STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0838

State of Minnesota,
Respondent,

vs.

Thomas John Rodriguez,
Appellant.

Filed March 27, 2017
Affirmed
Connolly, Judge

Dakota County District Court
File No. 19HA-CR-15-2489

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

James C. Backstrom, Dakota County Attorney, Cassandra Shepherd, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

CONNOLLY, Judge

Appellant challenges the denial of his motion to withdraw his guilty plea, arguing that he consistently expressed his desire to go to trial. Because we see no abuse of discretion in the denial of his motion, we affirm.

FACTS

In July 2015, D.L.W. reported to police officers that her boyfriend, appellant Thomas Rodriguez, assaulted her in Dakota County. He was charged with three counts: (1) felony domestic assault (cause fear of immediate bodily harm or death) (two or more prior convictions or adjudications); (2) domestic assault (intentionally inflict or attempt to inflict bodily harm) (two or more prior convictions or adjudications) and (3) felony domestic assault by strangulation. Attorney T.B. was appointed to represent appellant.

An incident in Ramsey County on the same day as the Dakota County incident also resulted in appellant being charged with three counts: (1) kidnapping, (2) false imprisonment, and (3) criminal sexual conduct. The Ramsey County charges carry mandatory offender registration and a longer sentence.

Appellant is not unfamiliar with the guilty plea process: between 1990 and 2015, he committed about 50 criminal offenses, almost all of which were resolved by guilty pleas. In the current matter, respondent State of Minnesota offered appellant, if he pleaded guilty to any one of the three Dakota County charges, a guidelines sentence between 21 and 28 months and dismissal of the other two charges, as well as an agreement not to refer the case to Ramsey County for prosecution of those three charges. Appellant rejected the offer. At

a settlement conference, the state added a bottom-of-the-box sentence under the guidelines to its offer. Appellant again rejected the offer.

At an omnibus hearing after D.L.W., who is homeless and uses methamphetamine, was located and agreed to cooperate with the prosecution, appellant waived his right to a speedy trial and agreed to a continuance so the parties would have time to review D.L.W.'s new evidence. The state indicated that it had filed a motion to amend the complaint to add charges of kidnapping, third-degree criminal sexual conduct, and fourth-degree criminal sexual conduct.

At the plea hearing, appellant pleaded guilty to count 1 (felony domestic assault – cause fear of immediate bodily harm or death, two or more prior convictions or adjudications); the state agreed to drop the other two charges and not to go forward with the Ramsey County charges; and appellant was told that his attorney would argue for a stayed prison sentence and the state would argue for a guidelines sentence, which would mean prison.

During the hearing, the prosecutor told appellant that he was waiving his right to challenge the state's evidence and to go forward to trial. Appellant responded, "I'd like to do that." The hearing was then recessed so appellant could confer with T.B. and also get the legal opinion of T.B.'s colleague, attorney D.E. The hearing resumed, the factual basis of the offense was established, and appellant entered his guilty plea.

A month later, T.B. filed appellant's motion to withdraw his guilty plea. At the hearing on the motion, T.B. argued that appellant felt pressured and coerced when he entered his plea. The state argued that (1) appellant said he knowingly and voluntarily

waived his rights and gave no indication that he felt pressured or coerced to enter a guilty plea, and (2) the state would be prejudiced by granting the motion to withdraw because of its difficulty in locating D.L.W., who had not been in contact with the state for six weeks.

The district court, having found that appellant's guilty plea was voluntary, that appellant had signed the plea petition and admitted the elements of the crime, and that it would not be fair and just to allow withdrawal, denied the motion.

Two weeks later, appellant's new attorney, L.K., filed another motion to withdraw appellant's guilty plea, arguing ineffective assistance of counsel and coercion by counsel. Appellant's request for an evidentiary hearing was granted, and the state called T.B. as a witness, while appellant called D.E.[1] The district court denied appellant's second motion for plea withdrawal on the ground that there was no evidence that either T.B. or D.E. coerced appellant to plead guilty.

The presentence investigation (PSI) recommended that appellant be committed to the Commissioner of Corrections for 24 months, in light of appellant's shifting blame to others, including D.L.W.; his multiple probation violations; his extensive criminal history, including an assault within six months of the assault here; and his being a risk to the community.

At the sentencing hearing, appellant moved a third time to withdraw his guilty plea and also asked to terminate the services of L.K. His motion was denied, and he was sentenced to 21 months in prison, which was a guidelines sentence. On appeal, he argues

[1] Appellant waived the attorney-client privilege in regard to both attorneys.

that the district court abused its discretion in denying his motions to withdraw his guilty plea.

D E C I S I O N

> In its discretion the [district] court may allow the defendant to withdraw a [guilty] plea at any time before sentence if it is fair and just to do so, . . . giv[ing] 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.

Minn. R. Crim. P. 15.05, subd. 2. A district court's decision to deny a motion to withdraw a guilty plea under the fair and just standard is reviewed for an abuse of discretion. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). The district court must consider the defendant's arguments as to why withdrawal would be fair and just and the State's arguments as to how withdrawal would prejudice the State. *Id.* Appellant argues that his guilty plea was not valid because it was not voluntary: he "was obviously reluctant to enter a guilty plea as evidenced by the record from the plea hearing." But the plea-hearing record does not provide such evidence.

First, when the district court asked appellant at the plea hearing, "You had a chance to meet with [T.B.] on Monday and Tuesday and now on Wednesday, [the day of the plea hearing], and you understand what's going on here today?", appellant answered, "Yes, Sir." After the district court said, "And you want to enter a plea of guilty to Count I. And do you have any further questions for [T.B.]?", appellant and T.B. had an off-the-record discussion. T.B. then told the court what the agreement was: dismissal of the two other counts, and not proceeding with the charges in Ramsey County. The district court then

asked appellant how he pleaded to the charge of domestic assault by causing fear of bodily harm; appellant answered, "Guilty, Your Honor."

Appellant answered in the affirmative T.B.'s questions as to whether appellant recognized the plea petition, signed it, had a chance to review it with T.B., understood he was waiving his constitutional rights, had enough time to discuss it, and understood he was giving up the right to a trial and a jury trial. When asked if he had any further questions for T.B., appellant answered "No".

The prosecutor then questioned appellant as to whether he understood that he could have had a trial to a judge or a jury, that a jury would have to be unanimous to convict, and that appellant could choose to testify or remain silent. Appellant answered those questions in the affirmative, but was silent when the prosecutor asked, "[Y]ou're waiving your right to have a hearing where you could contest any evidence that the State had against you as well as probable cause to just simply go forward on the charges?" The district court asked the prosecutor to repeat the question, and she did: "You have the right to have a contested hearing where you could have challenged any evidence that the State had against you and would have used at trial. You could have also challenged probable cause as to whether or not the State even had enough evidence to go forward with the case." Appellant said, "I'd like to do that." T.B. then asked for a recess, which was granted.

That afternoon, after the recess, T.B. asked appellant if it was correct that the two of them had met twice during the recess and that appellant had had a chance to consult T.B.'s colleague, attorney D.E.; appellant said it was correct and agreed that they had

answered his questions, that he was ready to proceed with the plea they were doing before the recess, and that he did not have any further questions for T.B. or for the district court.

The prosecutor resumed questioning. Appellant agreed that it was his intention to continue with the plea, that he was not under the influence of alcohol or illegal drugs, that he was not then treating with a mental health provider, that he understood everything that was going on in court that day, that his offense was enhanceable, i.e., could be punished more severely if he committed similar crimes, and that he was entering a straight plea. He also agreed with the prosecutor that his attorney would request a stayed prison sentence, that the state would request a guidelines sentence, that there were no guarantees on what the sentence would be, and that he intended to go forward and plead guilty.

T.B. then established the facts relevant to the offense. Appellant agreed that he had communicated with D.L.W. in such a way as to cause her to fear immediate bodily harm or death and that he had two previous convictions in the last ten years for domestic-violence offenses.

Just before the conclusion of the hearing, appellant told the district court, "I want to make sure that . . . Ramsey County and Dakota County will not pick up the charges." T.B. explained to the district court that the plea agreement included not referring the matter to Ramsey County or filing an amended complaint, and the prosecutor agreed with this explanation. The district court told appellant "We've agreed to it twice, that there will be no further charges arising out of the incident on the date of this offense that you just pled guilty to."

Appellant relies on one sentence from this hearing, his "I'd like to do that" in response to the prosecutor's statement that he was waiving his rights to challenge the State's evidence and probable cause, to argue that he "was obviously reluctant to enter a guilty plea." But the remainder of the transcript indicates that, after discussing the matter with two attorneys during the recess, appellant did want to proceed with his guilty plea and expressed concern only in regard to being certain that Ramsey County would not pursue its charges.

Appellant then discharged T.B. and was provided with a new attorney, who again moved to withdraw the plea and called T.B. as a witness. Appellant claims in his brief that T.B.'s testimony "supports [appellant's] claim that he wanted to go to trial and was under a great deal of pressure at the time to take the plea." But the transcript does not support that statement.

T.B. testified that, at the time of the plea hearing, he believed that the Ramsey County criminal sexual conduct and kidnapping charges "[were] a serious . . . problem for [appellant]" and that he had discussed that situation with appellant "on multiple occasions." T.B. said that, when he talked to appellant during the hearing recess, appellant "expressed to [T.B.] his concern and apprehension that he wanted certainty that the Ramsey County matters would not proceed" and that appellant "was not certain as to what he wanted to do" but wanted to "avoid[] a situation where he might be sent to prison." T.B. testified further that their plan was for appellant to plead guilty and T.B. to seek to have him placed on probation. T.B. testified that he had been advised that, if the matter went to trial, Dakota County would dismiss it and it would be handled by Ramsey County because the Ramsey

County charges were more serious. He said that, by the end of the hearing, he thought appellant "understood his choices" and "had decided that the way that we proceeded was what he wanted to do." T.B. added that, at the end of the recess, when he asked appellant if appellant had any further questions and was ready to decide what he wanted to do, appellant answered that "he wanted to take the deal . . . to enter a plea in accordance with the discussions that we had had." Finally, T.B. testified that he had been doing criminal defense work in Dakota County since 1975 and had handled hundreds, maybe thousands, of cases.

Appellant's own testimony also indicates that his guilty plea was valid. On cross-examination, he was questioned:

> Q. And you were aware on the 14th [of October, the day he pleaded guilty] that the State had had contact with the victim and she had been subpoenaed and was cooperative with the prosecution of your case, correct?
> A. That's right.
> Q. And you are aware that the victim in this matter has a drug addiction problem, correct?
> A. Yes.
> Q. And you are aware that she is also homeless, correct?
> A. Yeah, she was in the psych ward for five years, too.
> Q. And you understand that if she's unavailable for whatever reason on the date of trial, your case would be dismissed because the State couldn't go forward without her, correct?
> A. Yes, I guess.
> Q. And you understand that she's no longer subpoenaed for this case because you entered a guilty plea, correct?
> A. I wouldn't have taken this plea. I wouldn't have.
> Q. [Appellant,] the question is: You understand that she is no longer under subpoena for this case, correct? Yes or no?
> A. I don't know.
> Q. Okay.

A. I don't know how long a subpoena goes for.

The district court found that appellant "was not a credible witness. On the stand, [appellant] was often nonresponsive and his testimony contained several inaccuracies." The transcript of appellant's cross-examination supports this finding.

Q. It was your testimony that [T.B., D.E.] and myself all told you you needed to take this deal, is that correct?
A. Yes.
Q. [Appellant], have you and I ever had a face-to-face conversation other than in a courtroom setting when we're on the record?
A. Well –
Q. Yes or no?
A. No.
Q. Have I ever said the words to you[, "]you need to take this deal?["]
A. Okay.
Q. Yes or no?
A. No.
Q. So your testimony up there was incorrect, correct?
A. That's correct.
. . .
Q. [Y]ou agree that neither during the morning session or during the afternoon session did you ever say anything to the Court that you were feeling forced or threatened or coerced into entering the plea, is that correct?
A. Yes.
Q. And you never said anything to the Court about the fact that you really wanted to go to trial, correct?
A. Yes.
Q. You told the Court that you were voluntarily entering the plea because it's what you wanted to do, correct?
A. Yes.

Finally, appellant argues that "the State has failed to meet its burden of establishing it would suffer prejudice" if appellant were allowed to withdraw his guilty plea. But the district court found that:

> After [appellant] entered his guilty plea, the State lost contact with [D.L.W. Appellant] admitted that [she] is transient and has chemical dependency issues and the State argued, therefore, it would be difficult to find [her] and to ensure she would appear to testify at a trial several months from now.
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> . . . [Moreover,] domestic violence cases are difficult cases due to the nature of the parties' relationships. To have a defendant plead guilty and avoid a trial on the date of the jury trial when the State is ready to proceed with its victim/witness only to allow the [d]efendant to withdraw that plea a month and a half later when the victim/witness thought the case was over [] and has now fallen out of contact with the county attorney's office, would only encourage a new litigation tactic for these types of cases.

Appellant has not advanced any viable arguments in support of the motions to withdraw his plea under the fair and just standard, and the state has met its burden of showing prejudice that would result from the withdrawal. The district court did not abuse its discretion in concluding that appellant failed to establish a credible reason for plea withdrawal.

Affirmed.