STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0147

State of Minnesota,
Respondent,

vs

Floyd Erik Hyde,
Appellant.

Filed November 13, 2017
Affirmed
Connolly, Judge

Polk County District Court
File No. 60-CR-16-976

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Schellhas, 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 the district court did not comply with Minn. R. Crim. P. 15.01, that his waiver of a jury trial was not knowing, intelligent, and voluntary, and that his plea lacked a strong factual basis. Because a district court's failure to comply precisely with Minn. R. Crim P. 15.01 does not invalidate a guilty plea, because the transcript indicates that appellant had a clear understanding of his waiver of a jury trial, and because appellant's plea had a strong factual basis, we affirm.

FACTS

Following an incident in June 2016, appellant Floyd Hyde was charged with second-degree assault, threats of violence, and fourth-degree criminal damage to property; in addition, a domestic abuse no-contact order (DANCO) was issued prohibiting appellant from contact with his brother S.P.H., his mother D.M.B., and his brother's wife K.J.H.

In August 2016, the state told appellant in a plea agreement letter that: (1) the maximum penalty if he went to trial on the three charges and on two DANCO violations in other cases was seven years in prison or $14,000 or both; (2) if appellant pleaded guilty to the threats-of-violence charge and the DANCO violations, the state would dismiss the other charges; and (3) assuming that appellant's criminal-history score (CHS) was one, he would receive a stay of execution of the presumptive sentence and be placed on supervised probation for four years and receive two executed 30-day sentences, concurrent, for the

DANCO violations. Appellant appeared with an attorney and entered an *Alford* guilty plea, but no plea petition was filed.

In October 2016, appellant's attorney told the district court that appellant might want to withdraw his guilty plea and that he had accused the attorney of ineffective assistance. The district court set October 26, 2016, as the deadline for counsel to file a motion to withdraw the guilty plea and November 1, 2016, as the date for a hearing on either a motion to withdraw or on sentencing. No motion to withdraw appellant's guilty plea was ever filed.

At the sentencing hearing, appellant appeared with a different attorney. Although no motion to withdraw the guilty plea had been filed, the attorney told the district court that appellant wanted to withdraw that motion. The district court then sentenced appellant to 15 months in jail, stayed, with four years of probation, and two concurrent 30-day sentences on the DANCO violations, as stated in the plea agreement. Because of the time he had already served, appellant was released from custody.

Appellant, now represented by a third attorney, challenges the judgment of conviction and sentence entered at the hearing, arguing that he is entitled to withdraw his guilty plea because the district court failed to comply with Minn. R. Crim. P. 15.01, the waiver of his right to a jury trial was not knowing, intelligent, and voluntary, and the *Alford* plea lacked a strong factual basis.[1]

[1] In a pro se supplemental brief, appellant accuses various individuals and entities of acts going back to 2003 and asks that his plea be withdrawn and that he not be incarcerated. There is no legal basis for any of the arguments in the pro se brief. This court does not

D E C I S I O N

As a threshold matter, respondent State of Minnesota argues that, because no motion to withdraw a guilty plea was presented to or considered by the district court, this appeal is not properly before us. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (noting that, generally, an appellate court will not consider matters not argued to and not considered by the district court). "But a defendant has a right to challenge his guilty plea on direct appeal even though he has not moved to withdraw the guilty plea in the district court." *State v. Anyanwu*, 681 N.W.2d 411, 413 (Minn. App. 2004). We therefore address the merits of appellant's arguments. On appeal, "[t]he defendant bears the burden to establish that his plea was invalid," and this court reviews the validity of the plea de novo. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012).

"At any time the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice. Such a motion is not barred solely because it is made after sentencing." Minn. R. Crim. P. 15.05, subd. 1. The denial of a withdrawal motion made after sentencing, under the manifest-injustice standard, is reviewed de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

I. Violations of Minn. R. Crim. P. 15.01

The state concedes that "the district court failed to follow the script set forth in Minn. R. Crim. P. 15.0[1], subd. 1." Appellant argues that this alone made his plea unintelligent

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address allegations unsupported by legal analysis or citation. *State v. Bartylla*, 755 N.W.2d 8, 23 (Minn. 2008).

and therefore invalid. But "[a] trial court's failure to follow Rule 15.01 procedures does not invalidate the guilty plea." *State v. Wiley*, 420 N.W.2d 234, 237 (Minn. App. 1988).

Appellant relies on *Campos v. State*, 816 N.W.2d 480 (Minn. 2012).

> Based on the unique facts of this case, where the State apparently concedes error and is not arguing that the error was waived, we remand the question of whether [the appellant] is entitled to withdraw his plea due to lack of compliance with Rule 15.01, subd. 1(6)(l) [(providing that a defendant who is not a US citizen must be informed that deportation may be a consequence of pleading guilty)].

Campos, 816 N.W.2d at 500. But *Campos* is distinguishable: in that case, the defendant would not have pleaded guilty if he had been informed that deportation was a possible consequence in compliance with Minn. R. Crim. P. 15.01, subd. 1(6)(1). Here, appellant does not indicate that the district court's noncompliance with the exact language of Rule 15.01, subd. 1, had any effect on his decision to plead guilty.

II. Waiver of the Right to a Jury Trial

Appellant argues that his waiver of the right to a jury trial was not knowing, voluntary, and intelligent because, when asked, "[A]re you waiving your right to have a trial?" he answered, "Unfortunately, yes." He claims that the district court "failed to ensure that [appellant] understood the basic elements of a jury trial." Appellant does not contend that he did not have an adequate understanding of a jury trial, only that "[t]he record does not support a determination that [appellant's] waiver of his jury-trial right was knowing, intelligent and voluntary."

But the transcript shows that appellant had a clear understanding of the waiver of a jury trial. He answered affirmatively when asked if: (1) he had enough time to discuss his

case with his lawyer; (2) his lawyer was fully informed on the facts of his case; (3) his lawyer had advised him fully and answered his questions; (4) he understood that he had a right to a jury trial and would not be convicted unless all members of the jury agreed he was guilty; (5) he understood he would not be presumed guilty unless and until his guilt was proved beyond a reasonable doubt; (6) the state would be required to produce witnesses subject to cross-examination; (7) he would have the right to call his own witnesses; and (8) his plea was being offered voluntarily and of his own free will. Appellant has not shown that his waiver of a jury trial was not knowing, voluntary, and intelligent.

III. *Alford* Plea

Appellant argues that his *Alford* plea was invalid because it lacked a strong factual basis. But appellant answered affirmatively when the prosecutor asked him if he had reviewed the complaint and if he was pleading guilty to threats of violence. When asked if, on a particular date, he had threatened to kill S.P.H. and if he knew who S.P.H. was, appellant again answered affirmatively. Appellant agreed that he understood what an *Alford* plea was, that he had had an opportunity to talk to his attorney about it, and that he understood an *Alford* plea was used when someone was unable or unwilling to admit to the facts that established a crime.

When the prosecutor told appellant he was going to be asked about the evidence and asked if he understood that, after the prosecutor said what evidence the state would use at trial, appellant would be asked if he believed that, if this evidence were presented to a jury, the jury would be likely to find him guilty, appellant said, "I just want to take the plea

agreement and enter the *Alford* plea but not answer 'yes/no' to fifty million questions."

The district court told him:

> [Y]ou're going to have to answer some of these questions that I ask and that [the prosecutor] asks of you, because it's important that the record be clear and . . . that we detail through this. I know that it can be frustrating and it may seem tedious to you, but it's important, both for you and for me, that we have a clear record of what's taking place here. And so if down the road there are any issues, then you will have a clear record with respect to today's proceedings. Does that make sense, sir?

Appellant replied, "No, it doesn't, but go ahead. I think it's overkill," and the district court responded, "Regardless of what you think, I am telling [the prosecutor] I want him to present the State's case on the record."

The prosecutor then questioned appellant.

> Q: Now again, [appellant], I'm not asking you to agree with this, just that you understand and recognize the evidence. Okay?
> A: I already said that I've read the complaint.
> . . . .
> Q: . . . I'll try to be as brief as I can. . . . I would suspect that at trial the State would call [the trooper] who was dispatched to a rural address . . . that day. Do you understand that?
> A: Yes.
> Q: That he, as well as [a deputy], would testify that they found you in your vehicle . . . in the driveway of that residence and that you were agitated at that time?
> A: Yes. I called them. I called 911.
> Q: But the officers would testify that . . . when they showed up, they found you in your car and that they found your demeanor to be aggressive. That would be their testimony.
> A: I understand that they would say that.
> Q: Okay. And that they ultimately talked to some people that were there at the home, including an individual whose

name is S.P.H. And we already established you know who that is, right?
A: Yes.
Q: And . . . I would imagine S.P.H. would be called to testify. If that individual testified consistent with his reports to police officers, that . . . would indicate that you threatened or mouthed the words that you were going to "fucking kill him." Do you understand that?
. . . .
A: . . . That his testimony would be that he could read my lips [and] that he thought that I said that—those words, yes, I understand that.
. . . .
Q: . . . And that an altercation then ensued after he saw you and saw your lips. Do you understand that that would be his testimony?
A: Yeah. Some more happened, yes.
Q: Okay. And it would be his testimony that a part of what that was would be you brandishing a knife. Do you understand that?
A: Yup (meaning yes).
Q: And now all of that evidence taken together, I would also suspect that he would testify that he felt terrorized or at least that it caused that on his part. Do you understand that would be his testimony?
A: I don't believe that he was terrorized one bit. He –
Q. And I'm not asking –
A. He confronted me, so . . .
Q. -- you to agree with it. Okay?
A. Okay.
Q. Just – I'm asking, do you understand that if he testified consistent with his reports to law enforcement that would be his testimony at trial?
A. Okay, yes.
Q. Okay. And given that evidence and that testimony at trial, do you believe that if a jury heard that evidence there's a substantial likelihood that you would be found guilty?
A. Okay.

Appellant agreed that he understood the plea agreement and believed accepting it to be in his best interests and that he was taking the *Alford* plea to get the benefit of the plea

agreement. Thus, the transcript supports the district court's finding "a sufficient basis or sufficient evidence to support a jury verdict of guilty" and accepting appellant's *Alford* plea.

Appellant objects that "there w[ere] no abbreviated testimony, no witness statements, no stipulated facts" during the *Alford* plea hearing. But these are not necessary:

> In the context of an *Alford* plea, our jurisprudence indicates that the better practice is for the factual basis to be based on evidence discussed with the defendant on the record at the plea hearing . . . . This discussion may occur through an interrogation of the defendant about the underlying conduct and the evidence that would likely be presented at trial . . . .

State v. Theis, 742 N.W.2d 643, 649 (Minn. 2007). Appellant has not shown that his *Alford* plea was invalid for lack of a strong factual basis.

Affirmed.