

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1143**

State of Minnesota,
Respondent,

vs.

Kia Lee,
Appellant.

**Filed April 28, 2014
Affirmed
Rodenberg, Judge**

Ramsey County District Court
File No. 62-CR-12-7027

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

John Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Rodenberg, Judge; and Chutich, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Kia Lee challenges the district court's denial of her motion to withdraw her guilty plea. We affirm.

FACTS

Appellant was charged with felony damage to property in the first degree, Minn. Stat. § 609.595, subd. 1(3) (2010), and misdemeanor violation of a harassment restraining order (HRO), Minn. Stat. § 609.748, subd. 6(b) (2010), when she caused over \$3,000 in damage to a vehicle after going to an address from which she was banned under an existing HRO. On February 5, 2013, and as part of a global settlement agreement to resolve multiple charges in two files, appellant pleaded guilty to the count of violating the HRO in this case and agreed to pay restitution for the deductible amount of the vehicle's insurance. In exchange for her guilty plea, the state agreed to dismiss the property-damage charge.¹

At the plea hearing, the state introduced a "petition to enter a plea of guilty" to the HRO-violation charge, signed by appellant, listing the maximum possible penalties and fines and appellant's constitutional rights. By signing the petition, appellant acknowledged that she had discussed the plea agreement with her attorney and that she was waiving the constitutional rights listed on the form. When questioned about the plea petition, appellant acknowledged on the record that she was waiving her rights voluntarily and that she was, in fact, guilty of violating the HRO. She then provided a factual basis for her guilty plea. The district court deferred adjudication of guilt until the sentencing hearing, which was set for March 21.

¹ Appellant also pleaded guilty to attempting to procure prescription drugs with a fraudulent prescription and has petitioned for postconviction relief regarding that conviction. Although the two pleas were taken at the same hearing, that conviction is not part of this appeal.

Appellant failed to appear for her sentencing hearing, and the district court issued a bench warrant for her arrest. She was arrested on the warrant after turning herself in to police. A sentencing hearing was later held. At the beginning of the hearing, appellant's counsel stated: "[Appellant] did ask me to make a motion to withdraw the pleas in this case." The district court then asked for the basis of the motion:

DEFENSE: Your Honor, at the time [appellant] entered the pleas, she indicated to me that she did not understand the full nature and consequences of those pleas, and she felt that she was being forced into those pleas, and that is our basis.

DISTRICT COURT: Alright. Well, unfortunately, I do not have a transcript. [To prosecution:] And did you have notice of the motion to withdraw the plea?

PROSECUTION: No, Your Honor.

DISTRICT COURT: Alright. I find the motion to be untimely and, frankly, I find it without any basis. I remember clearly going through this plea process with [appellant], and although she—as I recall—was not very keen on the idea, she ultimately understood what was going on and did so voluntarily, intelligently, and knowingly. So the motion to withdraw the plea is denied.

The district court then accepted the guilty plea offered earlier, adjudicated appellant guilty, and sentenced her in accordance with the plea agreement. This appeal followed.

DECISION

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). The Minnesota Rules of Criminal Procedure permit withdrawal in two circumstances. Minn. R. Crim. P. 15.05, subds. 1, 2. Rule 15.05, subdivision 1, states that a district court *must* allow withdrawal of a guilty plea if “withdrawal is necessary to correct a manifest injustice.” *Kim v. State*, 434 N.W.2d 263,

266 (Minn. 1989). But subdivision 2 sets a lower standard, providing that a defendant *may* be permitted to withdraw a plea before sentencing “if it is fair and just to do so.” *Id.* Appellant argues that the fair-and-just standard applies to this appeal, while the state argues that we should analyze this case under the manifest-injustice standard because the motion to the district court was presented under that standard.

Under the manifest-injustice standard, a motion to withdraw a guilty plea must be granted if the guilty plea is not valid. *Raleigh*, 778 N.W.2d at 94. This, in turn, depends on whether the plea was accurate, voluntary, and intelligent. *Id.* At the sentencing hearing, appellant’s counsel argued as follows: “[Appellant] did not understand the full nature and consequences of those pleas, and she felt that she was being forced into those pleas.” This amounts to an argument that appellant’s plea was not voluntary or intelligent. It therefore seems to be a motion under the manifest-injustice standard of rule 15.05, subdivision 1. In the context of a motion before sentencing, however, subdivision 2 permits the district court to allow plea withdrawal under the fair-and-just standard. And certainly it would be unfair and unjust to deny withdrawal of appellant’s guilty plea if it was not valid because appellant felt “forced into” the plea. We therefore analyze appellant’s motion under the fair-and-just standard, and then we separately analyze the motion under the manifest-injustice standard.

“[T]he ‘ultimate decision’ of whether to allow withdrawal under the ‘fair and just’ standard is ‘left to the sound discretion of the [district] court, and it will be reversed only in the rare case in which the appellate court can fairly conclude that the [district] court abused its discretion.’” *State v. Kaiser*, 469 N.W.2d 316, 320 (Minn. 1991) (quoting

Kim, 434 N.W.2d at 266). “The [fair-and-just] standard requires district courts to give due consideration to two factors: (1) the reasons a defendant advances to support withdrawal and (2) prejudice granting the motion would cause the [s]tate given reliance on the plea.” *Raleigh*, 778 N.W.2d at 97 (quotation marks omitted). A defendant bears the burden of advancing reasons to support withdrawal. *Id.* at 94. The fair-and-just standard is less demanding than the manifest-injustice standard, but “it does not allow a defendant to withdraw a guilty plea for simply any reason.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quotation omitted).

Reversal may be warranted if the district court fails to engage in the correct analysis under the fair-and-just standard. *State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013) (“Although a decision to allow plea withdrawal is discretionary under [rule 15.05,] subdivision 2, a district court must apply the standard mandated by the rule when exercising its discretion.”), *review denied* (Minn. Dec. 31, 2013). The first step in the analysis requires the district court to give “due consideration” to “the reasons a defendant advances to support withdrawal.” *Raleigh*, 778 N.W.2d at 97. If a defendant provides sufficient reasons in support of withdrawal, the state may still defeat the motion by showing that it will be prejudiced by the district court’s granting of the motion. *Id.*

At the sentencing hearing, appellant argued that she “felt that she was being forced into” the plea. The district court noted that it did not have a transcript, but it stated that it remembered the plea hearing. It recalled that appellant had some reservations about pleading guilty, but also recalled facts satisfying the district court that the plea was entered “voluntarily, intelligently, and knowingly.” Therefore, the district court gave

“due consideration” to the reasons appellant advanced in support of her motion. *See id.* Because the district court concluded that these reasons were not sufficient to allow plea withdrawal, it was not required to consider whether the state would be prejudiced. *See id.* We conclude that the district court engaged in the proper analysis under subdivision 2, *see Cubas*, 838 N.W.2d at 224, and acted within its discretion in denying the plea under subdivision 2, *see Kaiser*, 469 N.W.2d at 320.²

Separately considering, then, the question of whether plea withdrawal is necessary to correct a manifest injustice, we review the validity of a guilty plea *de novo*. *Raleigh*, 778 N.W.2d at 94. To determine whether a guilty plea was voluntarily given, a district court must inquire into what the parties reasonably understood the terms of the plea agreement to be. *Id.* at 96. This requirement “ensures a defendant is not pleading guilty due to improper pressure or concern.” *Id.* Appellant’s written plea petition indicates that she had discussed the plea with her attorney, and she agreed at the plea hearing that she was offering her plea “freely and voluntarily.” Although appellant expressed some hesitation about the portion of the global settlement agreement involving the unrelated prescription-drug charge, she has produced nothing to demonstrate that her guilty plea in this case was not voluntary. *See id.*

A guilty plea is intelligently made when “a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea. ‘Consequences’

² As noted above, the basis for appellant’s request to withdraw her plea was not clearly stated before the district court. Because of this lack of clarity, the record is not ideal. But the district court considered the reasons advanced by appellant in support of her request. It rejected those reasons as insufficient, and we are satisfied that the district court had in mind the circumstances of appellant’s plea when it denied appellant’s motion.

refers to a plea's direct consequences, namely the maximum sentence and fine." *Id.* (citation omitted). The written plea petition demonstrates that appellant was informed of the maximum possible punishment and fines and that she was pleading guilty to the lesser of the two charges because she was guilty, and to avoid risk of conviction of the felony-property-damage charge. And even as to the property-damage charge, appellant agreed to make restitution for the damages. Her reluctance at the plea hearing concerned the other prescription-drug charge. Her testimony concerning the charges in this case was clear and unequivocal. She committed the offense, agreed she was guilty, and wished to resolve the charges in this case with the advice of counsel. She presented nothing at the sentencing hearing to establish that her guilty plea was not intelligently made. We conclude, on de novo review, that appellant's plea was voluntary and intelligent.

Appellant argues that, in denying the motion, the district court improperly relied on the lack of notice of the motion to the state. The manifest-injustice standard requires that a motion to withdraw a guilty plea be "timely," Minn. R. Crim. P. 15.05, subd. 1, but there is no similar requirement under the fair-and-just standard, *id.*, subd. 2. Although the two standards differ, appellant's argument misapprehends the district court's ultimate ruling on her motion. Indeed, the district court indicated that it believed the plea-withdrawal motion was untimely. But it also analyzed the merits of the motion and rested its decision on the merits. The district court stated that it remembered the plea hearing and that appellant's plea was "voluntarily, intelligently, and knowingly" given, and it denied the motion in a proper exercise of its discretion. And our review of the record convinces us that the district court accurately recalled appellant's plea, even

without reference to a transcript, as the district court accurately recalled details of the plea hearing. The district court properly considered the merits of appellant's motion, and its fleeting reference to appellant's motion having been "untimely," understood in proper context, was not reversible error.

One who pleads guilty cannot withdraw that plea "for simply any reason." *Theis*, 742 N.W.2d at 646. A district court's decision regarding whether to allow a guilty plea withdrawal under the fair-and-just standard will be reversed only in the "rare case" when a district court abuses its discretion. *Kaiser*, 469 N.W.2d at 320. The district court here engaged in a proper legal analysis of appellant's stated reasons for plea withdrawal, and properly exercised its discretion in denying her motion to withdraw the plea. And even considering appellant's motion under the manifest-injustice standard of rule 15.05, subdivision 1, and on de novo review, appellant has failed to establish that withdrawal of her guilty plea is necessary to correct a manifest injustice.

Affirmed.