STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1337

State of Minnesota,
Respondent,

vs.

Michael John Husten,
Appellant

Filed April 21, 2014
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-12-2130

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Kirk, Judge.

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

WORKE, Judge

Appellant argues that the district court erred by denying his petition to withdraw his guilty plea; he also raises other pro se issues. We affirm because the district court did

not abuse its discretion by concluding that appellant's plea was valid, and because appellant failed to raise the pro se issues to the district court.

FACTS

R.H. was murdered in 1975; appellant Michael John Husten was a suspect, but the evidence was insufficient to charge him. In 2011, Husten was charged with a separate aggravated-robbery offense. While in custody, Husten confessed to R.H.'s murder, and he was charged with second-degree intentional murder.

Husten offered to plead guilty to second-degree murder in exchange for imposition of a 20-year sentence and dismissal of the aggravated-robbery charge. The signed plea petition states, among other things, that Husten was not being treated for a nervous or mental condition and was not taking medication. Husten was not represented by an attorney, but the district court had appointed advisory counsel, and Husten's plea petition was completed with the assistance of advisory counsel.

At Husten's plea hearing, he said that he was pleading guilty to the murder charge and not to the aggravated-robbery charge because "[he] did not commit the robbery charge, and [he] committed . . . the murder." But when asked specifically by the district court why he negotiated a sentence that was four times longer than the projected sentence for aggravated robbery, Husten said, "I see no justice in this court with you because I think you're biased, as I . . . told you before in previous court hearings." Husten agreed that he had reviewed and filled out the plea petition "line by line" with the assistance of advisory defense counsel.

Advisory counsel questioned Husten about the constitutional rights he was giving up by entering the guilty plea. The court then inquired about Husten's mental-illness history, and Husten admitted that he had a life-long history of depression and had been taking an antidepressant for 23 years, but stated that the medication did not affect his ability to understand right and wrong or to defend himself. The district court said, "I can tell from the many conversations you and I have had together that you're very much aware of what's happening here in the courtroom."

The prosecutor examined Husten to elicit the factual basis for his plea:

> Q: Mr. Husten, you would agree on February 8, 1975, you were in Minneapolis?
> A: Yes.
> Q: And that's in Hennepin County, Minnesota?
> A: Yes.
> Q: At that time, you were in the presence of a man named [R.H.]?
> A: Yes.
> Q: You guys got into an altercation that evening, is that correct?
> A: Yes.
> Q: You would agree that during that altercation, you got [R.H.] on the ground and you hit him in the head with a stereo receiver, is that correct?
> A: Yes.
> Q: You would agree that when you did that, you had the intent to kill him?
> A: Yes.
> Q: You would agree that by hitting him in the head, that caused the death of [R.H.]?
> A: Yes.
> Q: And you would agree that, based on that, you were using the stereo receiver as a weapon and that by hitting him, you caused his death and that you intended to cause his death?
> A: Yes.

The district court accepted Husten's guilty plea and imposed the 20-year sentence, in accordance with Husten's plea agreement.

Months later, Husten petitioned for postconviction relief, seeking to withdraw his guilty plea because of the district court's bias and "because he suffered from documented mental illness and was not on his medications at the time of his guilty plea." The district court denied Husten's petition, and this appeal followed.

D E C I S I O N

Plea withdrawal

"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). A defendant may withdraw a plea after sentencing "upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A plea is manifestly unjust if it is not "accurate, voluntary, and intelligent." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). "The voluntariness requirement helps insure that the defendant does not plead guilty because of any improper pressures or inducements." *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). "The requirement that the plea be knowingly and understandingly made is designed to insure that the defendant understands the charges, the rights being waived and the consequences of the guilty plea." *Id.* "The accuracy requirement . . . is meant to protect the defendant from pleading guilty to a charge more serious than he could be convicted of if the case went to trial." *Bolinger v. State*, 647 N.W.2d 16, 21 (Minn. App. 2002).

On appeal, a postconviction court's decision must be affirmed absent an abuse of discretion. *Bruestle v. State*, 719 N.W.2d 698, 704 (Minn. 2006). In reviewing a postconviction decision, we review issues of fact for sufficiency of evidence and issues of law de novo. *Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010).

Husten argues that his plea was not accurate, voluntary, or intelligent. As to accuracy, Husten asserts that the factual basis for the plea was inadequate because it was elicited through leading questions from the prosecutor. In *State v. Raleigh*, the supreme court reiterated that as a general practice the district court should interrogate a defendant to establish the factual basis for a plea, permitting the defendant to "express in his own words what happened." 778 N.W.2d 90, 94-95 (Minn. 2010). Further, in general, if counsel establishes the factual basis for the plea, counsel should not ask the defendant only leading questions. *Id.* at 95. However, as in *Raleigh*, we note that the factual basis for Husten's plea was sufficient, and only the form used was a "disfavored format." *Id.* at 96. We conclude that the factual basis for the plea was sufficient to establish its accuracy. *Id*. at 94 (stating that the petitioner could not withdraw a plea "simply because the [district] court failed to elicit proper responses if the record contains sufficient evidence to support the conviction").

Husten next argues that his plea was not voluntary because "he believed his trial attorney was not capable of fully representing his interests . . . and because he believed that the district court was biased." In determining the voluntariness of a plea, we examine the reasonable understanding of the parties on the terms of the plea agreement and whether the plea was the result of improper pressure or coercion. *Id.* at 96. The facts

surrounding Husten's plea do not suggest that his plea was the product of coercion. Appellant's counsel was merely advisory because Husten had waived counsel, and standby counsel was appointed to ensure the validity of his plea. *See* Minn. R. Crim. P. 5.04, subd. 2 (permitting the district court to "appoint advisory counsel to assist a defendant who voluntarily and intelligently waives the right to counsel"). In addition, other than a bald claim that his court-assigned attorney was inadequate, the record does not support this assertion.

Further, there is no evidence of bias on the part of the district court judge. Husten's apparent basis for the claim is either adverse pretrial hearings or the district court's conduct in presiding over proceedings related to the aggravated-robbery charge, but Husten named no specific instance of bias, nor does this record include one. *See Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008) (stating that judicial bias is not shown by "[p]revious adverse rulings by themselves" and requiring bias to "be proved in light of the record as a whole"). In addition, Husten initiated the plea agreement, and he insisted on pleading guilty to the murder charge even after being informed by the district court that the sentence for murder was four times longer than the sentence for aggravated robbery.

Finally, Husten claims that his plea was not intelligent because the district court became aware of the fact that he suffers from depression and that he was not taking his medication on the date of the plea hearing, but did not question him about his mental condition before accepting the plea. A defendant is not competent to participate in criminal proceedings if the defendant is unable to "rationally consult with counsel" or

"understand the proceedings or participate in the defense due to mental illness or deficiency." Minn. R. Crim. P. 20.01, subd. 2. If the district court "determines that reason exists to doubt the defendant's competency," the district court must order an examination of the defendant's mental condition. *Id.*, subd. 3. Further, Minn. R. Crim. P. 15.01, subd. 1(5), requires the district court to determine at the plea hearing whether the defendant "has a mental disability" or "is undergoing medical or psychiatric treatment."

The plea-hearing testimony demonstrates that Husten fully understood and participated in the hearing, and that the district court had a proper factual basis for ruling that Husten had no mental disability that affected his ability to participate in the proceedings. In response to the district court's question of whether Husten had a history of mental illness, Husten stated, "I have a history, life-long history of depression, but not any in regards to my competence of right and wrong or my competence to defend myself in trial against these charges." Husten also said that he had taken an antidepressant for 23 years to help "maintain a daily maintenance of trouble-free and clear thinking." When asked by the district court how the medication affected his thinking, Husten answered, "[I]t has no cognitive effects whatsoever." The court also asked Husten if he was currently taking the medication, and Husten replied that he was, but that he generally took two days off per week because he did not need to work in prison on those days and did not "get up in the morning to go get my medicine." Husten denied that his medication affected his "ability to understand what's happening." Based on this dialogue, the district court concluded, "All right. Well, I can tell from the many

conversations you and I have had together that you're very much aware of what's happening here in the courtroom." On this factual record, we observe no error in the district court's inquiry about Husten's mental health or its conclusions regarding his ability to participate in the plea hearing.

We conclude that the district court did not abuse its discretion by denying Husten's postconviction petition because the record demonstrates that his guilty plea was valid. *See Bruestle*, 719 N.W.2d at 706 (affirming postconviction decision denying relief based on claimed mental illness, when, in part, defendant produced no evidence of mental incompetence at plea hearing); *Williams v. State*, 760 N.W.2d 8, 14-15 (Minn. App. 2009) (affirming postconviction decision denying relief when defendant submitted no factual proof of basis for plea withdrawal and plea petition countered claim that plea was not voluntary or intelligent), *review denied* (Minn. Apr. 21, 2009).

Pro se claims

Husten also asserts various pro se claims related to the district court's appointment of advisory defense counsel, denial of a continuance, failure to order a "psychiatric examination," and failure to recuse himself, as well as claims of prosecutorial misconduct, denial of the perceived right to examine witnesses at pretrial hearings, and Husten's false testimony undermining his guilty plea. These issues were not raised in district court. "It is well settled that a party may not raise issues for the first time on appeal from denial of postconviction relief." *Azure v. State*, 700 N.W.2d 443, 447 (Minn. 2005). In addition, the district court record does not provide factual support for any of the claims. *See State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007) (stating that

"conclusory, argumentative assertions, without factual support" are insufficient to support a postconviction claim for relief). For these reasons, we decline to consider Husten's pro se claims.

Affirmed.