STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0028

State of Minnesota,
Respondent,

vs.

Daniel Dean Alley,
Appellant.

Filed December 4, 2017
Affirmed
Kirk, Judge

Anoka County District Court
File No. 02-CR-14-4245

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica M. Surges, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Kirk, Judge.

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

KIRK, Judge

Appellant challenges his conviction, arguing that the district court abused its discretion in denying his presentence motion to withdraw his guilty plea because it was not intelligently entered. We affirm.

FACTS

On July 8, 2014, appellant Daniel Dean Alley was charged with felony domestic assault, alleged to have occurred on July 5. Appellant pleaded guilty at a September 29, 2014 plea hearing. A felony plea petition was filed with the district court detailing the terms of the agreement, and appellant waived his trial rights and answered questions regarding his mental state. Appellant signed the plea petition and acknowledged that he reviewed it line-by-line with his attorney. Appellant indicated that he understood the charge against him, that he had not "recently been taking pills or other medicines," and that he was entering the plea freely and voluntarily. When questioned by the district court, appellant indicated that he had not consumed "any alcohol or controlled substances, prescribed or otherwise," and that he was thinking clearly. In establishing the factual basis for his guilty plea, appellant described, "with unique detail and clarity," the physical altercation, its cause, and his actions following the altercation. The district court accepted appellant's guilty plea, finding that it was entered knowingly and voluntarily, and that there was a factual basis to support it.

On April 7, 2015, appellant failed to appear for sentencing because he was taken into custody on unrelated federal charges on April 1. On December 29, appellant filed a

presentence motion to withdraw his guilty plea, asserting that his plea was not entered intelligently and voluntarily because he was under the influence of controlled substances at the plea hearing.

Appellant was still in federal custody on May 25, 2016, when the contested hearing was held on his motion. Appellant testified that he remembered appearing at his 8:30 a.m. plea hearing on September 29, 2014, and signing the plea petition. Appellant testified that he was intoxicated at the plea hearing. Appellant claimed that he woke up before 7 a.m. on the day of the hearing and took two 30 milligram pills of Percocet and smoked "two blunts" containing marijuana. Appellant claimed that he lied under oath at the plea hearing when he said that he was not under the influence because he was willing to do anything to stay out of jail. Appellant also claimed that he did not understand the terms of the agreement when he entered his guilty plea.

Appellant also presented expert testimony by a forensic toxicologist who testified that "if marijuana and Percocet [are] used together, the negative effects [of the substances] could be exaggerated and cause a person to be less able to make decisions." The forensic toxicologist did not testify that he had any personal knowledge of appellant's mental state or drug use on the morning of his plea hearing.

The district court denied appellant's motion to withdraw his guilty plea, concluding that appellant failed to meet his burden under Minn. R. Crim. P. 15.05, subd. 1 or 2, by "fail[ing] to advance credible reasons supporting a withdrawal of his guilty plea." In an attached memorandum, the court found that appellant did not establish "that he was so under the influence that he was unable to understand the rights he waived when he pleaded

guilty." The court found that appellant's detailed description of his offense at the plea hearing "makes it highly likely he understood his circumstances at the time of the plea and the rights he was waiving." The court did not find appellant's claim that his guilty plea was involuntary and unintelligent to be credible. The court also found that the state would be prejudiced if appellant was allowed to withdraw his guilty plea due to the time elapsed between the offense, the guilty plea, and his motion to withdraw.[1]

On August 8, 2016, appellant filed a motion to reconsider, which the district court treated as a letter requesting leave to file a motion to reconsider. Minn. R. Gen. Pract. 115.11 ("Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances. Requests to make such a motion, and any responses to such requests, shall be made only by letter to the court of no more than two pages in length, a copy of which must be served on all opposing counsel and self-represented litigants."). The district court denied appellant's request. On October 10, 2016, appellant was sentenced to 18 months in prison.

This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea.

Although the district court denied appellant's motion to withdraw his guilty plea under both subdivision 1 and subdivision 2 of Minn. R. Crim. P. 15.05, on appeal appellant

[1] Appellant's motion was filed over 15 months after he pleaded guilty and over 17 months after the offense.

only challenges the district court's denial under subdivision 2. "A defendant has no absolute right to withdraw a guilty plea after entering it." *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). Minn. R. Crim. P. 15.05, subd. 2, provides that "the [district] court may allow the defendant to withdraw a plea at any time before sentence if it is fair and just to do so." The rule provides that "[t]he [district] court must give due consideration to the reasons advanced by the defendant in support of the motion [to withdraw] 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.*; *see also Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989) ("If a guilty plea can be withdrawn for any reason or without good reason at any time before sentence is imposed, then the process of accepting guilty pleas would simply be a means of continuing the trial to some indefinite date in the future when the defendant might see fit to come in and make a motion to withdraw his plea." (quotation omitted)). The "defendant bears the burden of advancing reasons to support withdrawal[, and t]he [s]tate bears the burden of showing prejudice caused by withdrawal." *Raleigh*, 778 N.W.2d at 97 (citations omitted). This court reviews the district court's denial of a motion to withdraw a guilty plea under the fair-and-just standard for an abuse of discretion, and will reverse only in the "rare case." *Id.* (quoting *Kim*, 434 N.W.2d at 266).

Appellant argues that it is fair and just to allow him to withdraw his guilty plea because: (1) he was intoxicated when he pleaded guilty; (2) this state conviction would cause his unrelated federal sentence to increase dramatically; and (3) he only pleaded guilty to avoid going to jail.

Appellant's second argument, that this conviction would affect his federal sentence, is not relevant to his motion to withdraw. First, any increase in his federal penalties are collateral to this guilty plea. The direct consequences of a guilty plea, such as the maximum sentence and fine for the offense, "flow definitely, immediately, and automatically from the guilty plea." *Kaiser v. State*, 641 N.W.2d 900, 904 (Minn. 2002).[2] Collateral consequences are those that do not flow definitely, immediately, and automatically from the guilty plea. *Id.* "Ignorance of a collateral consequence does not entitle a criminal defendant to withdraw a guilty plea." *Id.* (quotation omitted).

Second, appellant had not been arrested on the federal charge when he pleaded guilty in this case, so there is no reason to conclude that his federal sentence was a relevant consideration when he pleaded guilty. Furthermore, appellant testified at the contested motion hearing that he had already pleaded guilty in his federal case and that this case would not impact his federal plea agreement because his federal criminal-history score would be the same with or without this conviction. Appellant's third argument is also irrelevant to his motion to withdraw. Appellant's claim that he pleaded guilty to avoid going to jail is not supported by the record because the plea agreement exposed him to up to 90 days in jail.

Only appellant's first argument, that "he did not realize that he was waiving his trial rights and did not know what sentence he would receive in exchange," is relevant to his

[2] The Minnesota Supreme Court held in *Taylor v. State* that the *Padilla* decision did not require *Kaiser* to be overturned because deportation is a uniquely severe collateral consequence intended to be punitive. 887 N.W.2d 821, 826 (Minn. 2016).

motion to withdraw his guilty plea. Appellant argues that because of his impaired mental state, it is fair and just to allow him to withdraw his plea, and that the district court abused its discretion in denying his motion to withdraw. But appellant's own statements at the plea hearing contradict his claim of impairment, and there is no evidence in the record that either attorney or the district court judge noticed any strange behavior by appellant at the plea hearing.

The district court found that appellant's claim that he was too intoxicated to understand the proceedings or the terms of his plea agreement was not credible. "We generally defer to a district court's credibility determinations." *State v. Olson*, 884 N.W.2d 906, 911 (Minn. App. 2016), *review denied* (Minn. Nov. 15, 2016). Because the district court did not believe that appellant was impaired during the plea hearing, appellant's expert's testimony does nothing to support his claim that it is fair and just to allow him to withdraw his guilty plea. The district court concluded that appellant failed to present credible evidence to meet his burden under the fair-and-just standard, and there is no reason to conclude on this record that the district court abused its discretion.[3]

II. The district court did not err in denying appellant's motion to reconsider.

Appellant argues that the district court erred in denying his motion to reconsider. But the district court declined to hear his motion to reconsider pursuant to Minn. R. Gen.

[3] Appellant also asserts that he should have been allowed to withdraw his guilty plea because the state failed to show that it would be prejudiced. Because appellant failed to show that it is fair and just to allow him to withdraw his guilty plea, the issue of whether or not the state would be prejudiced by the withdrawal is moot. *See Raleigh*, 778 N.W.2d at 98 (affirming the district court's denial of a motion to withdraw because appellant did not meet the fair-and-just standard, irrespective of prejudice to the state).

Pract. 115.11. This rule only allows the district court to hear a motion to reconsider "upon a showing of compelling circumstances." *Id.* Appellant's motion to reconsider restated his arguments from the contested hearing on his motion to withdraw his guilty plea, providing very little additional information. Because the district court declined to allow a motion to reconsider, it implicitly found that appellant did not present compelling circumstances in his request. Appellant has not presented any argument as to why this court should conclude differently, or as to why this court should find error. *See State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) ("An assignment of error in a brief based on 'mere assertion' and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection." (citing *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997))), *aff'd*, 728 N.W.2d 243 (Minn. 2007).

Affirmed.