STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1836

State of Minnesota,
Respondent,

vs.

Kevin Mathew Erickson,
Appellant.

Filed August 13, 2018
Affirmed
Smith, Tracy M., Judge

Scott County District Court
File No. 70-CR-16-21371

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

Appellant Kevin Mathew Erickson challenges the district court's denial of his oral presentencing plea-withdrawal requests, arguing that the district court abused its discretion

by requiring him to file a written motion and not considering whether it was fair and just to allow plea withdrawal. We affirm.

FACTS

On November 30, 2016, the state charged Erickson with one count of fifth-degree controlled-substance crime in violation of Minn. Stat. § 152.025, subd. 2(1) (2016) and one count of misdemeanor domestic assault in violation of Minn. Stat. § 609.2242, subd. 1(2) (2016). The complaint alleged that, one day earlier, Erickson had possessed 2.29 grams of methamphetamine found in a hotel room, and that he had assaulted A.J.S., with whom he had had a relationship.

On May 1, 2017, the district court held a plea hearing and Erickson pleaded guilty to the fifth-degree controlled-substance crime in exchange for dismissal of the misdemeanor domestic-assault charge. After the plea petition was received and the factual basis was established, the district court stated that "[it will] defer acceptance of the plea here and dismissal of the remaining charge until the time of sentencing."

On July 28, the parties appeared for sentencing, but Erickson requested a continuance so that he could hire private counsel "to represent him in a plea withdrawal." The district court continued the sentencing hearing "in order to give [Erickson's private counsel] sufficient time to file the motion that would be required if he was requesting withdrawal of a plea." At Erickson's request, the district court discharged the public defender.

One month later, on August 21, the parties returned for sentencing. Erickson appeared without counsel. He informed the district court that he believed that he had

already withdrawn his guilty plea at the July 28 hearing. The district court stated that it did not see any motion to withdraw the plea and that the plea had not been withdrawn. Erickson acknowledged that he had not yet retained counsel, stated that it had been his intention to withdraw the plea following the July 28 hearing, and said, "[I]f I have to enter a motion, I do that verbally today." The district court stated that it would not allow Erickson to orally move to withdraw the plea at the sentencing hearing, explaining that, for a plea-withdrawal request, Erickson had to "bring a motion, and then the [c]ourt has to look at the issues [he has] raised in the motion, compare it with the law, and make a determination about whether or not it was knowing and voluntary." The district court denied Erickson's requests for "24 hours" and for a continuance. The district court then sentenced Erickson to 21 months in prison.

Erickson appeals.

D E C I S I O N

Erickson argues that the district court abused its discretion by denying his oral presentencing requests to withdraw the guilty plea without considering whether it was fair and just to allow plea withdrawal.

"A defendant has no absolute right to withdraw a guilty plea after entering it." *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). "Withdrawal is permitted in two circumstances." *Id.* First, a district court must allow a defendant to withdraw a guilty plea "[a]t any time" if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Second, a district court may allow a defendant to "withdraw a plea at any time before sentence if it is fair and just to do so." *Id.*, subd. 2.

When deciding whether to grant a motion to withdraw a guilty plea under the fair-and-just standard, a district court "must give due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea." *Id*. "A defendant bears the burden of advancing reasons to support withdrawal." *Raleigh*, 778 N.W.2d at 97. The state bears the burden of showing any prejudice that would result from such withdrawal. *Id.* "The ultimate decision is left to the sound discretion of the [district] court, and it will be reversed only in the rare case in which the appellate court can fairly conclude that the [district] court abused its discretion." *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

We have discretion to review the record to determine whether an appellant offered sufficient reasons to support a motion to withdraw the guilty plea. *See State v. Lopez*, 794 N.W.2d 379, 383 (Minn. App. 2011) (reviewing record "to determine whether the facts and circumstances satisfy the fair-and-just standard). Although the fair-and-just standard "is less demanding" than the manifest-injustice standard, "it does not allow a defendant to withdraw a guilty plea for simply any reason." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quotation omitted). "If a guilty plea can be withdrawn for any reason or without good reason at any time before sentence is imposed, then the process of accepting guilty pleas would simply be a means of continuing the trial to some indefinite date in the future when the defendant might see fit to come in and make a motion to withdraw his plea." *Kim*, 434 N.W.2d at 266.

Erickson advances three reasons to support his argument that the district court abused its discretion. First, Erickson argues that the district court never accepted his guilty plea or adjudicated him guilty. The state agrees, asserting that the case should be remanded to the district court so that the court can accept Erickson's guilty plea. Although the parties agree that the district court erred, this court must still conduct an independent inquiry. *See State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (noting that it is the responsibility of appellate courts to decide cases in accordance with the law, regardless of whether the parties choose to contest an issue). After carefully reviewing the record, we are not persuaded that the district court failed to accept Erickson's plea.

A conviction is defined as "(1) a plea of guilty; or (2) a verdict of guilty by a jury or a finding of guilty by the court" that is "accepted and recorded by the court." Minn. Stat. § 609.02, subd. 5 (2016). Therefore, when a defendant enters a guilty plea, "a conviction requires that a district court both accept and record the guilty plea." *State v. Thompson*, 754 N.W.2d 352, 355 (Minn. 2008) (citing Minn. Stat. § 609.02, subd. 5) (quotation marks omitted).

A district court *records* a guilty plea either by "accepting the guilty plea and adjudicating the defendant guilty on the record," *State v. Martinez-Mendoza*, 804 N.W.2d 1, 6 (Minn. 2011), or by entry of formal judgment of conviction, *State v. Jeffries*, 806 N.W.2d 56, 63 (Minn. 2011). A district court *accepts* a guilty plea when it uses "clear and unambiguous language of acceptance of the plea," but there are not "magic words" such as "convicted" or "I accept your plea" that "will always result in a conviction." *Id.* "A conviction appearing in the official judgment of conviction or in a conviction order entered

by the court has been formally adjudicated." *State v. Hoelzel*, 639 N.W.2d 605, 609 (Minn. 2002) (quotation omitted).

Here, the record shows that the district court implicitly accepted Erickson's guilty plea even though it did not use explicit words of acceptance. Taking the record as a whole and considering the district court's statements in context, the district court conveyed that it intended to accept Erickson's guilty plea at the sentencing hearing and it implicitly accepted Erickson's guilty plea at the sentencing hearing when it repeatedly stated that the purpose of the hearing was to sentence Erickson. In addition, the district court issued a sentencing order and warrant of commitment that entered the conviction of fifth-degree controlled-substance crime and sentenced Erickson to 21 months' imprisonment. Based on these facts, we conclude that the district court implicitly accepted Erickson's plea and properly entered his conviction.[1]

In any event, reversing the district court and remanding the case so that the district court can expressly accept Erickson's guilty plea would not give Erickson what he wants—withdrawal of his guilty plea. For these reasons, Erickson's first argument fails.

[1] Although no published case in Minnesota addresses implicit acceptance of a guilty plea, we note that this court in *State ex rel. Peltier v. Hvass* held that the district court "implicitly accepted" the defendant's guilty plea by adjudicating him guilty and that it did not need to expressly state that it had done so. No. A03-0008, 2003 WL 22534260, at *3 (Minn. App. Nov. 10, 2003). "Unpublished opinions are not precedential, but they may have persuasive value." *State v. Ellis-Strong*, 899 N.W.2d 531, 537 (Minn. App. 2017) (citing Minn. Stat. § 480A.08, subd. 3 (2016)) (other citation omitted). *Cf. United States v. Arafat*, 789 F.3d 839, 844 (8th Cir. 2015) (concluding that, even though the district court had not explicitly accepted the defendant's plea under the Federal Rules of Criminal Procedure, "[t]aken as a whole and considered in context, the district court's statements reflect that it intended to accept, and that it did implicitly accept [the defendant's] guilty plea").

Second, Erickson argues that the district court abused its discretion by not allowing him to make an oral motion to withdraw his guilty plea. Minn. R. Crim. P. 15.05 does not state whether a motion to withdraw a guilty plea must be made in writing. Minn. R. Crim. P. 32 states that "[a] motion other than one made during a trial or hearing must be in writing, unless the court or these rules permit it to be made orally." Erickson argues that, because he sought to withdraw his plea during a hearing (specifically, his sentencing hearing), the rules did not require a written motion and the district court erred as a matter of law by not considering his oral motion.

We find this argument unpersuasive. While Minn. R. Crim. P. 32 requires that a motion made outside a trial or hearing be in writing, it does not mandate that the district court entertain any oral motion made during any hearing. Here, the district court had granted Erickson's request for a continuance and had made clear that it granted the continuance "in order to give [Erickson's private counsel] sufficient time to file the motion that would be required if he was requesting withdrawal of a plea." Although a month had passed and sentencing was scheduled, Erickson had neither retained counsel nor filed any motion. The district court did not abuse its discretion in not ruling on Erickson's oral motion.

We need not decide whether a motion to withdraw a guilty plea made during the sentencing hearing must be in writing because Erickson's oral requests at the sentencing hearing failed to meet the requirements for a plea-withdrawal motion. Minn. R. Crim. P. 32 ("The motion must state the grounds on which it is made and must set forth the relief or order sought."); *See State v. Mudgett*, 748 N.W.2d 921, 922-23 (Minn. App. 2008) ("We

need not decide whether a motion must be written because [the defendant's] contingent request, written or not, did not require treatment as a pre-sentencing plea-withdrawal motion."). At the sentencing hearing, Erickson did not articulate the grounds for his requests. Instead, Erickson merely repeated his desire to withdraw his guilty plea and made some general statements concerning the public defender's performance and why he pleaded guilty. Because a defendant bears the burden of advancing reasons to support withdrawal, *Raleigh*, 778 N.W.2d at 97, and because pro se litigants are generally held to the same standards as attorneys and must comply with all rules of procedure, *Francis v. State*, 781 N.W.2d 892, 896 (Minn. 2010), these general statements fail to meet the requirements for a plea-withdrawal motion. *See Mudgett*, 748 N.W.2d at 923.

Finally, Erickson argues that the district court abused its discretion because the court suggested it would have applied the manifest-injustice standard, rather than the fair-and-just standard, had Erickson submitted a written motion. We disagree that the district court abused its discretion. It is true that the district court's statement that it would have made "a determination about whether or not [the plea] was knowing and voluntary" seems to indicate that the district court would have applied the manifest-injustice standard. *See Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997) ("Manifest injustice occurs if a guilty plea is not accurate, voluntary, and intelligent, and thus the plea may be withdrawn."). However, because Erickson's requests did not amount to a motion and the district court was not actually considering one, it does not matter whether the district court's brief description of the law was correct.

We conclude that the district court did not abuse its discretion in denying Erickson's oral requests to withdraw his guilty plea at the sentencing hearing.

Affirmed.