STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1282

State of Minnesota,
Respondent,

vs.

Laqundus Laron Tanner,
Appellant.

Filed April 8, 2013
Affirmed
Kirk, Judge

Hennepin County District Court
File No. 27-CR-10-49094

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Kirk, Judge; and Klaphake, 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

KIRK, Judge

Appellant Laqundus Laron Tanner challenges the district court's denial of his motion to withdraw his guilty plea, and brings several pro se arguments challenging the jurisdiction of this court, the statutory basis for his conviction, and he raises a claim of ineffective assistance of counsel. We affirm.

FACTS

Respondent State of Minnesota charged appellant with one count of second-degree controlled substance crime in violation of Minn. Stat. § 152.022, subd. 1(6)(i) (2010), and two counts of third-degree controlled substance crime in violation of Minn. Stat. § 152.023, subd. 1(1) (2010). The charges arise from three different incidents that occurred in September and October 2010. One of the third-degree controlled substance crime charges arises from appellant's sale of 0.3 grams of crack cocaine to an undercover Minneapolis police officer on September 29. The second-degree controlled substance crime charge arises from the sale of 0.4 grams of crack cocaine to an undercover Minneapolis police officer on September 30 in Elliott Park. The other third-degree controlled substance crime charge arises from appellant's sale of 1.1 grams of crack cocaine to a Minneapolis police officer on October 19.

Appellant appeared for trial on January 23, 2012. The state had offered appellant a 60-month sentence in exchange for pleading guilty to the second-degree controlled substance crime, which represented a downward departure of 38 months from the presumptive sentence. Following a recess, appellant decided to accept the state's offer

and he was immediately arraigned and pleaded guilty to the crime. The other charges were dismissed.

On March 15, appellant moved the district court to withdraw his plea pursuant to Minn. R. Crim. P. 15.05, subd. 2. The district court denied the motion and sentenced appellant to 60 months in prison. This appeal follows.

D E C I S I O N

I. This court has jurisdiction over appellant.

Appellant argues in his pro se brief that he is not subject to the jurisdiction of this court because of his status as "[a] Moorish American Sovereign with Free National Name, All Unalienable Rights Reserved by Birthright." Appellant theorizes that he is not in contractual privity with the state because he has established his sovereignty through an averment to the Congress of the United States and the International Court of Justice.

"A person may be convicted and sentenced under the law of this state if the person . . . commits an offense in whole or in part within this state." Minn. Stat. § 609.025(1) (2012). Minnesota law "requires that some territorial event be committed in Minnesota to confer jurisdiction" on this court. *State v. Smith*, 421 N.W.2d 315, 319-20 (Minn. 1988). There is no dispute that appellant's crimes occurred in Hennepin County, Minnesota. The courts of Minnesota have jurisdiction over appellant.

II. The district court made no error in denying appellant's motion to withdraw his guilty plea.

Appellant argues that the district court abused its discretion when it refused to allow him to withdraw his guilty plea prior to sentencing. On appeal, the district court's

decision on a motion to withdraw a presentence plea "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).

"In its discretion the court may allow the defendant to withdraw a plea at any time before sentence if it is fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2. The district "court must give due consideration to the reasons advanced by the defendant in support of the motion." *Id.* The defendant bears the burden of proving that there is a fair and just reason for wanting to withdraw his plea. *Kim*, 434 N.W.2d at 266. "There is no absolute right to withdraw a guilty plea." *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007).

Appellant contends that he was motivated to withdraw his plea on the basis that he wished to accept an alternate option available to him during plea negotiations, a straight guilty plea to all three counts and subsequent sentencing by the district court. Appellant advised the district court at the sentencing hearing that he believed 60 months was an excessive sentence for the amount of crack cocaine he sold. It appears that appellant believes he would receive a more favorable sentence under the option he did not choose; however, "an unwarranted hope" about the sentence predicted by the appellant to have been dispensed by the district court is not sufficient grounds for the withdrawal of a plea. *Schwerm v. State*, 288 Minn. 488, 491, 181 N.W.2d 867, 868 (1970). Moreover, our supreme court has emphasized that it is impermissible to allow a defendant to withdraw a guilty plea "for simply any reason" because "[t]o do so would transform the process of accepting guilty pleas into 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." *Farnsworth*, 738 N.W.2d at 372 (quotation omitted).

Appellant also claimed that he felt coerced into accepting the plea because he believed that the district court judge had dinner plans and would be upset if a trial interrupted them. This rationale is not supported by the record, as appellant does not contend he was choosing between pleading guilty or proceeding to trial, but choosing between two different plea options.

It appears that appellant seeks to withdraw his guilty plea because he changed his mind. It was within the district court's sound discretion to determine whether it was fair and just to permit appellant to withdraw his plea, and the court did not abuse its discretion when it denied appellant's motion.

III. Appellant's conviction was proper under Minn. Stat. § 609.035 (2010).

Appellant argues pro se that his conviction was improper under Minn. Stat. § 609.035. Under the statute, "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them." Minn. Stat. § 609.035, subd. 1.

The crux of appellant's argument appears to be that he was prosecuted on three separate charges for the same crime. However, appellant apparently misunderstands that the statute only applies if appellant's conduct constitutes just one offense. Appellant was facing charges arising from three separate offenses that occurred at different times and

different places; he did not face multiple charges for one crime. Appellant's statutory argument fails.

IV. Appellant received effective assistance of counsel.

Appellant contends he was denied effective assistance of counsel because his attorney refused his request to bring a motion to suppress wiretap recordings between appellant and undercover police. When a claim of ineffective assistance of trial counsel can be determined on the basis of the trial record, it must be brought on direct appeal or it is barred under *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976). *Torres v. State*, 688 N.W.2d 569, 572 (Minn. 2004). To prevail on an assertion of ineffective assistance of counsel, appellant "must affirmatively prove that his counsel's representation 'fell below an objective standard of reasonableness' and 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)) (citation omitted). Judicial scrutiny of counsel's performance is highly deferential. *Roe v. Flores-Ortega*, 528 U.S. 470, 477, 120 S. Ct. 1029, 1035 (2000).

Appellant himself moved to suppress the recordings in a pro se motion, which the state successfully resisted. Appellant explains to this court that he was told by his counsel that she would not file a motion because it would be frivolous. "Matters of trial strategy lie within the discretion of trial counsel and will not be second-guessed by appellate courts." *Leake v. State*, 737 N.W.2d 531, 536 (Minn. 2007). Appellant's

attorney made a strategic decision not to contest the admission of the wiretaps. Because trial counsel is afforded broad discretion in such matters, appellant's claim of ineffective assistance of counsel is unjustified.

Affirmed.