STATE OF MINNESOTA
IN COURT OF APPEALS
A11-162

State of Minnesota,
Respondent,

vs.

Jamal Ronta Williams,
Appellant.

Filed February 13, 2012
Affirmed
Halbrooks, Judge

Hennepin County District Court
File Nos. 27-CR-04-81504, 27-CR-09-49872, 27-CR-10-16421,
27-CR-10-25548, 27-CR-10-26671, 27-CR-10-34575

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

Michael O. Freeman, Hennepin County Attorney, Alan J. Harris, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Halbrooks, Judge; and Worke, Judge.

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

HALBROOKS, Judge

Appellant contends that his pre-sentencing motion to withdraw his guilty plea based on ineffective assistance of counsel created a conflict of interest for his attorneys

that required the district court to appoint substitute counsel to argue the issue. Because we conclude that the district court engaged in serious consideration of appellant's claims under the fair and just standard, we affirm.

FACTS

Appellant Jamal Ronta Williams was charged with seven crimes in four separate criminal complaints: failure to register as a predatory offender, theft by swindle over $1,000, counterfeiting of currency, two counts of third-degree driving while impaired (DWI), and two counts of domestic assault. Williams had two attorneys: Max Keller, who represented Williams on theft-by-swindle and counterfitting cases, and Keshini Ratnayake, who represented him on the other charges. To resolve all seven charges, Williams pleaded guilty to failure to register as a predatory offender, theft by swindle, and one count of third-degree DWI, and the state dismissed the other four charges. The state agreed to recommend that Williams receive concurrent sentences of 24 months for theft by swindle, 365 days for third-degree DWI, and 39 months for failure to register as a predatory offender. Appellant also agreed to the revocation of his probation on an unrelated matter and execution of the stayed 21-month sentence.

At the sentencing hearing, both Keller and Ratnayake informed the district court that Williams wanted to withdraw his guilty plea based on ineffective assistance of counsel, but neither attorney made a formal motion. During his allocution before sentencing, Williams moved pro se to withdraw his guilty plea based on his attorneys' alleged ineffective assistance. When the district court discussed the allegations underlying the claim with him, Williams stated, "I don't believe my attorneys did the best

job they could do." The district court denied Williams's motion to withdraw his guilty plea, concluding that there was no legal basis for it. The district court sentenced Williams to 39 months, consistent with the parties' agreement. This appeal follows.

D E C I S I O N

A defendant has the constitutional right to counsel in criminal trials, which includes the right to effective assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984). A defendant can also bring a motion to withdraw a guilty plea before sentencing, which the district court has the discretion to allow "if it is fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2. When bringing the motion, the defendant has the burden to establish the fair and just reasons for withdrawing his guilty plea. *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007). One fair and just reason might be lack of effective counsel at a plea withdrawal proceeding because counsel at the proceeding had a conflict of interest. *State v. Paige*, 765 N.W.2d 134, 140 (Minn. App. 2009). "The burden of a defendant claiming ineffective assistance due to a conflict of interest depends on whether and to what extent the alleged conflict was brought to the district court's attention." *Id.*

Minnesota case law has identified two factors to consider when evaluating whether an appellant's claim of ineffective counsel at the plea-withdrawal proceedings establishes a fair and just reason to allow appellant to withdraw his guilty plea. First, the district court must have sufficient notice of a potential conflict of interest that could materially limit defense counsel's representation, based on counsel's comments or actions. *See id.* at 141. Second, if there is sufficient notice, the district court must take

"adequate steps to ascertain whether an impermissible conflict existed." *Id*. If the district court fails to give serious consideration to the claims when determining whether an impermissible conflict existed, then the matter should be "reversed without inquiry into prejudice resulting from the alleged conflict." *Cooper v. State*, 565 N.W.2d 27, 32 (Minn. App. 1997) (citing *Holloway v. Arkansas*, 435 U.S. 475, 484, 488-89, 98 S. Ct. 1173, 1178-79, 1181 (1978)), *review denied* (Minn. Aug. 5, 1997).

We are guided in our resolution of this case by the supreme court's decision in *Butala v. State*, 664 N.W.2d 333 (Minn. 2003), and this court's decision in *Paige*, 765 N.W.2d at 141-42. In a postconviction proceeding, Butala sought to withdraw his guilty plea to first-degree murder on multiple grounds, including that he should have been afforded substitute counsel when his attorneys stepped aside and declined to advance his motion to withdraw his guilty plea. *Butala*, 664 N.W.2d at 340. The supreme court held that the lack of substitute counsel did not present a fair and just reason to allow Butala to withdraw his guilty plea, reasoning that the record demonstrated that the district court gave Butala's pro se motion at sentencing "serious consideration [by] taking care to review appellant's stated reasons and factual support as well as all of the relevant materials before making his ruling." *Id.* at 341. The supreme court also concluded that Butala articulately presented the same facts and grounds for withdrawal as did his postconviction counsel, and that with the assistance of postconviction counsel, Butala had the opportunity to fully litigate the claim of his right to withdraw his plea under the fair and just standard. *Id.*

In *Paige*, this court applied the *Butala* holding to a claim that the district court improperly addressed Paige's motion to discharge his counsel that resulted in the absence of adequate representation at his plea-withdrawal hearing. 765 N.W.2d at 140. We noted that the facts in *Paige*, while similar to those in *Butala*, were "sufficiently distinguishable to require a different outcome." *Id.* at 141. Butala had had the opportunity to fully litigate his claims. *Id.* at 140. Further, in *Butala*, the absence of adequate representation was attributable only to the nature of Butala's plea-withdrawal claim, whereas the absence of adequate representation in *Paige* was tied to the district court's "failure to clarify and address appellant's request to discharge counsel." *Id.* at 142. We therefore remanded the case to the district court for a new hearing on Paige's request to withdraw his plea.

Here, both of Williams's attorneys informed the district court of a possible conflict of interest and their reluctance to assert a motion that they determined lacked a legal basis. During his allocution before sentencing, Williams stated his bases for asserting a claim that his attorneys provided him with ineffective assistance:

> [M]y attorneys told me that 39 months was my only option or I would get 15 years, which wasn't true. After I spoke to another attorney, they told me that I had the right to actually go to trial, . . . and I could have been found not guilty. There is mitigating reasons on my charges for time less than guidelines, and [my attorneys] basically refused to mount a vigorous defense, and they didn't examine evidence on my—neither one of my charges.

Williams claimed that he did not know he had the right to go to trial. This assertion is directly contradicted by the guilty plea colloquy between appellant and Ratnayake:

> RATNAYAKE: And this agreement actually incorporates all of the cases you have with me and all of the cases you have with Mr. Keller. . . . Your choices today are to either proceed with this agreement, . . . or to reject this agreement and ask the Judge to commence the trial for you . . . .
> WILLIAMS: Yes.
> RATNAYAKE: So, first of all, what I want to make sure of is that you understand the two choices that you have today, one being entry of the agreement, the other being saying let's go to trial. Do you understand those options?
> WILLIAMS: Yes, I do.
> . . . .
> RATNAYAKE: For each case a jury of 12 would have listened to all of the evidence and they would not have found you guilty unless every single one of them agreed that the State had proven the case beyond a reasonable doubt. If they felt the State had not met that burden they would have found you not guilty. . . . Do you have any questions about those rights?
> WILLIAMS: No, I don't.

In order to properly address Williams's assertion that he was erroneously advised that if he were convicted of the felony charges, the statutory maximum aggregate sentence was 15 years (180 months), we note that the following exchange occurred at the guilty-plea hearing:

> KELLER: And, of course, if you went to trial you could get the statutory maximum because the State could make a motion for that, and so you could get 60 months on the Failure to Register. You understand that, right?
> WILLIAMS: Yes.
> KELLER: And if the witnesses actually came to court and if the felony Domestic was proven, you could get 60 months consecutive on that, and since there were two victims the

> State could ask for 60 months for each victim and you could get sentenced to 120 months consecutive to the 60 months on the Failure to Register. So that could add up to be 180 months, right?
> WILLIAMS: Correct.
> KELLER: And taking all that into consideration, that's one reason why you're agreeing to this deal of 39 months today, right?
> WILLIAMS: Yes.

Williams was properly and accurately informed by his counsel of the statutory maximum sentence that he could face if he were convicted of the felony domestic assault charges. To avoid the potential lengthy prison sentence, Williams agreed to serve 39 months in prison in exchange for his pleading guilty to three of the counts and the state's dismissal of the other four counts.

During the sentencing hearing, Williams asserted that the plea agreement was supposed to "cap" his prison time. The district court addressed appellant's allegation in the following exchange:

> THE COURT: Let's deal with the cap. You are agreeing to 39 months. How do you—help me out here, Mr. Williams. I am trying to figure out if you're agreeing to 39 months, what do you mean it's—there's no cap on here?
> WILLIAMS: There was supposed to be a cap on there.
> THE COURT: Of 39 months?
> WILLIAMS: Yeah.
> THE COURT: Well, there is a cap on here of 39 months.
> WILLIAMS: Oh, there is?
> THE COURT: Sure. . . . That's what you agreed to. That's what you signed here, 39 months.

The district court seriously considered Williams's claim and established that there was no merit to the claim of ineffective assistance of counsel. Williams received exactly what he bargained for and what he understood to be the terms of the plea agreement, as

demonstrated by the Minn. R. Crim. P. 15.01 colloquy on the record at the guilty-plea hearing. A defendant is not entitled to substitute counsel based solely on the utterance of "ineffective assistance of counsel" when there is no merit to his claim.

Williams's remaining arguments similarly lack merit. He contends that there were mitigating factors that would have resulted in a sentence below the guidelines. But the 39 months to which he agreed was well below the 180 months he could have received if he had been found guilty of all seven criminal counts. Even if factors may have existed to mitigate a 180-month sentence, they were incorporated in the parties' plea agreement. The record refutes Williams's assertions that Keller and Ratnayake did not mount a vigorous defense or consider all of the evidence. As the district court stated:

> Having been personally aware of all the files that are in front of me and having been personally aware of the efforts made by both Ms. Ratnayake and Mr. Keller and knowing Ms. Ratnayake for the number of times that she has appeared in front of me, as well as Mr. Keller having appeared in front of me on more than one occasion, I know that they were knowledgeable about your case, they were prepared to go to trial, they knew available defenses and that there is nothing that leads me to believe that your lawyers didn't meet all the standards. Having considered all that, Mr. Williams, I am going to deny your request.

Because the district court seriously considered Williams's allegations of ineffective assistance of counsel and determined that they all lacked merit, we conclude that the district court was not required to appoint substitute counsel for Williams.

Affirmed.