearing of a "defendant charged with a felony." *Id.* at 4-5. Consequently, the validity of that waiver was governed

by Minn. R. Crim. P. 5.04, subd. 1(4), which requires both a written waiver of the right to counsel and an advisory from the district court. Because neither of these had occurred before the sentencing hearing, the waiver was not procedurally valid. *Id.* at 7. This court therefore used the four *Gant* factors to determine whether it was otherwise valid. *Id.* at 8. Appellant, in contrast, was charged with a gross misdemeanor, which is governed by Minn. R. Crim. P. 5.04, subd. 1(3), and requires only that the waiver be either in writing or on the record and that the district court be satisfied that the waiver is voluntary and made with the defendant's full knowledge of his rights. Appellant's waiver met these conditions and therefore was procedurally valid, so no consideration of the *Gant* factors was appropriate, much less necessary.

Second, the factors themselves do not support appellant's claim that his waiver was not valid. As to previous representation by counsel, the transcript of the November 27, 2023, hearing indicates that appellant's counsel told the first judge that she and appellant had a discussion, she explained "various things and options," and appellant was "quite sure that he want[ed] to discharge the public defender's office." The first judge then asked appellant if counsel's statement was accurate and if he understood that: (a) he had the ability to represent himself, (b) he could hire an attorney to represent him, and (c) he qualified for representation by the public defender's office and a public defender had been appointed to represent him. Appellant answered, "yes," to each question. The first judge then asked appellant if he understood that, if he discharged the public defender's office, he could not come back and say he made a mistake and he did want the office to represent him, and appellant answered, "Yep." When the first judge asked appellant if he had been

to law school or taken the bar exam, appellant answered "No." The first judge then told appellant that he had to follow the rules that applied to him and no judge would help him and that the "Office of Legal Rights" would be a possible option if he did want help.[1] Finally, appellant answered "Yes" when asked if he was certain discharging the public defender's office was what he wanted to do.

As to advisory counsel, appellant cites cases in which defendants accused of felonies and subject to subdivision 1(4) of the rule had advisory counsel, but no cases in which defendants like appellant, charged with a misdemeanor or gross misdemeanor, had advisory counsel, and appellant offers no other support for his view that a district court is obliged to provide advisory counsel to those accused of gross misdemeanors. Moreover, the rule states that a district court *may*, not that it *must*, appoint advisory counsel because of concerns about "fairness of the process" or about "delays in completing the trial." Minn. R. Crim. P. 5.04, subd. 2(1)-(2). The court may also "appoint the district public defender for the limited purpose of advising and consulting with the defendant as to the waiver." Minn. R. Crim. P. 5.04, subd. 1(4). Here, the first judge did appoint a public defender, who talked to appellant before being fired.

As to the district court's statements about waiver, in addition to appellant's discussion with the first judge on November 27, 2023, the second judge and the third judge discussed the matter with him. The second judge asked appellant if he wished to represent himself and, when appellant answered that he did, told him:

[1] We assume the district court meant the Legal Rights Center.

> [Y]ou know, the advantage of hiring private counsel is if you hire an attorney, they know the statutes of Minnesota, the rules of criminal procedure, how to evaluate evidence, how to request it, how to evaluate a negotiation and compare what the offer is in this case to other cases. You understand that?

Appellant answered, "Yep." The second judge then explained the waiver form to appellant, saying, "If you would review it, sir, sign it, and date it, then we have an accurate record. We do that in cases where people are representing themselves just to make sure they're clear about everything. Do you have any questions about anything?" Appellant said, "I'll just look at the waiver. I'm not sure," and the second judge explained further, "The waiver says to the [c]ourt we've explained to you that you have a right to have private counsel, and you're making an informed choice that you don't want that. . . . [T]hat's what you, I believe, [are] telling me." Appellant replied, "Okay." The second judge went on, "That's why you're representing yourself today?" and appellant said, "Yeah." The second judge continued,

> [S]o the waiver that I'm talking about is it's a written waiver. . . . It's kind of a protocol that we give to people when they are making the choice to represent themselves and waiving or giving up their right to have an attorney stand next to them and represent them. So I'm just going to ask you to review that and sign that and make it part of the record if that's what you want to do, which I think it is.
>
> . . . .
>
> . . . I'm trying not to confuse you. So we're going to print out that form and we'll give that to you. If you want to just have a seat, review it. If you understand everything in it I'll ask you just to sign it, put today's date on it, and then bring it back to the court operations staff, who is to my left. They'll make a copy of it for you and give you a copy, and then you're free to take off.

The waiver form was signed and dated by both appellant and the second judge.[2]

On January 22, 2024, the third judge asked appellant if he had applied for representation by the public defender's office. After counsel for the state explained that appellant had "actually fired his public defender," the third judge asked appellant if he wanted to proceed without an attorney, and appellant said that he did. The third judge told appellant:

> You are representing yourself, having fired your public defender. You should know that you can, of course, hire an attorney to represent you. We do have information about the Legal Rights Center, and they represent people on a sliding scale. So that might be an option for you and we're happy to give you that information.
>
> If you represent yourself, you're held to the same standards as an attorney. . . .[Y]ou'll be expected to follow all the same rules and protocols as an attorney would; do you understand?

Appellant again answered, "Yes." After explaining to appellant that he would be having an evidentiary hearing and what that would entail, the third judge said,

> [W]hat I'd suggest is that you go to the Self Help Center. It's available online, but there are also people downstairs, and try to get some assistance. Because, as I said, because you're representing yourself, you'll be expected to follow the same rules and protocol as an attorney. The judge can't help you figure out what to say or what evidence to provide. You need to figure that out for yourself, sir.

[2] Although the waiver form was not filed until later, there is no indication that this affected its validity.

Thus, the first judge, the second judge, and the third judge all took pains to see that the waiver was knowing, voluntary, and intelligent, and appellant at no point indicated that he did not understand what he was doing in waiving his right to counsel.

Finally, appellant's only prior experience of the judicial system reflected in the record is appellant's 2016 DWI conviction. Having had a prior conviction and experienced its consequences, appellant was not ignorant of the judicial process. Even if it were appropriate to consider the four *Gant* factors when there is a procedurally valid waiver, none of them would provide a basis for concluding that appellant's waiver of his right to counsel was not valid.

**II. Pro se brief**

Appellant's pro se brief asks this court to "vacate" his conviction on the grounds that he was not allowed to present some evidence and that other evidence was misconstrued. Other than referring to and quoting the Fourteenth and the Fourth Amendments to the United States Constitution, appellant offers no legal support or argument for either assertion. Pro se supplemental-brief claims that are not supported by legal arguments or citations to legal authority are forfeited. *State v. Reek*, 942 N.W.2d 148, 165-66 (Minn. 2020). As to the issues that are raised in appellant's pro se brief, we have reviewed them and determined that they all fail.

**Affirmed.**