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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-582**

State of Minnesota,
Respondent,

vs.

Dwayne Cage,
Appellant.

**Filed January 17, 2012
Affirmed
Bjorkman, Judge**

Olmsted County District Court
File No. 55-CR-10-4772

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County
Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Wright, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his conviction of third-degree assault, arguing that the district court abused its discretion by denying his motion to withdraw his guilty plea. We affirm.

FACTS

Appellant Dwayne Cage was charged with second- and third-degree assault. On September 2, 2010, Cage pleaded guilty to third-degree assault pursuant to a plea agreement in which the state agreed to dismiss the other charge and agreed to his “release from custody pending sentencing.” In mid-October, before sentencing, Cage moved to withdraw his guilty plea. Cage asserted that his guilty plea was invalid because he “was not taking his prescribed medications” at the time of his plea and that he “is a vulnerable adult if he is not taking his medications.” He submitted a handwritten note from his doctor, dated September 29, 2010, which stated: “Dwayne Cage . . . was in my office . . . today. He requested a letter about his status as a ‘vulnerable adult.’ When off medication he certainly fits criteria.” Cage also asserted that his guilty plea was partially based on a mutual mistake as to his criminal-history score and, by extension, his presumptive sentence. The district court denied the motion, and this appeal follows.

DECISION

A defendant does not have an absolute right to withdraw a guilty plea. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). Guilty pleas may be withdrawn only if one of two standards is met. First, a guilty plea may be withdrawn at any time if “withdrawal is

necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists if a guilty plea is invalid. *Williams v. State*, 760 N.W.2d 8, 11 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009). A guilty plea is valid only if it is accurate, voluntary, and intelligent. *Id.* Second, a guilty plea can be withdrawn before sentencing “if it is fair and just to do so.” Minn. R. Crim. P. 15.05, subd. 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). We review a district court’s decision on a motion to withdraw a guilty plea for abuse of discretion. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

Cage first argues that the district court misapplied the law in evaluating his withdrawal motion; because Cage sought to withdraw his guilty plea before sentencing, the fair-and-just standard applied. We agree. A defendant may be able to satisfy the lower fair-and-just standard even if he cannot establish manifest injustice. *See State v. Raleigh*, 778 N.W.2d 90, 96-98 (Minn. 2010) (addressing claim of stress, pressure to plead guilty, and failure to fully understand the consequences of the plea under fair-and-just standard after concluding defendant could not meet manifest-injustice standard). A district court errs when it fails to consider this possibility. But such error warrants reversal only if application of the lower standard could produce a different result on the record established before the district court. *See* Minn. R. Crim. P. 31.01 (“Any error that does not affect substantial rights must be disregarded.”); *cf. State v. Lopez*, 794 N.W.2d 379, 385 (Minn. App. 2011) (stating that evaluation of a presentence plea-withdrawal motion under only the manifest-injustice standard “may in some circumstances warrant a

remand for reconsideration”). We therefore consider whether the district court’s error prejudiced Cage’s substantial rights.

A defendant seeking to withdraw a guilty plea must establish, under both the fair-and-just and manifest-injustice standards, that valid grounds support plea withdrawal. *See Raleigh*, 778 N.W.2d at 94-98 (stating that the defendant “bears the burden of advancing reasons to support withdrawal,” and failure to substantiate the stated reason warrants denial of guilty plea withdrawal). The district court rejected the factual bases of Cage’s claims—that his guilty plea was not valid because he was not taking his medication and because he relied on a mistake as to his criminal-history score in deciding to plead guilty. We address each claimed basis for plea withdrawal in turn.

Medication

Cage argues that his guilty plea is invalid because he was not taking necessary medication at the time he entered the plea. The only support for this claim is a handwritten note from Cage’s doctor, dated nearly four weeks after Cage’s guilty plea, stating that Cage “fits the criteria” of a “vulnerable adult” when he is not taking his medication. Although the doctor did not explain what he meant by “vulnerable adult,” the definition of “vulnerable adult” is immaterial in the absence of any evidence supporting Cage’s claim that he was not taking his medication at the time of his guilty plea. Cage did not submit a sworn affidavit or medical records from the time of his guilty plea indicating that he was not taking his medication. And the doctor’s note is silent as to whether Cage was taking his medication at the time of the guilty plea.

By contrast, the record of the guilty plea hearing indicates that Cage was taking his medication. The district court reviewed Cage's written guilty plea petition, which indicated that he was taking two prescription medications. And before accepting his guilty plea, the district court specifically questioned Cage about his medications and mental state:

DISTRICT COURT: And are those medications that you take to help you think better and feel better?

CAGE: To help me with my anxieties and my depression, yes.

DISTRICT COURT: Right. And are you currently taking them now?

CAGE: Yes, I am.

DISTRICT COURT: Are they helping?

CAGE: Yes, they are.

DISTRICT COURT: Are you thinking clearly today?

CAGE: Yes, I am.

This record thoroughly establishes that Cage was taking his medications when he pleaded guilty.

A district court is justified in relying on the contemporaneous record as to a defendant's mental state at the time of the guilty plea. *See State v. Ecker*, 524 N.W.2d 712, 719 (Minn. 1994) (affirming a district court's refusal to permit a plea withdrawal based on claim of involuntariness when the plea-hearing record showed that the defendant repeatedly stated that he was making his own decision); *Erickson v. State*, 702 N.W.2d 892, 898 (Minn. App. 2005) (rejecting the defendant's argument that plea was involuntary due to the use of alcohol and anti-depressants, because defendant testified that he understood what he was doing and that he was not under the influence of alcohol or drugs); *see also Williams*, 760 N.W.2d at 14 (stating that a defendant is not entitled to

an evidentiary hearing on a plea-withdrawal motion if the defendant's allegations lack factual support or are refuted by the defendant's own testimony in the record). Because Cage provided no evidence contradicting the contemporaneous record that he was taking his prescribed medications at the time of the guilty plea and understood the proceedings, we conclude that the district court did not abuse its discretion by rejecting Cage's request to withdraw his guilty plea on that basis.

Criminal-history score

Cage also asserts that withdrawal of his guilty plea is warranted because he pleaded guilty in reliance on a mutual mistake as to his criminal-history score. A mutual mistake as to a defendant's criminal-history score may justify permitting withdrawal of a guilty plea, but the mistake must be genuinely mutual and must be the basis of the guilty plea. *See State v. DeZeler*, 427 N.W.2d 231, 234-35 (Minn. 1988). “[W]hat the parties agreed to at the time of the plea agreement is an issue of fact to be resolved by the district court.” *Oldenburg v. State*, 763 N.W.2d 655, 658 (Minn. App. 2009); *see also State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (stating that a dispute on the substance of the plea agreement raises an issue of fact, but the interpretation and enforcement of the agreement are issues of law subject to de novo review).

A July 2010 pre-plea worksheet indicated that Cage's criminal-history score was 3. After Cage pleaded guilty, it was determined that Cage's actual score, based on the same criminal history, is 4. But nothing in the record indicates that Cage relied on the erroneous criminal-history score in deciding to plead guilty. Cage's guilty plea petition recites the plea agreement as a guilty plea to third-degree assault in exchange for the

state's dismissal of the other charge and an agreement that Cage could be released from custody pending sentencing. The plea agreement did not include a particular agreement as to sentencing or indicate an expected sentence; rather, it acknowledged that sentencing would occur after a formal presentence investigation. The district court discussed this agreement at the guilty-plea hearing and specifically addressed Cage's criminal-history score, asking if Cage's sentence would be "presumptive local." Defense counsel replied that it "should be" based on the criminal-history score of 3 in the pre-plea worksheet, "unless something comes up that we're not aware of at this point." This record amply supports the district court's determination that Cage did not rely on the lower criminal-history score in pleading guilty and therefore is not entitled to relief based on the subsequent correction of that score.

On this record, we conclude that the district court's erroneous application of the manifest-injustice standard to Cage's guilty-plea withdrawal motion was harmless error. And the district court did not abuse its discretion by denying Cage's motion to withdraw his guilty plea because he failed to establish a basis for withdrawal.

Affirmed.