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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1641

State of Minnesota,
Respondent,

vs.

Erica Marie Ruiz,
Appellant.

Filed September 24, 2018
Affirmed
Smith, Tracy M., Judge

Ramsey County District Court
File No. 62-CR-16-6108

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

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

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

SMITH, TRACY M., Judge

Appellant Erica Ruiz appeals the denial of her presentence motion to withdraw her plea, arguing (1) that it was fair and just to permit withdrawal because she was innocent

and felt pressured by her attorney to plead guilty and (2) that withdrawal was required because her plea was not intelligent. We affirm.

FACTS

In late August 2016, Ruiz was charged with one count of felony threats of violence and one count of gross-misdemeanor stalking. On February 28, 2017, Ruiz entered an *Alford* plea[1] to gross-misdemeanor stalking in exchange for dismissal of the threats-of-violence charge and a recommendation for a stay of execution of the sentence for stalking, with no additional jail time.

Before sentencing, Ruiz filed a motion to withdraw her plea. A hearing was held on July 20. The district court denied her motion to withdraw, concluding that allowing Ruiz to withdraw her plea was not fair and just and that she had entered her plea "voluntarily, knowingly, and intelligently." At sentencing, per her attorney's request and without objection by the state, the district court agreed to stay the imposition (rather than stay the execution) of Ruiz's sentence so that she would have the opportunity to reduce her conviction from a gross misdemeanor to a misdemeanor if she complied with the conditions of probation.

Ruiz appeals the denial of her plea-withdrawal motion.

[1] An *Alford* plea allows a defendant to plead guilty while maintaining innocence of the charged offense because there is sufficient evidence for a jury to find the defendant guilty at trial. *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977) (discussing *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970)).

D E C I S I O N

I. The district court did not abuse its discretion in denying Ruiz's motion to withdraw her plea under the fair-and-just standard.

A district court has discretion to allow a defendant to withdraw a plea before sentencing "if it is fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2. In applying the fair-and-just standard, the district court must consider the defendant's reasons as to why the defendant should be allowed to withdraw his or her plea and balance those reasons against any prejudice the state would suffer. *Id.* The defendant has the burden to show why plea withdrawal is appropriate. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010).

Ruiz argues that plea withdrawal would have been fair and just because she is innocent of the charges and she pleaded guilty only because she felt forced to do so by her attorney, who she believes was providing inadequate representation. The decision whether to permit withdrawal under the fair-and-just standard is within a district court's discretion and "will be reversed only in the rare case in which the appellate court can fairly conclude that the [district] court abused its discretion." *State v. Kaiser*, 469 N.W.2d 316, 320 (Minn. 1991) (quotation omitted). We conclude that this is not one of those rare cases.

In deciding that Ruiz was not pressured by her attorney into pleading guilty, the district court relied on her sworn statements and signed plea petition, as well as its own observations as to the significant amount of time Ruiz spent discussing her plea with her attorney off the record during the plea hearing. After meeting with counsel and listening to the state's offer of proof, Ruiz testified that she had sufficient time to discuss the offer and was freely choosing to plead guilty because she believed there was sufficient evidence

to support a guilty verdict. The district court chose to credit Ruiz's sworn statements, and we defer to this credibility determination. *See State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. Jun. 11, 1997). As for Ruiz's argument that she is innocent of the charges, this assertion is fully consistent with her *Alford* plea and so cannot provide a reasonable basis for its withdrawal. *See Goulette*, 258 N.W.2d at 761 (explaining that, under an *Alford* plea, a defendant maintains his or her innocence). The district court did not abuse its discretion in declining to allow Ruiz to withdraw her plea under the fair-and-just standard.

II. There is no manifest injustice requiring plea withdrawal.

A district court must allow a defendant to withdraw a guilty plea if it is necessary to correct a "manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists when a plea is not constitutionally valid, meaning that it is not accurate, voluntary, or intelligent. *Raleigh*, 778 N.W.2d at 94. For a plea to be intelligent, a defendant must understand "the charges against [her], the rights [s]he is waiving, and the consequences of [her] plea." *Id.* at 96. The validity of a plea is a question of law that appellate courts review de novo. *Id.* at 94.

Ruiz argues that there are two issues that rendered her plea unintelligent: (1) it was unclear to her what the terms of the plea agreement were; and (2) she was unaware of the potential consequences of her guilty plea, specifically, that she would receive two years of probation.

The record indicates that Ruiz was made aware of the terms of the plea agreement at the plea hearing by both the state and her attorney, and she agreed to those terms in the

signed plea petition. At the beginning of the plea hearing, the state explained that its offer was for Ruiz to enter an *Alford* plea to "either count as a gross misdemeanor, with a stay of execution, no additional jail time requested by the state." The consequences of the plea were also articulated within the plea petition that Ruiz signed, which stated that "the maximum penalty that the court could impose" for the crime is imprisonment for one year. And, before her plea was accepted, Ruiz testified that her attorney fully explained the "joint recommendation" and that she understood the terms and conditions.

Ruiz's reliance on *State v. DeZeler*, 427 N.W.2d 231 (Minn. 1988) is misplaced. While the defendant in *DeZeler* was mistakenly told he would receive a lesser sentence based on his criminal history score, *see DeZeler*, 427 N.W.2d at 235, Ruiz was not misinformed of her sentence and did not, in fact, receive any additional jail time in accordance with her plea agreement. There was no promise in the state's offer regarding probation, either when it was made on the record or in what was noted on the plea petition. At sentencing, Ruiz's attorney successfully requested a stay of imposition instead of a stay of execution, which requires successful completion of the terms of the stay. *See* Minn. Sent. Guidelines 1.B.19 (2015). And, notably, when the district court explained at sentencing what a stay of imposition entailed, Ruiz did not object to probation or claim surprise at the conditions.

Because we conclude that Ruiz intelligently entered her plea, there is no manifest injustice requiring plea withdrawal.

Affirmed.