**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-1103**
**A19-1330**

State of Minnesota,
Respondent,

vs.

Trejuan Dominic Miller,
Appellant.

**Filed June 15, 2020**
**Affirmed**
**Connolly, Judge**

Hennepin County District Court
File Nos. 27-CR-18-25314, 27-CR-19-2013

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Rodenberg, Judge.

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

**CONNOLLY**, Judge

In this consolidated appeal following sentences for failure to register as a predatory offender and fleeing police in a motor vehicle, appellant challenges the denial of his postsentence motions for plea withdrawal. He also raises three issues in a pro se supplemental brief. Because appellant entered valid guilty pleas, and because his pro se arguments entitle him to no relief, we affirm.

## FACTS

This consolidated appeal concerns two guilty pleas entered in separate cases. In October 2018, respondent State of Minnesota charged appellant Trejuan Miller with one count of failing to register as a predatory offender under Minn. Stat. § 243.166, subd. 5(a) (2018). Then in January 2019, the state filed another complaint charging appellant with one count of fleeing police in a motor vehicle under Minn. Stat. § 609.487, subd. 3 (2018), and one count of providing a false name to police under Minn. Stat. § 609.506, subd. 1 (2018).

At an April 2019 hearing, appellant entered a straight plea on the predatory-offender-registration charge and agreed with the state to plead guilty to the fleeing charge in exchange for dismissal of the false-name charge. The district court ordered a presentence investigation and the parties scheduled a sentencing hearing.

Based on his criminal-history score, appellant faced a presumptive 24-month prison sentence on the predatory-offender-registration charge. *See* Minn. Sent. Guidelines 4.B (2018). At sentencing, the district court denied appellant's motions for downward

dispositional and durational departures and imposed the presumptive sentence on the predatory-offender-registration offense. It also imposed the presumptive 17-month stayed prison sentence on the fleeing offense.[1] Just after the district court announced these sentences, appellant orally moved to withdraw his guilty pleas, and following the parties' arguments and a brief recess, the district court denied both motions. This consolidated appeal follows.

## D E C I S I O N

### I. Denial of motions for plea withdrawal

The central issue on appeal is whether the district court erred in denying appellant's motions for plea withdrawal. An appellate court reviews a guilty plea's validity de novo. *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017).

Once a defendant enters a guilty plea, there is no absolute right to plea withdrawal. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). Upon a defendant's timely motion, a district court must permit plea withdrawal at any time to fix a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1.[2] A manifest injustice exists when a guilty plea is not accurate, voluntary, or intelligent. *Mikulak*, 903 N.W.2d at 603. The burden of establishing an invalid guilty plea rests with the defendant. *Id.* Here, appellant challenges the accuracy and voluntariness of his guilty pleas.

[1] The parties appeared for a second sentencing date where appellant chose to execute the 17-month presumptive stayed sentence concurrent to his 24-month prison sentence.

[2] Neither party argues that the "fair and just" standard for plea withdrawal in Minn. R. Crim. P. 15.05, subd. 2, applies here.

### A. Accuracy of appellant's pleas

The accuracy requirement ensures that defendants do not plead guilty to a more serious charge than they could have been convicted of at trial. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). An accurate guilty plea requires the support of a proper factual basis. *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007).

To attack the accuracy of his pleas, appellant highlights the use of leading questions to establish the factual basis underlying each plea. The Minnesota Supreme Court has expressed repeated disapproval of this practice. *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) (collecting cases). But the use of leading questions does not automatically invalidate a guilty plea. *Id.*

A review of the record shows that appellant's trial counsel mainly used leading questions to establish the factual basis for both offenses. But the record also shows that appellant admitted each of the elements for both offenses. As a result, we decline to invalidate his guilty pleas based on the use of leading questions when the record contains evidence supporting appellant's guilt. *See State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010) (explaining that a defendant cannot withdraw his plea even if the district court did not obtain proper responses to establish the factual basis when the record contains enough evidence to support the conviction).

In urging us to conclude that his pleas lacked accuracy, appellant contends that the record shows that he was confused about the elements of one offense and that he later denied an element of the fleeing offense. First, the confusion that appellant references occurred at an earlier hearing when his trial counsel stated that appellant was confused

about the elements of the predatory-offender-registration offense. But whatever confusion appellant had does not appear in the transcript at the plea hearing, at which he acknowledged guilt for each offense element. Thus, this argument presents no basis for reversal.

Second, appellant observes that he disavowed driving the car in the fleeing case—an element of that offense—after he pleaded guilty. *See* Minn. Stat. § 609.487, subd. 3 ("Whoever by means of a motor vehicle flees or attempts to flee . . . is guilty of a felony . . . ."). But appellant answered "yes" under oath when asked if he was driving a vehicle on the date in question for the fleeing offense. Appellant professed his innocence only after he did not obtain his desired result following the district court's denial of his departure motions. This hindsight belief that he now made a poor decision cannot justify plea withdrawal here. *See Bradshaw v. Stumpf*, 545 U.S. 175, 186, 125 S. Ct. 2398, 2407 (2005) ("[A] plea's validity may not be collaterally attacked merely because the defendant made what turned out, in retrospect, to be a poor deal.").

**B. Voluntariness of appellant's pleas**

The voluntariness requirement protects a defendant from pleading guilty due to improper pressure or coercion. *Nelson*, 880 N.W.2d at 861. To determine a plea's voluntariness, courts consider the circumstances and the parties' reasonable understanding of the plea terms. *Raleigh*, 778 N.W.2d at 96.

Appellant argues that his plea was involuntary because his trial counsel promised that he would receive treatment. For support, appellant highlights a statement he made at the sentencing hearing where he claimed that his attorney promised he would receive

treatment if he pleaded guilty. But appellant responded "no" during both plea colloquies when asked if anyone had promised him anything to make him plead guilty. The district court also observed that it never promised appellant he would receive treatment if he pleaded guilty. As a result, we conclude that appellant entered voluntary pleas. *See State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (rejecting plea-withdrawal argument involving defense counsel's "unqualified promise of probation" because the signed plea petition and the appellant's statements at the plea hearing refuted this claim).

## II. Appellant's pro se arguments

In a pro se supplemental brief, appellant argues that (1) excessive bail affected the intelligence of his plea, (2) the district court judge should have recused herself, and (3) he received ineffective assistance of counsel. We consider these issues in turn.

### A. Excessive bail

Appellant's first pro se claim appears to argue that the district court's bail decision affected the intelligence of his pleas. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const. amend. VIII; *see also* Minn. Const. art. I, § 5 (providing the same protections as the U.S. Constitution). The record contradicts appellant's excessive-bail argument. In both plea petitions that appellant signed after reviewing them with his attorney, he checked a box stating that he did not plead guilty due to an inability to post bond. For that reason, his excessive-bail argument fails.[3]

[3] Even if we interpreted this argument as alleging a constitutional violation, appellant's own guilty plea would defeat it. A criminal defendant's valid guilty plea operates as a

### B. Recusal of the district court judge

Second, appellant asserts that the district court judge should have recused herself based on her longstanding relationship with his probation officer. The rules of criminal procedure prevent a judge from presiding over a criminal proceeding if she is disqualified from doing so under the Code of Judicial Conduct (the Code). Minn. R. Crim. P. 26.03, subd. 14(3). An alleged violation of the Code presents a legal question subject to de novo review. *State v. Mouelle*, 922 N.W.2d 706, 713 (Minn. 2019).

The relevant question in a disqualification analysis is "whether a reasonable examiner, with full knowledge of the facts and circumstances, would question the judge's partiality." *In re Jacobs*, 802 N.W.2d 748, 753 (Minn. 2011). A party's declaration of a judge's partiality alone does not create a reasonable question about the judge's partiality. *Mouelle*, 922 N.W.2d at 713. The law presumes that a judge is unbiased. *State v. Dorsey*, 701 N.W.2d 238, 247 (Minn. 2005). For a judge to be impartial, she must possess "no actual bias against the defendant or interest in the outcome of his particular case." *State v. Munt*, 831 N.W.2d 569, 580 (Minn. 2013) (quoting *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998)).

In appellant's view, the district court judge's statement at the sentencing hearing about knowing his probation officer for "probably 20 years" was unprofessional and required recusal. When viewed in context however, this statement did not create a reasonable question about the judge's partiality. In fact, the judge made this statement

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waiver of all nonjurisdictional defects before entry of the plea. *Dikken v. State*, 896 N.W.2d 873, 878 (Minn. 2017).

when responding to the arguments of appellant and trial counsel that the probation officer's improper comment led appellant to withdraw from a treatment program. After these arguments, the judge commented that she had known the probation officer for 20 years and that the alleged behavior was out of character. This comment did not convey bias against appellant or an interest in the outcome of his cases. Simply knowing the probation officer for a long time did not require recusal under the Code. If it did, most judges in Minnesota would have to recuse themselves from all criminal cases.

### C. Ineffective assistance of counsel

Lastly, appellant raises two ineffective-assistance-of-counsel claims. Appellant first contends that trial counsel told him to plead guilty because the judge would sympathize with his position and grant him treatment. Second, appellant asserts that trial counsel failed to prepare a proper presentence investigation.

A successful ineffective-assistance-of-counsel claim requires a defendant to show both that (1) his attorney performed below an objective standard of reasonableness, and (2) but for his attorney's unreasonable performance, a reasonable probability exists that the outcome would have been different. *State v. Luby*, 904 N.W.2d 453, 457 (Minn. 2017). Here, appellant does not address either prong, and we conclude neither of his arguments warrant relief.

As noted above, appellant stated under oath that no one had made any promises beyond the plea agreement with the state on the fleeing offense in exchange for his guilty plea. Thus, appellant's argument that trial counsel promised him that he would receive treatment if he pleaded guilty lacks record support. Similarly, there is no record support

for appellant's contention that trial counsel performed ineffectively concerning the presentence investigation. The probation department, not a defense lawyer, prepares this report. *See* Minn. Stat. § 609.115, subd. 1(a) (2018). And trial counsel did object to the sentence that the probation officer recommended. These facts lead us to conclude that appellant received effective assistance of counsel.

**Affirmed.**