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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1568**

State of Minnesota,
Respondent,

vs.

Anthony Dennis Cates,
Appellant.

**Filed May 6, 2013
Affirmed; motion denied
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-12-2773

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Stoneburner, Presiding Judge; Connolly, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's denial of his motion to withdraw his guilty plea to a charge of felony domestic assault. Because the denial was not an abuse of discretion, we affirm.

FACTS

Respondent State of Minnesota charged appellant Anthony Dennis Cates with felony domestic assault. Pursuant to a plea agreement, Cates agreed to plead guilty and to serve a 27-month executed prison sentence. Under the terms of the plea agreement, Cates was released from custody pending sentencing. But he agreed that he would receive a 36-month executed prison sentence if he failed to appear for sentencing or violated the conditions of his release. During the plea hearing, Cates acknowledged that he had read a petition to plead guilty, discussed it with his attorney, and signed each page of the petition. The plea petition included the following statements: (1) "I have never been a patient in a mental hospital," (2) "I have not talked with or been treated by a psychiatrist or other person for a nervous or mental condition," (3) "I have not been ill recently," and (4) "I have not recently been taking pills or other medicine." Cates also told the district court that it was solely his decision to plead guilty and that he was pleading guilty because he felt remorseful and wanted to take responsibility for his actions.

Prior to sentencing, the district court revoked Cates's conditional release because he allegedly used nonprescription drugs, failed to submit to a random drug test, and failed

to remain in contact with probation. At the sentencing hearing, the state asked the district court to sentence Cates to 36 months in prison because he violated his conditions of release. Cates informed the court that if the state sought more than 27 months, he would move to withdraw his plea. The district court continued the hearing for three weeks. Subsequently, Cates moved to withdraw his plea, contending that plea withdrawal was appropriate if the court intended to sentence him to more than the “agreed upon 27 month sentence.”

At the next court appearance, the state withdrew its request for a 36-month sentence and asked the court to sentence Cates to 27 months in prison. Cates’s attorney told the district court that Cates still wanted to withdraw his plea, “but not for the same reasons articulated in my memorandum.” Instead, Cates argued “[s]imply that he should be able to do it” and that “[h]e wishes to; it’s his right to; and the [c]ourt has the discretion to allow him to before sentencing.” The state asserted it would be prejudiced if the motion were granted, claiming that the victim had moved and arguing that the victim “would have to endure the stress of thinking about a future trial date when this had been, to her, a closed matter.”

The district court stated that it had given “due consideration to the reasons advanced in support of the motion by [Cates],” but found “there would be prejudice to the prosecution” and that granting the motion “could adversely affect the victim.” The district court concluded that it was not fair and just to allow Cates to withdraw his plea and that there was not a manifest injustice necessitating plea withdrawal. After the district court denied Cates’s motion, Cates told the court:

I don't feel I was in the right frame of mind to substantiate my guilty plea because, at that particular time, I was suffering from post-traumatic stress disorder and severe depression, and I didn't have my medication so I didn't think that my plea would be substantial, you know, as far as making a sound decision at that particular time.

The district court reiterated that it would not allow Cates to withdraw his guilty plea. The court sentenced Cates to serve 27 months in prison. Cates appeals the denial of his plea-withdrawal motion.

DECISION

I.

“A defendant does not have an absolute right to withdraw a valid guilty plea.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Guilty pleas may be withdrawn only if one of two standards is met. *See* Minn. R. Crim. P. 15.05 (setting forth the manifest-injustice and fair-and-just standards for plea withdrawal). Cates argues that the district court erred because it would have been fair and just to allow him to withdraw his plea.¹

The district court has discretion to allow plea withdrawal before sentencing “if it is fair and just to do so. The 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.*, subd. 2. A defendant bears the burden of advancing reasons to support withdrawal. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). The state bears the burden of showing prejudice caused by withdrawal. *State v. Wukawitz*, 662 N.W.2d 517,

¹ Cates does not challenge the district court’s decision under the manifest-injustice standard.

527 (Minn. 2003). Although it is a lower burden, the fair-and-just standard “does not allow a defendant to withdraw a guilty plea for simply any reason.” *Theis*, 742 N.W.2d at 646 (quotation omitted). Allowing a defendant to withdraw a guilty plea “for any reason or without good reason” would “undermine the integrity of the plea-taking process.” *Kim*, 434 N.W.2d at 266. We review a district court’s denial of a plea-withdrawal motion under the fair-and-just standard for an abuse of discretion, reversing only in the “rare case.” *Id.*

Cates asserts that at the time of his guilty plea, he “was suffering from post-traumatic stress disorder and severe depression,” “wasn’t in his right mind,” and “didn’t have his medications.” Cates further asserts that “he was under a lot of stress and felt pressured from the prosecutor to plead guilty or he would get a more severe charge.” But when he pleaded guilty, Cates proffered a petition in which he explicitly agreed that he had never been a patient in a mental hospital, had not been treated by a psychiatrist, had not been ill recently, and had not been taking any medications. Furthermore, Cates told the district court that it was solely his decision to plead guilty, and he volunteered that he was pleading guilty because he felt remorseful and wanted to take responsibility for his actions. In sum, there is nothing in the record to support Cates’s assertion that he was unable to make a sound decision when he entered his guilty plea. The fact that Cates may have changed his mind is not grounds for plea withdrawal. *See id.* (“[G]iving a defendant an absolute right to withdraw a plea before sentence would undermine the integrity of the plea-taking process.”).

Cates also asserts that the state “failed to establish that the prosecution would be prejudiced” by plea withdrawal. The state argued that it would be prejudiced because it would be difficult to arrange the attendance of the witnesses at trial and because a trial would be stressful to the victim. The district court considered those reasons and found that granting the motion would cause “prejudice to the prosecution” and “could adversely affect the victim.” The district court did not err in its consideration of prejudice to the state. *See id.* at 267 (finding no abuse of discretion where the district court considered, among other things, the interests of the victim and that the state had released witnesses from subpoena).

In conclusion, the district court gave due consideration to Cates’s reasons for plea withdrawal and the prejudice that would result from plea withdrawal. Although the showing of prejudice to the state is minimal, this is not a rare case justifying reversal of the district court’s discretionary decision. *See id.* at 266.

II.

Cates filed a pro se supplemental brief, asserting that the state’s arguments in district court were factually inaccurate. But the brief does not cite any legal authority, and it appears to be an attempt to correct the factual record. The supreme court has stated that if an appellant’s pro se supplemental brief fails to include an argument in support of his position or citation to legal authority, the pro se claims are waived. *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002). Moreover, the record on appeal consists of the papers filed in district court, the offered exhibits, and transcripts of the proceedings. Minn. R. Civ. App. P. 110.01; Minn. R. Crim. P. 28.02, subd. 8. And the court of appeals

is not a fact-finding court. *See Wright Elec., Inc. v. Ouellette*, 686 N.W.2d 313, 324 (Minn. App. 2004) (stating that “this court cannot serve as the fact-finder”), *review denied* (Minn. Dec. 14, 2004). For those reasons, we cannot resolve the factual disputes that are raised in Cates’s pro se supplemental brief, and we do not consider his pro se claims.

The state has filed a motion to strike Cates’s pro se supplemental brief on the grounds that it “alleges new facts that are not part of the district court record and his argument is unsupported by legal authority.” Because we do not consider Cates’s pro se claims, we deny the state’s motion to strike as moot. *See State v. Kipp*, 384 N.W.2d 230, 232-33 (Minn. App. 1986) (dismissing appellant’s motion to strike portions of respondent’s brief as moot because the “portions of respondent’s brief to which appellant objects are not necessary to the decision of this court”), *review denied* (Minn. May 22, 1986).

Affirmed; motion denied.