STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1312

State of Minnesota,
Respondent,

vs.

Katherine Trinka Olson,
Appellant.

Filed April 7, 2014
Affirmed
Klaphake, Judge[*]

Stearns County District Court
File No. 73-CR-11-11673

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

Janelle Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stauber, 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

KLAPHAKE, Judge

In this appeal from her conviction of second-degree drug sale, appellant Katherine Trinka Olson argues that (1) the district court erred by denying her request to withdraw her presentence guilty plea when it would have been fair and just to permit withdrawal and the state would not have been prejudiced, and (2) her plea was invalid because she was not in a proper state of mind when she entered it. We affirm.

D E C I S I O N

Once a guilty plea is entered a defendant has no absolute right to withdraw it. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). "[T]he Minnesota Rules of Criminal Procedure allow a defendant to seek to withdraw a guilty plea in two circumstances." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). First, a district court must permit guilty-plea withdrawal at any time, even after sentencing, if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a guilty plea is invalid. *Theis*, 742 N.W.2d at 646. A guilty plea is invalid if it is not voluntary, accurate, and intelligent. *Perkins*, 559 N.W.2d at 688. If a guilty plea is invalid, withdrawal is required. *Theis*, 742 N.W.2d at 646. The validity of a guilty plea under the manifest-injustice standard is a question of law that we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

Second, if a defendant moves to withdraw a plea before sentencing and shows that withdrawal would be "fair and just," then whether to permit withdrawal is within the district court's discretion. Minn. R. Crim. P. 15.05, subd. 2. "Although this standard is

less demanding than the manifest injustice standard, it does not allow a defendant to withdraw a guilty plea 'for simply any reason.'" *Theis*, 742 N.W.2d at 646 (quoting *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007)). We review withdrawal under the fair-and-just standard for abuse of discretion. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989) (stating that a district court's decision whether to permit withdrawal under the fair-and-just standard "will be reversed only in the rare case in which the appellate court can fairly conclude that the trial court abused its discretion").

Appellant argues that the district court "abused its discretion in refusing to allow [appellant] to withdraw her guilty plea because it would have been fair and just to allow her to do so and the state would not be prejudiced." She asserts that she was not in a proper state of mind at the time she entered the plea due to the stress of her circumstances, mental health issues, and medication issues. Appellant presents this argument in the context of Minn. R. Crim. P. 15.05, subd. 2, which gives the district courts discretion to permit presentence plea withdrawal under the fair-and-just standard. But her assertion that she was not in a proper frame of mind implicates the manifest-injustice standard found in subdivision 1. If her plea was not voluntary, then it was not valid. *Perkins*, 559 N.W.2d at 688. If her conviction was based on an invalid plea, a manifest injustice has occurred, and withdrawal is mandatory rather than discretionary. *Theis*, 742 N.W.2d at 646 (invalid plea results in manifest injustice); Minn. R. Crim. P. 15.05, subd. 1 (plea withdrawal mandatory where manifest injustice has occurred). We therefore address appellant's arguments primarily under the manifest-injustice standard of subdivision 1 and secondarily under the fair-and-just standard of subdivision 2.

A. The record does not demonstrate manifest injustice.

Appellant offers extended explanations of the circumstances surrounding her decision to plead guilty, including her mental state before, during, and after the plea hearing. It is undisputed that appellant suffered from depression, but defense counsel explicitly addressed this issue during the plea colloquy:

> COUNSEL: You have previously been treated for mental health issues; specifically depression, correct?
> APPELLANT: Yes.
> COUNSEL: And you are not being currently medicated because of the, I guess sort of quick transition after the jury trial in terms of the immediate in custody, correct?
> APPELLANT: Yes.
> COUNSEL: But as far as not being on medication, that's not affecting your ability to understand what's going on here today, is it?
> APPELLANT: No.

In her pro se briefs, appellant seeks to overcome her admission of competence by asserting that while in custody she "became deeply depressed . . . feeling both physical and emotional pain to the point of attempting suicide," that her "brain was experiencing a constant series of electric shocks from the lack of medication," and that she pleaded guilty "and requested to be moved to prison where their medical and mental health departments would be better equip[ped] to serve [her] needs." We reject this argument because it is analogous to the argument considered and rejected by the supreme court in *Perkins*.

In *Perkins*, it was undisputed that the appellant was physically ill at the time he entered his plea, but at his plea hearing he admitted that he "felt competent to fully understand the proceedings." 559 N.W.2d at 691. The appellant later claimed that he

"made a hasty decision to plead guilty because he wanted to leave [jail] to enter a state facility where he could get appropriate medical treatment." *Id.* at 690. In view of his contemporaneous admission of competence, the supreme court concluded that his medical condition "in no way precluded an accurate, voluntary, and intelligent plea." *Id.* at 691. Here, when appellant was given the opportunity to raise any mental health concerns during the plea hearing, she denied that her state of mind had any impact on her ability to understand the proceedings. In view of the record in this case, appellant's arguments and assertions do not persuade us that her plea was not accurate, voluntary, and intelligent. We therefore conclude that her plea was valid when made, and that a manifest injustice did not occur.

B. The district court did not abuse its discretion.

Appellant's core argument is that the district court's denial of her withdrawal motion amounted to abuse of discretion because withdrawal would have been fair and just and the state would not have been prejudiced. Minn. R. Crim. P. 15.05, subd. 2 states, in relevant part, that "[*i*]*n 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." (Emphases added.) Appellant apparently inverts the logic of that sentence, interpreting it to mean that if permitting withdrawal would be fair and just, then *refusal* to permit withdrawal would constitute abuse of discretion. But the supreme court has construed the rule as providing that "a defendant, *in the trial court's discretion*, may be allowed to withdraw his guilty plea only if the defendant has not been sentenced and only if it is 'fair and just' to so." *State v. Kaiser*, 469 N.W.2d 316, 319 (Minn. 1991) (quoting Minn. R. Civ. P.

15.05, subd. 2). In other words, the fair and just standard is subdivision two's predicate for the district court's exercise of its discretion; it is not a standard of appellate review.

When a motion to withdraw a guilty plea falls within the fair-and-just standard before the district court, we review the district court's decision for abuse of discretion. *Kim*, 434 N.W.2d at 266. The motion at issue in this case fell within the fair-and-just standard because it was made before sentencing and, as we have already concluded, a manifest injustice did not occur. Our review of the record shows that this is not one of those "rare case[s] in which [we] can fairly conclude that the [district] court abused its discretion." *Id.*

Affirmed.