STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0963

State of Minnesota,
Respondent,

vs.

Christopher Lee Wynn,
Appellant.

Filed April 3, 2017
Affirmed
Reilly, Judge

Otter Tail County District Court
File No. 56-CR-15-2592

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

David J. Hauser, Otter Tail County Attorney, Kurt A. Mortenson, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

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

Considered and decided by Reilly, Presiding Judge; Hooten, Judge; and Smith, Tracy M., Judge.

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

REILLY, Judge

Appellant argues that the district court abused its discretion by denying his presentencing plea-withdrawal motion, claiming that his plea was neither intelligent nor

voluntary. Appellant also makes pro se arguments. We reject each of appellant's arguments and affirm.

FACTS

On August 28, 2015, M.F. reported to police that her ex-boyfriend, appellant Christopher Lee Wynn, had coerced his way into her home that morning, threatened her with a knife, and choked her by the throat almost to the point of unconsciousness. Respondent State of Minnesota charged Wynn with second-degree assault (dangerous weapon), felony domestic assault (fear), felony domestic assault (harm), felony violation of a no-contact order, and domestic assault by strangulation.

A jury trial was set for January 20, 2016. But shortly before trial, the parties reached a plea agreement whereby Wynn would plead guilty to second-degree assault (dangerous weapon) and the state would dismiss the remaining four charges and seek a bottom-of-the-box sentence. On January 19, Wynn entered a *Norgaard* plea to second-degree assault (dangerous weapon); the district court accepted that plea and set sentencing for March 11, 2016.[1]

[1] At the plea hearing, Wynn's plea was characterized as an *Alford*/*Goulette* or *Alford* plea. And on appeal, both parties refer to the plea as an *Alford*/*Goulette* or *Alford* plea. But, as we explain below, the plea was actually a *Norgaard* plea. *See Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009) ("A plea constitutes an *Alford*/*Goulette* plea if the defendant maintains innocence but pleads guilty because the record establishes, and the defendant reasonably believes, that the state has sufficient evidence to obtain a conviction. A plea constitutes a *Norgaard* plea if the defendant asserts an absence of memory on the essential elements of the offense but pleads guilty because the record establishes, and the defendant reasonably believes, that the state has sufficient evidence to obtain a conviction." (citations omitted)), *review denied* (Minn. Apr. 21, 2009). We urge greater care in distinguishing between the two.

Wynn moved to withdraw his plea on February 26, 2016, and the state opposed plea withdrawal. At a hearing on his plea-withdrawal motion, Wynn testified that he had felt pressured to plead guilty and "just said what [he] had to say and did what [he] had to do to get it over with." The district court ruled that it would not allow Wynn to withdraw his plea, adjudicated Wynn guilty of second-degree assault (dangerous weapon), and sentenced Wynn to 34 months' imprisonment in accordance with the plea agreement. Wynn appeals.

D E C I S I O N

"A defendant has no absolute right to withdraw a guilty plea after entering it." *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016) (quotation omitted). But Minnesota Rule of Criminal Procedure 15.05 provides for plea withdrawal under two separate standards: the subdivision 1 manifest-injustice standard, which applies to plea-withdrawal motions made before or after sentencing, and the subdivision 2 fair-and-just standard, which applies only to presentencing plea-withdrawal motions.

Under the manifest-injustice standard, a district court must allow a defendant to withdraw his guilty plea "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 manifest injustice exists if a guilty plea is not valid." *Barrow v. State*, 862 N.W.2d 686, 691 (Minn. 2015). "To be valid, a guilty plea must be accurate, voluntary, and intelligent." *Taylor*, 887 N.W.2d at 823. Thus, the court must allow the defendant to withdraw a guilty plea that he proves was not accurate, voluntary, and intelligent. *See*

Barrow, 862 N.W.2d at 689 ("A defendant has the burden of proving his plea was invalid.").

Under the fair-and-just standard, by contrast, the district court may allow plea withdrawal "[i]n its discretion . . . if it is fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2. Thus, "[t]he court must give 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." *Id.* "The defendant has the burden of advancing reasons to support withdrawal; the state has the burden of showing the prejudice that would be caused by withdrawal." *State v. Townsend*, 872 N.W.2d 758, 764 (Minn. App. 2015) (quotation omitted).

The fair-and-just standard is "a less demanding standard than the manifest-injustice standard, but it does not permit withdrawal of a guilty plea for simply any reason." *Id.* (quotations omitted). Indeed, "[e]ven when there is no prejudice to the state, a district court may deny plea withdrawal under rule 15.05, subdivision 2, if the defendant fails to advance valid reasons why withdrawal is fair and just." *State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013), *review denied* (Minn. Dec. 31, 2013). "Guilty pleas facilitate the efficient administration of justice, and more than a change of heart is needed to withdraw a guilty plea." *State v. Lopez*, 794 N.W.2d 379, 382 (Minn. App. 2011) (citing *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989)).

In this case, Wynn argues that the district court abused its discretion by denying his presentencing plea-withdrawal motion, apparently blending the fair-and-just standard with the manifest-injustice standard by claiming that his plea was invalid as unintelligent and

involuntary and insisting that, because the plea thereby "amount[ed] to a manifest injustice," withdrawal of the plea is fair and just. Yet Wynn also implicitly concedes that his plea-withdrawal motion and the evidence presented at the plea-withdrawal hearing did not raise the issue of plea validity below, citing *State v. Abdisalan*, 661 N.W.2d 691 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003), for the proposition that "where the defendant's presentence motion to withdraw his guilty plea raised only the question of whether withdrawal would be 'fair and just,' the reviewing court will not consider whether his plea was valid under the 'manifest injustice' standard." And Wynn does not ask us to apply the manifest-injustice standard on review.

We therefore apply only the fair-and-just standard here. *Cf. Abdisalan*, 661 N.W.2d at 694-95 (applying only fair-and-just standard where appellant did not squarely challenge the validity of his plea or argue that his plea was invalid under the manifest-injustice standard). Under the fair-and-just standard, we reverse only if the district court abused its discretion by denying Wynn's presentencing motion to withdraw his *Norgaard* plea. *See Cubas*, 838 N.W.2d at 223 ("We review a district court's decision regarding a motion to withdraw a guilty plea under the fair-and-just standard for an abuse of discretion, reversing only in the 'rare case.'" (quoting *Kim*, 434 N.W.2d at 266)).

Wynn claims that his plea was not intelligent because (1) "[t]he term '*Alford* plea' pertains to guilty plea proceedings in which the defendant maintains that he is innocent of the charged offense," (2) "Wynn ultimately agreed to enter a plea to second-degree assault with a dangerous weapon" as an *Alford*/*Goulette* plea, and (3) Wynn "failed to assert his innocence" during the plea colloquy, thereby "demonstrat[ing] that he did not understand

that an *Alford*/*Goulette* plea [i]s premised on a defendant maintaining his innocence." According to Wynn, "[t]he record makes it clear that Wynn did not have the same understanding of the premises supporting the *Alford*/*Goulette* plea, as did the State and his counsel."

We recognize that Wynn's plea was characterized as an *Alford*/*Goulette* or *Alford* plea at the plea hearing and that Wynn did not maintain his innocence during the plea colloquy. But Wynn's argument here mistakes a *Norgaard* plea for an *Alford* plea. During his plea colloquy, Wynn asserted an absence of memory on the essential elements of second-degree assault (dangerous weapon), stating:

> We'd been using drugs all week long. I don't know. It's so blurry and I can't really remember much. I remember being there. I remember fighting with [M.F.]. I remember, I don't know, her wanting to have sex, and that's basically all I remember. I don't remember much.

He further agreed that he did not "recall specifics" but that he recalled being inside M.F.'s home and "fighting with her." Wynn also affirmed that he had read the police reports and listened to an audio recording of M.F.'s statement to police, and he expressed a reasonable belief that the state had sufficient evidence to convict him of second-degree assault, as follows:

> DEFENSE COUNSEL: [A]t this point, you're prepared to enter a plea of guilty based on if that information was presented to a jury, you find the jury would believe that?
> WYNN: Yes.
> . . . .
> DEFENSE COUNSEL: And is this why you're doing this, to take advantage then of the plea agreement?
> WYNN: Yes.
> . . . .

> THE COURT: . . . You had a chance to sit down and talk through this evidence with [defense counsel], correct?
> WYNN: Yes.
> THE COURT: And do you believe that the evidence could or would be presented at a trial if the trial went forward?
> WYNN: Yes.
> THE COURT: And that based on the evidence contained in those reports you reviewed with [defense counsel], the jury would find you guilty of the offense of Assault in the Second Degree?
> WYNN: Yes.

It is evident that Wynn's plea was a prototypical *Norgaard* plea. The intelligence of such a plea cannot be undermined by a defendant's failure to maintain his innocence or by the simple misnomer of the plea as an *Alford*/*Goulette* or *Alford* plea. *See Nelson v. State*, 880 N.W.2d 852, 858 (Minn. 2016) ("[T]he proper legal inquiry [for intelligent pleading] is whether, when he pleaded guilty, [the defendant] understood the charges against him, the rights he waived, and the consequences of the plea."). Because Wynn provides no other basis for his claim that his plea was unintelligent, we conclude that the claim is meritless.

Wynn also claims that his *Norgaard* plea was not voluntary because he "felt forced into pleading guilty." But he supports this claim with no more than a curated portion of his own plea-withdrawal testimony:

> I felt I had no other choice. I really didn't have any time to visit with my attorney or, you know, get anything taken care of before trial. . . . And I just basically felt, you know, like I was going into trial blind and by myself and that if I didn't take a plea deal I wouldn't stand a chance, so I just said what I had to say and did what I had to do to get it over with, basically.

Wynn discounts his plea-colloquy affirmations that he had "a sufficient amount of time to discuss th[e] matter with [defense counsel]," that he "believe[d] that [defense counsel]

ha[d] fully represented [his] interests throughout the[] proceedings," that no one "made any threats or promises to [him] or members of [his] family to get . . . [him] to plead guilty," that he was not "under the influence of any drugs or alcohol," that he was not "under the care of a medical or psychiatric professional," and that, knowing his trial rights, he nevertheless "wish[ed] to offer [his] guilty plea."

We note that Wynn declined two separate opportunities to ask "any questions" before entering a factual basis for the plea—a plea that limited his exposure on five felony charges to a single felony conviction with a bottom-of-the-box sentence. On these facts, we conclude that Wynn's involuntariness claim must fail. *See Nelson*, 880 N.W.2d at 861 ("The voluntariness requirement ensures a defendant is not pleading guilty due to improper pressure or coercion. Whether a plea is voluntary is determined by considering all relevant circumstances." (quotations omitted)); *Oldenburg v. State*, 763 N.W.2d 655, 658 (Minn. App. 2009) ("A plea is voluntary when it is made without improper pressures or inducements." (quotation omitted)); *cf. Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 300 (Minn. 2016) (Anderson, J., dissenting) ("[A] plea decision may be 'voluntary' even if a motivating influence is particularly strong, . . . and even if the alternatives to a decision are unattractive[.]" (citations omitted)).

Our review of the record confirms that the district court duly considered Wynn's testimony and arguments in support of plea withdrawal and the prosecutor's arguments that plea withdrawal would result in prejudice to the state. In denying Wynn's presentencing plea-withdrawal motion, the court stated:

> The plea that was entered made specific reference to the evidence that the State would . . . present . . . at the trial, and Mr. Wynn acknowledged that that evidence was there. He'd had access to the reports of the three police officers. He'd had access to the recorded statement of [M.F.]. He indicated he had read the reports and listened to the recording. He was aware of the specific allegations that supported the assault in the second degree charge. I do not find that it would be fair and just at this time to allow the defendant to withdraw his guilty plea primarily because I'm considering not only the statements of Mr. Wynn but also prejudice to the State and the impact that a withdrawal of the plea would have on [M.F.]. I do think that the State would be prejudiced, at this point, in gaining the cooperative testimony of [M.F.], and so the State would be prejudiced in its presentation of the case to a jury.

We conclude that the court properly applied the fair-and-just standard for plea withdrawal and did not abuse its broad discretion by denying Wynn's motion to withdraw his plea. *See Abdisalan*, 661 N.W.2d at 694-95 (concluding that presentencing plea-withdrawal motion was not an abuse of discretion where defendant voluntarily pleaded guilty and district court ensured that defendant understood and was aware of all trial-related rights, the particular facts underlying the crime, and the direct and collateral consequences of the sentence imposed).

In a pro se supplemental brief, Wynn presents a scrambled version of the same argument, claiming that his plea was "not valid, not voluntary, [and] not intelligent or knowing," that plea-withdrawal is necessary to correct the resulting "manifest of injustice," and that "[t]here can be no separation of a claim of 'fair and just' and 'manifest of injustice'" because "the one encompasses the other by necessity." We are confident that this argument does no more than repeat less coherently the counseled argument that because Wynn's *Norgaard* plea was not voluntary and intelligent, the district court abused

its discretion by denying Wynn's presentencing motion to withdraw that plea. We have fully addressed Wynn's counseled argument above, and we do not separately address its pro se iteration. *See State v. Schuster*, 709 N.W.2d 282, 285 n.1 (Minn. App. 2006) (declining to address pro se argument that "reiterate[d] the argument raised in the formal brief"), *vacated on other grounds*, 744 N.W.2d 374 (Minn. 2006).

Wynn also asks us to preserve an ineffective-assistance-of-trial-counsel claim for postconviction consideration, citing caselaw for the proposition that "an ineffective assistance of counsel claim is properly raised in a postconviction proceeding and not on direct appeal" while arguing that his "claim of ineffective assistance of counsel . . . is supported by the record and . . . relevant in these proceedings to establish the plea as unlawful/invalid." We view this portion of Wynn's pro se supplemental brief as a primary argument that the record shows that defense counsel rendered ineffective assistance, making Wynn's *Norgaard* plea invalid. Alternatively, we view this portion of Wynn's brief as an argument that Wynn has an ineffective-assistance-of-trial-counsel claim that cannot be determined on this record and therefore is properly raised in a petition for postconviction relief.

A criminal defendant's "Sixth Amendment right to counsel . . . extends to the plea-bargaining process," such that "[d]uring plea negotiations defendants are entitled to the effective assistance of competent counsel." *Lafler v. Cooper*, 566 U.S. 156, 163, 132 S. Ct. 1376, 1384 (2012) (quotation omitted). It follows that "[a] defendant's guilty plea may be constitutionally invalid if the defendant received ineffective assistance of counsel." *Sames v. State*, 805 N.W.2d 565, 567 (Minn. App. 2011).

But the record does not show that defense counsel rendered ineffective assistance to Wynn. In fact, the transcript of the plea hearing suggests just the opposite:

> PROSECUTOR: Have you had a sufficient amount of time to discuss this matter with your attorney . . . ?
> WYNN: Yes.
> PROSECUTOR: Have you discussed the facts with him and any possible defenses that you may have?
> WYNN: Yes.
> PROSECUTOR: Do you believe he has fully represented your interests throughout these proceedings?
> WYNN: Yes.
> . . . .
> THE COURT: You had a chance to sit down and talk through [the state's] evidence with [defense counsel], correct?
> WYNN: Yes.

Even at the plea-withdrawal hearing, Wynn began by testifying, "I'm not here to, you know, say anything bad about [defense counsel] or bash him or anything like that. You know, I like him. He's a good attorney."

We recognize that Wynn went on to testify that defense counsel was "very busy," that he "really didn't have any time to visit with [his] attorney or . . . get anything taken care of before trial," and that he "basically felt" that he "was going into trial blind and by [himself]." But these "bare allegations . . . do not reach the level of proof necessary to show ineffective assistance of counsel." *See State v. Bock*, 490 N.W.2d 116, 123 (Minn. App. 1992) (denying ineffective-assistance claim that was based on defendant's unsupported assertions that his trial counsel failed to adequately inform him of pretrial preparations and initiated minimal contact with him prior to trial), *review denied* (Minn. Aug. 27, 1992). We therefore reject Wynn's claim of ineffective assistance of trial counsel and decline to hold that the claim is preserved for postconviction consideration. *See*

McKenzie v. State, 754 N.W.2d 366, 369 (Minn. 2008) ("[A]n ineffective assistance of counsel claim fits within the second exception to *Knaffla* if it cannot be determined from the district court record and requires additional evidence." (quotation omitted)); *Brocks v. State*, 753 N.W.2d 672, 675-76 (Minn. 2008) (noting that *Knaffla* exceptions apply only to claims a defendant failed to raise on direct appeal and concluding that postconviction ineffective-assistance-of trial-counsel claims were *Knaffla* barred where petitioner raised, and supreme court rejected, these claims on direct appeal).

Affirmed.