STATE OF MINNESOTA
IN COURT OF APPEALS
A11-457

State of Minnesota,
Respondent,

vs.

Quentin Lee Davis,
Appellant.

Filed March 19, 2012
Affirmed in part, reversed in part, and remanded
Crippen, Judge[*]

Hennepin County District Court
File No. 27-CR-10-306

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Frank R. Gallo, Jr., Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and Crippen, Judge.

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

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

CRIPPEN, Judge

Appellant was convicted on his guilty plea for possession of a firearm by an ineligible person. On appeal, he challenges the district court's denial of his motion to withdraw his plea. He also disputes the court's sentence, arguing that the stated jail credit was miscalculated and that the court wrongfully made a one-day reduction of the jail credit in exchange for satisfying appellant's minimal fine and surcharge obligations. Because appellant's plea-withdrawal application was not adequately supported, we affirm the district court's denial of the petition. We remand for the district court's redetermination of the amount of appellant's entitlement to jail credit, and we reverse the reduction of the jail credit to satisfy the defendant's fine and surcharge.

FACTS

On November 5, 2009, appellant Quentin Davis was a passenger in a vehicle stopped by the Minneapolis police on suspicion that an occupant was involved in a drug transaction. While searching the vehicle, officers found loose marijuana on the floor of the driver's side of the vehicle and a loaded gun in the console between the driver and passenger seats of the vehicle. Police later obtained evidence that appellant made incriminating remarks that suggest his possession of the gun that was found.

On June 28, 2010, following a charge of being a prohibited person in possession of a firearm, a violation of Minn. Stat. § 624.713, subds. 1(2), 2(b) (2008), appellant pleaded guilty while maintaining his innocence pursuant to *State v. Goulette*, 258 N.W.2d 758

(Minn. 1977). After failing to appear for a July 29 sentencing hearing, appellant was arrested and sentenced on November 8, 2010.

At the sentencing hearing, appellant made an oral pro se petition to withdraw his guilty plea, arguing that he had been pressured and misled by his attorney in entering his plea. The district court asked the attorneys to determine the amount of appellant's jail credit. After the attorneys engaged in an off-the-record discussion, the prosecuting attorney stated that "from what [defense counsel] and I can calculate I believe it's 226 days credit." The district court then denied appellant's request to withdraw his guilty plea, stating that it was "applying the fair and just standard" and "considered the defendant's petition and the content of that petition." The district court sentenced appellant to a 60-month confinement. Minn. Stat. § 609.101, subd. 5(b) (2008). The court asked appellant whether he wanted to "take one day off of [his] credit" in order for the court to deem satisfied the statutory minimum fine and surcharge. Appellant replied that it did not matter to him, so the district court reduced the jail credit applied to appellant's sentence from 226 days to 225 days, declaring that the fine and surcharge were satisfied.

D E C I S I O N

1. Appellant's Plea

Appellant argues that the district court failed to duly consider arguments in his pro se petition to withdraw his plea. A defendant does not have an absolute right to withdraw a guilty plea after it has been accepted. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). But a district court may allow withdrawal of a guilty plea prior to sentencing "if it

is fair and just to do so," or at any time "to correct a manifest injustice." Minn. R. Crim. P. 15.05, subds. 1, 2. The fair-and-just standard is less demanding than the manifest-injustice standard. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007).

In considering whether it is fair and just to allow a plea withdrawal, the district court must consider the defendant's reasons for seeking withdrawal and any possible prejudice to the state from granting withdrawal. *Id.* It is the defendant's burden to prove that there is a "fair and just" reason for withdrawing his plea. *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007). It is the state's burden to prove prejudice if the defendant were permitted to withdraw his plea. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). But if the defendant does not substantiate the reason it would be fair and just to allow withdrawal of the plea, the court does not have to consider the prejudice to the state. *Id.* at 98.

We will reverse a district court's decision denying a motion to withdraw a guilty plea "only in the rare case" in which it abused its discretion. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

Appellant argues that the court should have inquired as to the veracity of the claims made in his petition to withdraw his guilty plea. But it is the defendant's burden to show that it is fair and just to allow withdrawal of his plea. *Farnsworth*, 738 N.W.2d at 371. Where there is no evidence in support of withdrawal other than the defendant's bare allegations, the district court is simply required to consider those allegations along with all other evidence on the record under the appropriate standard. *Raleigh*, 778 N.W.2d at 97.

Although appellant stated in his withdrawal petition that he had been unduly pressured and misled in entering his plea, the district court observed that the "basis of the withdrawal of a plea is not supported by any facts or any evidence," and that there was an "extensive record made with respect to [appellant's] plea." The court further noted that it was "applying the fair and just standard . . ., [and] has considered the defendant's petition and the content of that petition."

The district court was not required to inquire about the factual basis of appellant's assertions when appellant provided none himself and when the record supported appellant's plea. It is evident that the court gave due consideration to appellant's petition to withdraw his plea and did not abuse its discretion in denying it.

2. Jail Credit Calculation

Appellant's dispute on the calculation of his jail credit is governed by Minn. R. Crim. P. 27.03, subd. 4(B), which requires that the number of days a defendant has spent in custody in connection with the offense being sentenced must be deducted from the sentence. Counsel for the parties furnished the district court what they believed was the correct credit. On appeal, appellant offers extra-record evidence to show that 226 may not be the correct number, and respondent also suggests that there is some uncertainty in the calculation.[1]

[1] Neither this contention nor the next that we review was challenged by appellant contemporaneous with the district court's sentencing proceedings, but legal objections to elements of the sentence are generally not waived. *State v. Maurstad*, 733 NW.2d 141, 146-48 (Minn. 2007).

Appellant's current offer of evidence does not indicate whether the jail time it represents was served in connection with this offense, and we cannot clearly discern the correct credit. Because the evidence on the record does not support the amount of jail credit calculated, we remand to the district court for a factual determination of the correct number of days of appellant's jail credit.

3. Altering the Credit

Appellant argues that the district court exceeded its authority in altering the number of days of his jail credit so that mandatory financial penalties would be deemed satisfied. Neither the minimum fine nor the surcharge can be waived by the district court. Minn. Stat. § 357.021, subd. 6(c) (2008). A district court must "state the number of days spent in custody in connection with the offense or behavioral incident being sentenced," and "that credit must be deducted from the sentence and term of imprisonment." Minn. R. Crim. P. 27.03, subd. 4(B). "The granting of jail credit is not discretionary with the trial court." *State v. Cameron*, 603 N.W.2d 847, 848 (Minn. App. 1999) (quotation omitted).

"A district court's decision whether to award credit is a mixed question of fact and law; the court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances." *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). Interpretation of criminal procedure rules is a question of law, which this court reviews de novo. *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005).

The district court found that appellant was entitled to jail credit but altered the credit and deemed the fine and surcharge to be satisfied. The mandatory nature of jail

credit is meant, at least in part, to prevent a de facto sentencing departure from being executed outside of the normal mechanism for doing so. *State v. Arden*, 424 N.W.2d 293, 294 (Minn. 1988); *see also State v. Folley*, 438 N.W.2d 372, 374 (Minn. 1989) (noting the further aim to avoid a prosecutor's freedom to manipulate the credit calculation). Governing rules further demand that jail credit "must be deducted from the sentence and term of imprisonment." Minn. R. Crim. P. 27.03, subd. 4(B).

The plain text of the jail-credit rule does not allow any discretion on the part of the court to alter the amount of jail credit, and appellant's sentenced days of confinement must be reduced for every day that he spent in custody in connection with this offense.[2] On remand, the district court is instructed to allow the full recalculated credit.

We affirm the district court's exercise of discretion in denying appellant's request to withdraw his guilty plea. We remand to the district court the issue of the precise number of days constituting appellant's credit, and we reverse the district court's failure to reduce appellant's confinement for the full amount of his jail credit.

Affirmed in part, reversed in part, and remanded.

[2] Respondent does not suggest and we observe no basis for construing the rule to view financial penalties as part of the "sentence" such that the district court has discretion to determine the days of credit that are the equivalent of financial penalties.