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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1729**

State of Minnesota,
Respondent,

vs.

Larry Donnell Griffin,
Appellant.

**Filed August 13, 2018
Affirmed
Larkin, Judge**

Ramsey County District Court
File Nos. 62-CR-16-8117, 62-CR-16-7989, 62-CR-16-7991

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

John J. Choi, Ramsey County Attorney, Elizabeth Lamin, 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 Schellhas, Presiding Judge; Larkin, Judge; and Stauber,

Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's denial of his motion to withdraw his guilty pleas to several criminal-sexual-conduct charges, arguing that his pleas were coerced. We affirm.

FACTS

Respondent State of Minnesota charged appellant Larry Donnell Griffin with more than 15 counts of criminal sexual conduct, kidnapping, and robbery in five separate cases. One case was tried to a jury, resulting in a guilty verdict. Griffin engaged in negotiations to dispose of the remaining cases through a comprehensive plea agreement.

The prosecutor stated the state's plea offer on the record as follows: plead guilty to first-degree criminal sexual conduct in one of the cases, enter *Alford* guilty pleas to first-degree criminal sexual conduct in two other cases, and receive a prison sentence ranging from 306 to 450 months. The state agreed to dismiss the kidnapping and robbery charges in the cases in which Griffin pleaded guilty, as well as the remaining robbery case.

Griffin countered the state's offer with his own proposal as follows: plead guilty to first-degree criminal sexual conduct in three cases and proffer a factual basis for each guilty plea in exchange for the opportunity to argue for a prison sentence as low as 216 months, which would have been a downward durational departure, with a cap of 450 months.

The state agreed to Griffin's proposal, and the district court approved the settlement. Griffin waived his right to trial, executed and submitted petitions to plead guilty as agreed, and provided a factual basis for each plea. The district court deferred acceptance of

Griffin's guilty pleas pending the completion of a presentence investigation report (PSI). The district court informed Griffin that there were no guarantees regarding a departure, but assured Griffin that it would consider his argument for departure.

Prior to sentencing, Griffin moved for plea withdrawal. His attorney argued that plea withdrawal should be allowed based on Griffin's assertion of his innocence and noted that Griffin had maintained his claim of innocence throughout the pretrial proceedings. Griffin's attorney argued that "[w]henver [Griffin] has had access to the record, except for the day he entered [his] plea, he has continued to assert his innocence." Griffin himself argued that he did not understand his plea. The district court denied Griffin's request to withdraw his pleas, reasoning as follows:

The Court did make a finding near the end of that plea agreement that the defendant was competent to enter a plea. He had provided a knowing, intelligent, and voluntary waiver of his trial rights. . . . He did spend a great deal of time speaking with [his attorney] about the plea agreement. Counsel pointed out it was almost an hour and a half recess the Court took to give the defendant an opportunity to speak with counsel.

And, yes, it is true that there were some statements on the record from Mr. Griffin that he had concerns about his counsel's performance. But the court, after giving him additional time to consider and meet with [his attorney], was confident at that time and is confident today that [his attorney] performed effectively and the defendant agreed that he had performed effectively in advising him not only during the previous trial but during the plea negotiations.

. . . [Griffin's] assertion of innocence is certainly inconsistent with the statements that he made under oath during that plea petition. There are 10 pages in the plea petition where he went through the factual basis and each of these cases . . . provide a thorough factual basis for his guilty plea to criminal sexual conduct in the first degree.

. . . [D]efendant chose not to assert his innocence and take an *Alford* plea. Rather, he fully agreed to under oath that

he had committed these crimes and in great detail. And the information that he provided under oath was consistent and corroborated by the evidence

The district court also noted that it was a burden on the state to restart the trial proceedings and that it was unacceptable to put the victims through trial after they were told that the cases were resolved.

The district court received a PSI recommending that Griffin serve 648 months in prison with a lifetime conditional-release period. Griffin requested he be sentenced to 216 months in prison, arguing that he should receive a durational departure because his cognitive processes were affected by three years of methamphetamine use, because 216 months is a substantial penalty, and because the time in prison would afford him the ability to take advantage of chemical and mental-health services. The state argued that Griffin should receive a 450-month prison sentence because of the egregious conduct in the cases, but the state acknowledged that Griffin had spared the victims further distress by pleading guilty. The district court sentenced Griffin to serve 450 months in prison. Griffin appeals.

D E C I S I O N

I.

Griffin contends that the district court “abused its discretion by denying [his] request for plea withdrawal where it would have been fair and just to allow him to face trial.”

“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). However, “[i]n its discretion the court may allow the defendant to withdraw a plea at any time before sentence if it is fair and just to do so.” Minn. R. Crim. P. 15.05, subd. 2.

The fair and just standard requires district courts to give due consideration to two factors: (1) the reasons a defendant advances to support withdrawal and (2) prejudice granting the motion would cause the State given reliance on the plea. A defendant bears the burden of advancing reasons to support withdrawal. The State bears the burden of showing prejudice caused by withdrawal. We review a district court's decision to deny a withdrawal motion for abuse of discretion, reversing only in the rare case.

Raleigh, 778 N.W.2d at 97 (quotations and citations omitted).

In district court, Griffin offered two grounds for plea withdrawal: he was innocent of the crimes charged and he did not understand the plea agreement. On appeal, Griffin does not argue the district court erred by denying his motion on these grounds. Instead, Griffin for the first time argues that plea withdrawal should have been allowed because his plea was coerced.

As a general rule, an appellate court will not decide issues that were not first raised before the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Moreover, we question how we could conclude that the district court abused its discretion by refusing to grant relief based on a coercion theory that was never raised. Because Griffin does not argue that the district court abused its discretion by denying his motion for plea withdrawal on the grounds that were raised, we do not review the district court's application of the fair-and-just standard. However, we consider Griffin's coercion arguments under the manifest-injustice standard in the next section of this opinion.

II.

Griffin contends that the district court should have allowed him to withdraw his plea because it was manifestly unjust. "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. A manifest injustice results if a guilty plea is invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A defendant has the burden to establish that his guilty plea was invalid and therefore subject to withdrawal. *Raleigh*, 778 N.W.2d at 94. Assessing the validity of a plea presents a question of law, which we review de novo. *Id.*

To be valid, a guilty plea must be “accurate, voluntary, and intelligent.” *Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002). The “involuntariness of a guilty plea constitutes such a manifest injustice as to entitle a defendant to withdraw his plea.” *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994) (quotation omitted). The voluntariness requirement ensures a defendant is not pleading guilty due to improper pressure or coercion. *Raleigh*, 778 N.W.2d at 96.

Again, an appellate court generally will not decide issues that were not first raised before the district court. *Roby*, 547 N.W.2d at 357. But an offender may challenge the validity of a guilty plea for the first time on appeal if the record provides a sufficient basis for meaningful review. *See State v. Anyanwu*, 681 N.W.2d 411, 413 & n.1 (Minn. App. 2004) (holding that defendant could challenge guilty plea for first time on appeal when challenge was based entirely on matters of record and no material-fact dispute existed), *overruled by Wheeler v. State*, 909 N.W.2d 558 (Minn. 2018). We address Griffin’s challenge to the validity of his guilty plea for the first time on appeal because the record provides a sufficient basis for meaningful appellate review, given the specific arguments advanced by Griffin.

Griffin contends that his guilty plea was coerced for three reasons. We address each in turn.

First, Griffin argues that “the state refused to allow [him] to plead pursuant to *Alford* unless [he] agreed to a higher potential sentencing range.” The state counters that Griffin was the one who proposed providing a factual basis for his guilty pleas, arguing that Griffin “strategically determined that it would benefit his argument for a durational departure to admit all the facts of the cases and there was absolutely no coercion on the part of the State.”

We agree that the record does not support Griffin’s claim that the state coerced his guilty pleas by refusing to allow an *Alford* plea. The ultimate plea agreement, in which Griffin provided a factual basis for each of his guilty pleas and argued for a durational departure, was Griffin’s idea. We reject Griffin’s attempt to characterize a negotiated settlement that he proposed as one that was coerced by the state.

Second, Griffin argues that his “guilty plea was invalid because it was premised upon an illusory promise.” “A guilty plea cannot be induced by unfulfilled or unfulfillable promises, including a promise of a sentence unauthorized by law. Where a sentence is illegal and therefore invalidly imposed, the voluntariness of the plea is drawn into question.” *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). Griffin argues that the promise that he could argue for a durational departure was illusory because there were no legal grounds for a downward departure.

We agree that there does not appear to be any obvious legal ground for a downward departure in this case. However, the likelihood of the district court granting a downward

departure is immaterial because Griffin was not promised a departure. The state agreed to a specific sentencing range that would allow Griffin to argue for a downward durational departure. But as the district court advised Griffin at the time of the plea, the district court did not promise a departure.

In sum, Griffin was promised that he could argue for a downward durational departure as part of a global settlement that resolved all outstanding charges, with guilty pleas to some charges, dismissal of other charges, and a sentencing range with a maximum duration of 198 months less than the sentence ultimately recommended in the PSI. Griffin received exactly what he bargained for. This case does not involve an illusory promise resulting in coercion.

Third, Griffin argues that his “guilty plea was invalid because the district court . . . had predetermined his guilt.” Griffin’s argument is perplexing. He seems to rely on comments by the district court at sentencing, which he deems “inappropriate,” as evidence of coercion. Griffin fails to explain—and we fail to discern—how statements that the district court made one month after he pleaded guilty coerced his plea. Moreover, we fail to see why the district court’s comments regarding the evidence of Griffin’s guilt were inappropriate when they were made in direct response to Griffin’s argument that his plea should be withdrawn because he was actually innocent. It seems completely reasonable for the district court to have assessed Griffin’s claim of innocence in light of the evidence suggesting his guilt. Indeed, Griffin does not cite legal authority establishing that the district court’s approach was improper.

Lastly, we address Griffin's complaint that the district court failed to consider his "systemic arguments." Specifically, Griffin refers to the following argument that his lawyer made to the district court in support of plea withdrawal: "What matters is that a person is standing before the system saying I am innocent. And we do have constitutional rights to trial. And he is now saying I want that back. I want to exercise my right to trial."

Appellant's suggestion that he should be allowed to withdraw his guilty plea and have a trial simply because he changed his mind and decided to reassert his innocence is unavailing. A defendant does not have an absolute right to withdraw a guilty plea. *State v. Hughes*, 758 N.W.2d 577, 582 (Minn. 2008); *Theis*, 742 N.W.2d at 646. Allowing a defendant to withdraw a guilty plea "for any reason or without good reason" would "undermine the integrity of the plea-taking process." *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

"Public policy favors the finality of judgments and courts are not disposed to encourage accused persons to play games with the courts by setting aside judgments of conviction based upon pleas made with deliberation and accepted by the court with caution." *Kaiser*, 641 N.W.2d at 903 (quotation omitted). "A defendant, no less than a prosecutor, should not be permitted to renege on a plea agreement without sufficient cause, nor to use a plea of guilty as a tactical device to frustrate the prosecution of an offense which the evidence would support." *Beltowski v. State*, 289 Minn. 215, 219, 183 N.W.2d 563, 566 (1971). "A failure to require [a defendant] to adhere to a plea agreement properly negotiated and approved by the court would obviously have an adverse effect on the

prosecution's employment of plea negotiations and plea agreements as an effective aid in the administration of criminal justice." *Id.*

In sum, Griffin's suggestion that he should be allowed to withdraw his guilty plea and stand trial simply because he changed his mind is inconsistent with well-established policy favoring the finality of guilty pleas. Griffin has the burden to establish that his guilty plea was invalid and therefore subject to withdrawal. *Raleigh*, 778 N.W.2d at 94. Because neither caselaw nor the record supports Griffin's claim that his guilty plea was coerced and therefore invalid, we affirm.

Affirmed.