STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0156

Michael Dejaris Denson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 25, 2017
Affirmed
Bratvold, Judge

Ramsey County District Court
File No. 62-CR-14-2060

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

John Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota; (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and Jesson, Judge.

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

BRATVOLD, Judge

Appellant challenges the denial of his motion for postconviction relief requesting to withdraw his guilty plea for second-degree criminal sexual conduct. Because appellant was

not entitled to substitute counsel, his plea was not involuntary, and his other challenges to the validity of the plea are unavailing, we affirm.

FACTS

In March 2014, the state charged appellant Michael Dejaris Denson with three counts of first-degree criminal sexual conduct and two counts of third-degree criminal sexual conduct for repeatedly raping and sexually abusing M.H., his teenage daughter. According to the criminal complaint, Denson and M.H. had minimal contact until 2011, when Denson agreed to let M.H. live with him, telling her he would have sex with her. On the day she moved in, Denson performed oral sex on M.H. and had sexual intercourse with her. During the next year, Denson abused M.H. every day. The abuse continued until March 2014, although the frequency decreased.

In August 2014, Denson told the court he wanted to accept a plea agreement by which he would plead guilty to an amended charge of second-degree criminal sexual conduct and receive a guidelines sentence of 300 months in prison. In exchange, the state would dismiss the other charges. Denson asked to speak before entering his plea. The district court responded that Denson's counsel had "worked very hard to get this offer," but that Denson did "not have to accept it." Denson stated:

> I don't feel like I'm being forced to plead, Your Honor. I'm just upset with the public defender's office. And putting me and [trial counsel] in this position, where he never tried a case like this. And it's not, I don't think it's fair to him or fair to me.
>
> As far as guilty plea, I mean, I'm guilty. I want to get this behind me. I'm just going to say I'm guilty of the crime. Let's get this done. Let's just get this done. I'm guilty. Let's get it done.

The district court told Denson that his counsel was "an excellent trial attorney." Denson replied, "I believe that, your honor," but later insisted that his counsel had "never tried a case like this." The district court replied "I think he probably has. But anyway, do you want to plead guilty or not?" Denson said, "Yeah. Let's do it. Let's get this over with, man. Then we don't have to see each other again." The district court, defense counsel, and Denson also discussed Denson's questions regarding his conditional release period. Denson interrupted the conversation, saying "I'm guilty, your honor. Let's go. Let's go. Let's go."

Defense counsel and Denson then went over the signed plea petition, which stated that he admitted to "sexual contact with my daughter [through] multiple acts over an extended period of time." Denson continued to interject that he wanted to "get this out of the way." He also admitted he was freely and voluntarily waiving his trial rights. The district court accepted Denson's plea as voluntary and accurate. After the plea, the state filed an amended complaint, as promised in the plea agreement, adding a second-degree criminal sexual conduct charge.

At his scheduled sentencing hearing, Denson was represented by a public defender who was different from his appointed counsel. The new attorney told the court that Denson had considered whether to withdraw his plea, but was prepared to be sentenced. The district court proceeded with sentencing, beginning with the prosecution's statement. Denson twice interrupted, claiming that the state was "dramatizing" the events. During Denson's allocution, he stated he "never touched my daughter inappropriately," and expressed dissatisfaction with the quality of his legal representation.

The court asked Denson whether he wanted to withdraw his plea instead of going forward with sentencing, and Denson responded, "Well, your honor. I cannot go to trial with him. . . . It ain't fair to him. It ain't fair to me." The district court again asked Denson whether he wanted to withdraw his plea; Denson did not respond directly, but generally complained about his appointed counsel. The district court noted that Denson was giving the "impression that you were being forced by somebody to plead guilty to something you didn't do," and then asked a third time whether Denson wanted to withdraw his plea. Denson stated, "to be honest, I really don't know." The district court told Denson he would continue the case for one week to allow Denson to decide whether he wanted to be sentenced or withdraw his plea. Denson responded, "Let's go with the guilty. Let's get this done." The district court refused, telling Denson to take the week to think it over and discuss questions with his counsel.

At the continued sentencing hearing the following week, Denson was again represented by his appointed counsel. Denson told the court he was "gonna go with guilty" and proceed with sentencing. He refused to go through the predatory offender materials, stating, in part, "I'm guilty, man. Let me go to the joint. I'm guilty." He also stated, "I'm guilty. I ain't trying to be no fool, your honor. I'm just trying to get this over with . . . . I'm sick of him. He's a sell out, man. I don't want to be around him no more." The district court sentenced Denson to 300 months in prison on October 24, 2014.

Denson filed a petition for postconviction relief on August 16, 2016, arguing that he was forced to plead guilty due to his dissatisfaction with trial counsel. The postconviction court noted that Denson acknowledged his satisfaction with counsel during

the plea colloquy, and the record established the adequacy of appointed counsel's representation. The postconviction court also found that Denson made his own decision to plead guilty. The postconviction court determined Denson's plea was voluntary and denied Denson's petition for postconviction relief. Denson appeals.

D E C I S I O N

"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." Minn. R. Crim. P. 15.05, subd. 1. Minnesota appellate courts have recognized that manifest injustice exists where a guilty plea is invalid because it is inaccurate, involuntary, or unintelligent. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). An appellant bears the burden of showing his plea was invalid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). Although we review a denial of postconviction relief for abuse of discretion, the validity of a guilty plea is reviewed de novo. *James v. State*, 699 N.W.2d 723, 728 (Minn. 2005).

I. The postconviction court did not err in determining Denson voluntarily pleaded guilty.

The voluntariness requirement aims to ensure that a defendant is not coerced, improperly pressured, or induced to enter a plea agreement. *See State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000); *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). Whether a plea is voluntary is determined by consideration of "all of the relevant circumstances surrounding" the plea. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994).

The postconviction court determined Denson's plea was voluntary. Denson argues he pleaded guilty because he did not believe his appointed counsel could adequately represent him at trial and he was not given "the option of alternative counsel." To be clear, Denson's argument is not that he received ineffective assistance in negotiating and accepting the plea, but that he accepted the plea to avoid receiving inadequate assistance at trial. In effect, Denson argues the district court's failure to appoint substitute counsel compelled him to plead guilty. The erroneous denial of a request for substitute counsel may form the basis for a plea withdrawal if the plea is shown to be involuntary due to the denial. *See United States v. Taylor*, 652 F.3d 905, 909 (8th Cir. 2011) (determining that "[a] waiver [of counsel] is involuntary if the defendant is offered the 'Hobson's choice' of proceeding to trial with unprepared counsel or no counsel at all").

An indigent defendant is not entitled to an attorney of his choice, but substitute counsel may be granted in "exceptional circumstances." *State v. Worthy*, 583 N.W.2d 270, 278 (Minn. 1998). "When the defendant voices serious allegations of inadequate representation, the district court should conduct a searching inquiry before determining whether the defendant's complaints warrant the appointment of substitute counsel." *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013) (quotations omitted). We review the denial of a request for substitute counsel for abuse of discretion. *Id.*

Although Denson never formally made a request for substitute counsel, it was clear that Denson was dissatisfied with his appointed attorney and thought he was unfit to try the case. At one point, Denson stated, "I'm asking that Ramsey County needed to give me

a different attorney." We conclude that Denson's statements amounted to a request for substitute counsel.

The issue on appeal is whether Denson "voice[d] serious allegations of inadequate representation" such that his concerns warranted appointment of substitute counsel. *Munt*, 831 N.W.2d at 586 (quotation omitted). The "exceptional circumstances" that necessitate appointment of substitute counsel are those that "affect a court-appointed attorney's ability or competence to represent the client." *State v. Gillam*, 629 N.W.2d 440, 449 (Minn. 2001). General dissatisfaction with counsel is not sufficient. *Worthy*, 583 N.W.2d at 278.

Here, Denson stated his concerns about appointed counsel, but he did not raise any specific concerns about his counsel's representation beyond claims that the attorney had not previously tried this type of case to a jury. We conclude that these concerns do not amount to "exceptional circumstances," and therefore no substitute counsel was necessary. *See, e.g.*, *State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999) (holding general dissatisfaction and personal tension are not exceptional circumstances warranting substitute counsel). The district court discussed Denson's concerns with him on multiple occasions, and even continued sentencing so that Denson could consider whether to withdraw his plea. Accordingly, we conclude the district court did not abuse its discretion when it did not appoint substitute counsel and that the failure to appoint substitute counsel did not render Denson's plea involuntary.

Aside from his substitute-counsel argument, Denson provides little support for his argument that his plea was involuntary.[1] Our review of the record shows that Denson demonstrated that he desired to enter into the plea agreement. He stated repeatedly "I'm guilty," "let's go," and "let's get this done." These repeated statements do not indicate coercion or force, but voluntariness to settle the case. Moreover, the district court asked repeatedly whether he wanted to go forward with or withdraw his plea. These inquiries and Denson's repeated decision to proceed with the plea agreement support the postconviction court's determination that his plea was voluntary. Accordingly, we conclude that the postconviction court did not abuse its discretion when it denied relief.

II. Denson's plea was accurate.

"The factual basis of a plea is inadequate when the defendant makes statements that negate an essential element of the charged crime because such statements are inconsistent with a plea of guilty." *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003). This rule applies when a defendant specifically denies an element of the crime. *See, e.g.*, *Kelsey v. State*, 298 Minn. 531, 532, 214 N.W.2d 236, 237 (1974) (noting that first-degree murder defendant had admitted to fighting with the decedent, but "denied he had used a dangerous weapon or inflicted great bodily harm upon the victim" and "this was all that the trial court

[1] Denson attempts to highlight his questions to the district court and the prosecutor regarding to which charge he was entering a plea. During the plea colloquy, Denson twice addressed the court before answering a question, asking "Is this what I'm plead guilty to?" and "How many counts am I pleading guilty to here?" Denson answered the questions affirmatively after the court answered his questions. The fact that Denson asked questions during his plea colloquy and these questions were answered immediately, apparently to his satisfaction, does not render his plea invalid.

had before it in the nature of a factual basis"); *Chapman v. State*, 282 Minn. 13, 22, 162 N.W.2d 698, 704 (1968) (holding defendant's guilty plea to a murder charge was inaccurate because he "specifically denied an intent to kill"); *State ex rel. Grattan v. Tahash*, 262 Minn. 18, 20-21, 113 N.W.2d 342, 343-44 (1962) (determining that a guilty plea was inaccurate because defendant's statements at the plea colloquy did not establish the intent element). Denson contends that his plea was inaccurate because he later denied elements of the charged offense. We are not persuaded.[2]

At the plea hearing and in response to leading questions, Denson admitted to touching his daughter's vagina several times over the course of two years. While leading questions at a plea hearing are disfavored, Denson's admissions are sufficient to support the second-degree criminal sexual conduct charge to which he pleaded guilty. *C.f. Raleigh*, 778 N.W.2d at 95-96 (determining a plea was valid despite its use of the "disfavored format" of leading questions).

Denson later made statements negating elements of the charged offense when he met with probation and at the first sentencing hearing, but these later statements do not negate the testimony he provided at the plea hearing. When a defendant asserts his innocence after pleading guilty, these later statements do not invalidate the plea. *See State v. Williams*, 373 N.W.2d 851, 853 (Minn. App. 1985) (determining that defendant's assertion of innocence after the plea did not meet the "fair and just" standard for presentence plea withdrawal) *abrogated on other grounds by Kim v. State*, 434 N.W.2d

[2] The postconviction court determined that Denson did not challenge the accuracy of his plea. On appeal, the state responds to Denson's argument and, thus, we consider it.

263, 266 (Minn. 1989). Moreover, when Denson returned for sentencing, he made no comments about the elements of his offense or his innocence. Accordingly, we conclude that Denson's plea was accurate.

III. The issues raised in Denson's pro se brief are unavailing.

Denson submitted a pro se supplemental brief that asserts facts not raised in his principal brief. For example, Denson alleges that his appointed counsel was assigned through a pool system by which "the one with the least experience is assigned the case," that his counsel at the first sentencing hearing "held his folder over his mouth and said I'm only here if you plead guilty," and that his appointed counsel now prosecutes misdemeanors. None of these factual allegations are supported by the record; therefore, we do not consider them further. *See* Minn. R. Civ. App. P. 110.01 (defining the appellate record as "[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings"); *In re Welfare of J.P.-S.*, 880 N.W.2d 868, 874 (Minn. App. 2016) ("We may not base our decision on matters that were not received into evidence by the district court and that are outside the record on appeal.").

Denson also claims that, before he entered his plea, counsel stated he would receive a 200-month sentence. But the plea-hearing transcript and signed plea petition reflect that Denson pleaded guilty in exchange for a 300-month sentence. Finally, Denson complains that he was charged with the same crime five times. "[I]f a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." Minn. Stat. § 609.035, subd. 1 (2014). Here, Denson was convicted of and sentenced for only one of the six counts of criminal sexual conduct. Denson pleaded

guilty to second-degree criminal sexual conduct for sexually abusing M.H. over a two-year period when she was 14 and 15 years old. Thus, Denson's sentence does not violate section 609.035.

Because we conclude that Denson's plea was voluntary and accurate, the postconviction court did not abuse its discretion, and also determine that Denson's pro se arguments lack merit, we affirm his conviction.

Affirmed.