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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1989**

State of Minnesota,
Respondent,

vs.

Lincoln Caldwell,
Appellant.

**Filed November 18, 2008
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 06052666

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Mike Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Jodie L. Carlson, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Lincoln Caldwell pleaded guilty to second-degree assault in exchange for, among other things, one week of conditional release before his sentencing hearing. The district court issued an order authorizing his conditional release, but Caldwell was not released because the state filed new charges against him in connection with a separate incident. Caldwell then moved to withdraw his guilty plea, but the district court denied the motion. We conclude that there was no breach of Caldwell's plea agreement and that the district court did not abuse its discretion by denying the motion to withdraw the guilty plea. Therefore, we affirm.

FACTS

On August 4, 2006, the state charged Caldwell with attempted second-degree murder and first-degree assault. The complaint alleged that, on July 26, 2006, Caldwell shot S.L. in the chest at S.L.'s residence in Minneapolis after S.L. asked Caldwell and others to stop selling drugs outside S.L.'s residence and to leave.

On July 10, 2007, Caldwell pleaded guilty to a reduced charge of second-degree assault. In exchange for Caldwell's guilty plea, the state agreed to dismiss the attempted-murder charge and to recommend a 46-month prison sentence. At the plea hearing, the state also agreed, subject to the district court's approval, to allow Caldwell to be released from custody for a one-week period before his sentencing hearing. The district court approved the agreement, including the one week of conditional release, and accepted Caldwell's plea.

On July 19, 2007, the district court issued an order providing for Caldwell's release, on certain conditions, on July 24, 2007, and requiring him to appear for sentencing on July 31, 2007. On July 20, 2007, however, the state charged Caldwell with murder based on a separate incident, which, according to Caldwell's counsel, occurred in June 2006. Because of the new charges, Caldwell remained in custody continuously.

At sentencing, Caldwell moved to withdraw his guilty plea on the ground that he was not given a week of conditional release, as contemplated by the plea agreement. The district court found that there was not a breach of the plea agreement and, accordingly, denied Caldwell's motion to withdraw the guilty plea. The district court then sentenced Caldwell to 46 months of imprisonment. Caldwell appeals the denial of his motion to withdraw his guilty plea.

D E C I S I O N

A criminal defendant does not have an absolute right to withdraw a guilty plea. *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007); *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). If a defendant moves to withdraw a guilty plea before sentencing, the district court may, in its discretion, permit the defendant to withdraw the plea "if it is fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2; *see also Farnsworth*, 738 N.W.2d at 371. "It is well settled that an unqualified promise which is part of a plea arrangement must be honored or else the guilty plea may be withdrawn." *State v. Garcia*, 582 N.W.2d 879, 882 (Minn. 1998) (quoting *Kochevar v. State*, 281 N.W.2d 680, 687 (Minn. 1979)); *see also James v. State*, 699 N.W.2d 723, 728-29 (Minn.

2005). This court reviews a district court's decision to deny a motion to withdraw a guilty plea for an abuse of discretion. *Farnsworth*, 738 N.W.2d at 372.

Minnesota courts have applied principles of contract law to plea agreements. *In re Ashman*, 608 N.W.2d 853, 858 (Minn. 2000); *see also State v. Spaeth*, 552 N.W.2d 187, 194 (Minn. 1996) (noting that application of contract principles should be tempered with "safeguards" (quoting *Santobello v. New York*, 404 U.S. 257, 262, 92 S. Ct. 495, 499 (1971))). The plea agreement between Caldwell and the state is reflected in the transcript of the plea hearing. The prosecutor informed the district court that, pursuant to an agreement between the parties, Caldwell would be

allowed out of custody for approximately one week before sentencing to allow himself the time to get affairs in order.

....

My understanding is that the Court was willing to accept the offer, including the one week out of custody . . . but indicated that you would want some form of supervision, which would include conditional release, electronic home monitoring, probably a 10 o'clock curfew and random drug testing as determined by conditional release.

Defense counsel then expressed Caldwell's desire to be released as soon as possible after the plea hearing rather than closer in time to the sentencing hearing. The district court did not commit to grant defense counsel's request but, rather, indicated that the one-week period would occur sometime before the sentencing hearing and was more likely to occur in the latter part of the available time period:

THE COURT: Mr. Edlund [counsel for Caldwell], did you decide which week you wanted off? I can tell you looking at this some more, just in how we can make this

happen, it would probably make most sense to have it the last week before sentencing because at that point I could change his bail as a conditional release. It would be harder to do it the other way. *Furlough* is a term that doesn't work very well in the facilities here.

MR. EDLUND: I spoke with Mr. Caldwell about his options and he expressed that he would just as soon do the presentence investigation and be released shortly thereafter. If I could have a moment, I can talk to him again.

THE COURT: Here's what we will do: I'm going to accept the negotiation from the prosecution; I'll promise [Caldwell] the week off. We may have to go through some mechanical means to figure out exactly how to do that. It just isn't the sort of thing that happens in the jail when somebody has a bail this high, but we will find a way to get that done.

Mr. Caldwell, you heard all this, is this something you want to do?

DEFENDANT: Yes.

At the conclusion of the plea hearing, the district court reiterated the uncertainty concerning the timing of the conditional release by saying, "I can't tell you which seven days it's going to be but you will get your week off."

At the sentencing hearing, before ruling on Caldwell's motion to withdraw his guilty plea, the district court sought to determine whether the timing of the new charges in the other case had been manipulated so as to frustrate the purpose of the plea agreement in this case. The district court made inquiries of the prosecutor and the probation officer and found that "neither of them had any involvement in the decision to charge Mr. Caldwell with the new offense." The district court stated that it was not aware of the new charges until the sentencing hearing. Thus, the district court made a finding that Caldwell "did not obtain the one-week release . . . for reasons completely

beyond the control of the Court, the probation office, or the prosecution.” The district court stated that Caldwell’s continued confinement was “caused by the fact that [he] was held independently on a new charge.” The district court’s inquiry served to ensure that the plea agreement was not unjustly circumvented, and Caldwell does not directly challenge these findings of fact. Rather, Caldwell challenges the district court’s conclusion that there was no breach of the plea agreement. In light of the agreement between the parties and the district court’s statements during the plea hearing, the district court correctly determined that there was no breach of the plea agreement. There was no failure of performance by either the state or the district court. The district court complied with the plea agreement by issuing an order authorizing Caldwell’s conditional release within the specified time frame.

Caldwell contends that the plea agreement was breached because the district court, in essence, gave him an unconditional promise of being released for one week. Caldwell cites the district court’s statements at the plea hearing that “I’ll promise [Caldwell] the week off,” and “we will find a way to get that done.” These comments, however, were made in the context of responding to Caldwell’s expressed preference for a one-week period at the beginning, rather than the end, of the interval between the plea hearing and the sentencing hearing. When read in context, the above-quoted colloquy reveals that the district court informed Caldwell that the district court was certain to order his release for a one-week period but was uncertain about exactly when the one-week period would begin and end. The district court’s July 19, 2007, order for conditional release was

consistent with the district court's comments at the plea hearing. By issuing an order for Caldwell's release, the district court fulfilled the terms of the plea agreement.

Even though Caldwell did not receive the benefits he expected to receive, this case can be distinguished from a leading case on this issue. In *State v. Kunshier*, 410 N.W.2d 377 (Minn. App. 1987), *review denied* (Minn. Oct. 21, 1987), the defendant pleaded guilty in exchange for a reduced sentence but escaped from custody and committed a new offense before sentencing. *Id.* at 378. At the sentencing hearing on the original charge, the state recommended that the district court impose a sentence greater than provided in the plea agreement, and the district court did so. *Id.* at 378-79. On appeal, this court held that defendants "do not forfeit their right to withdraw those pleas of guilty and stand trial if, because of later events, the trial court or the prosecution ethically change their minds about previous agreements that were reached." *Id.* at 380. In this case, however, neither the state nor the district court changed positions concerning the one week of conditional release. Furthermore, in this case, both the state and the district court followed through on the plea agreement. Caldwell was unable to take advantage of the one week of conditional release afforded him under the plea agreement for reasons that are independent of the plea agreement and independent of this case and due solely to his own conduct.

Caldwell contends that the district court erroneously applied the "manifest injustice" standard of rule 15.05, subdivision 1, rather than the more lenient "fair and just" standard of rule 15.05, subdivision 2, which applies to a pre-sentence motion to withdraw a guilty plea. Contrary to Caldwell's argument, the district court did not make

any reference to the manifest-injustice standard. Rather, it was Caldwell's counsel who referred to the incorrect standard by arguing to the district court that "there is a manifest injustice occurring that Mr. Caldwell has not been provided his week out, as was the benefit of the deal." There is no indication that the district court applied the wrong standard when it denied Caldwell's motion.

In sum, the district court did not abuse its discretion by denying Caldwell's motion to withdraw his guilty plea. The district court issued an order for Caldwell's conditional release, as required by the plea agreement.

Affirmed.