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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1261**

State of Minnesota,
Respondent,

vs.

Zittie Taylor,
Appellant.

**Filed August 31, 2020
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-CR-17-15240

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

BRYAN, Judge

In this direct appeal, appellant challenges the denial of his presentence motion to withdraw his guilty plea. We conclude that the district court did not abuse its discretion and affirm the district court's decision.

FACTS

A grand jury indicted appellant Zittie Taylor for first-degree premeditated murder, second-degree intentional murder, and possession of a firearm by an ineligible person. Taylor initially pleaded guilty, then withdrew the guilty plea, proceeded to trial, and pleaded guilty a second time during the trial. Prior to sentencing, Taylor requested to withdraw from the second guilty plea, arguing that the plea was invalid because he pleaded guilty only after losing confidence in the two attorneys representing him at trial. The district court denied this motion. Taylor appeal that decision. Given the issues raised, we review the facts concerning the second guilty plea and the plea negotiations as well as the facts concerning the conduct of Taylor's trial counsel.

Just before the initial trial was to begin, Taylor pleaded guilty to second-degree intentional murder, admitting that he shot the victim in the back of the head with the intent to kill the victim. In exchange for this admission, respondent State of Minnesota agreed to a sentence at the bottom of the applicable guidelines range—312 months—and agreed to dismiss the other charges. After the presentence-investigation report determined that Taylor had a lower criminal-history score than anticipated, Taylor moved to withdraw his guilty plea for the first time. The state did not oppose the motion, but made it clear, that if

the district court granted the motion and allowed Taylor to withdraw his plea, the state would not adjust its original offer to reflect the accurate criminal-history score. Instead, the state informed Taylor that it would insist on a sentence of no less than 312 months, not 295 months, which was the low end of the guidelines range, given the revised criminal-history score. The district court granted Taylor's motion, and scheduled the case for trial.

Before trial began, and despite its previous representation, the state offered Taylor a new plea deal. The state would agree to a sentence of 306 months if Taylor pleaded guilty to second-degree intentional murder. According to the district court's order, the offer would expire when voir dire began. Taylor initially rejected this offer, but attempted to accept it after voir dire commenced. The state reminded Taylor that the offer was no longer available. The state made a new, one-time offer, agreeing to a sentence of 330 months, which Taylor rejected.

On the first day of trial, the state called seven witnesses, including an 11-year-old boy who testified that he heard gunshots, looked out the window, and saw Taylor getting into his car with a gun before driving off. The state also called T.W. who witnessed the shooting and reported the incident to law enforcement under a false name because she did not want to get involved. In addition, the state called a police officer who testified regarding the description provided by T.W. T.W. had described the shooter as a five-foot-eight male in his thirties weighing about 160 to 170 pounds. At trial, T.W. testified that she thought the victim was a woman and described the shooter as a stocky male in his thirties. Despite the fact that the victim was a male, that Taylor is about six feet tall, and

that Taylor weighed 209 pounds when arrested, Taylor's counsel only questioned T.W. about the lighting in the area.

Before the second day of trial, Taylor attempted to accept the offer that he had rejected earlier. The state informed Taylor that it would not revive the rejected offer. The state made a new, one-time offer of 360 months, but Taylor rejected this offer. Testimony resumed and the state called 13 additional witnesses, including a ten-year-old child who testified that she heard gun shots, looked out the window, and saw Taylor get into his car with a gun and leave quickly.

Before testimony resumed on the next day, Taylor attempted to accept the state's 360-month offer. Again, the state informed Taylor that it had withdrawn this offer but countered with 390 months. Taylor accepted this deal and pleaded guilty to second-degree intentional murder. At that time, Taylor stated that he understood the repercussions of his plea and admitted to shooting the victim with the intent to kill the victim.

Prior to his sentencing, Taylor moved to withdraw his second guilty plea, asserting that he pleaded guilty because he had lost confidence in trial counsel. According to the district court, Taylor did not raise the typical postconviction claim of ineffective assistance of counsel. Rather, his argument focused on how his subjective thought process would have been different if counsel had demonstrated to him a more earnest effort to present an alibi defense and more effective witness examinations:

[Taylor] contends he should be permitted to withdraw his guilty plea because he had lost confidence in his trial lawyers . . . because they failed to present an alibi defense at trial and upon witnessing what he believed to be an inadequate and ineffective cross-examination of T.W. . . . Taylor maintains

that his decision to plead guilty was not truly voluntary as the law requires in view of his belief that continuation of the trial would be futile based on his lost confidence in his trial lawyers and his view that they were not providing him an effective defense. Taylor argues the issue presented to the Court here is not the typical *Strickland* second-prong issue of whether the outcome would have been different (assuming a finding on the *Strickland* first prong that he in fact received ineffective assistance of counsel), but rather whether his own thought process would have been different, with the result that he would not have agreed to plead guilty.

The argument presented to the district court was whether Taylor involuntarily pleaded guilty because he lost confidence in trial counsel and, therefore, believed it futile to continue at trial. At the hearing on Taylor's motion to withdraw his second guilty plea, the district court received testimony regarding the decisions at trial and regarding a potential alibi defense that trial counsel did not present. Taylor testified that he pleaded guilty "[b]ecause I just felt like the attorneys, they weren't on my side. They weren't trying to hear nothing I was saying. They basically weren't working with me." When asked why he wanted to withdraw his plea, Taylor stated that "I felt like I was being represented wrong because they weren't really trying to hear what I had to say." Taylor also expressed concerns about the way his counsel handled his alibi defense and how they handled the cross-examination of T.W. Taylor claimed he had provided his attorneys with contact information for an alibi witness well in advance of trial. Taylor also testified that he was displeased when his attorneys did nothing and just sat there during T.W.'s testimony.

The district court also received the testimony of trial counsel and credited their testimony over Taylor's testimony. Both defense attorneys testified that they made a strategic decision not to aggressively cross-examine T.W. because of her demeanor and

emotional state. Because she was “on the verge of tears,” one of the attorneys concluded that they risked alienating the jury by accusing T.W. of lying on the witness stand. The district court also did not credit Taylor’s explanation regarding the alibi defense. Specifically, the district court noted that it is “highly implausible, and objectively unreasonable,” and “defies credulity” that Taylor had a viable alibi defense but failed to bring it up sooner when potentially facing life in prison. In its factual findings, the district court disbelieved Taylor:

The Court credits [trial counsel]’s testimony that, although Taylor had occasionally brought up the concept of an alibi defense, Taylor had not offered specifics of where Taylor claimed to have been shortly before midnight on June 18, 2017, to Defense Counsel which they could have investigated on a timely basis before trial. The Court also credits [trial counsel]’s testimony that Taylor only provided them the name of a purported alibi witness, [M.Y.], and contact information for [M.Y.] on January 30, 2019, when voir dire was already underway in the third trial setting!

In addition, the district court found that “[t]here is no evidence that Taylor ever provided Defense Counsel any dated writing relating to his purported alibi defense stating where he claimed to have been at the time of the shooting or the names and contact information for any alibi witnesses prior to the January 28, 2019 trial date.” Finally, the district court also found that Taylor had an opportunity to present evidence to corroborate his claims, but did not do so. The district court noted that Taylor could have called M.Y. to testify at the hearing to withdraw his second guilty plea. Likewise, the district court stated that Taylor “had access to Defense Counsel’s file,” but “did not seek to introduce at

the April 15, 2019 hearing any such writings either from his own copies or from Defense Counsels' files.”

In the district court's view, Taylor did not genuinely lack confidence in his counsel. Instead, the district court concluded that Taylor must have considered how the state's offers continued to increase and, in light of the increasing possibility of life in prison and the strength of the evidence against him, Taylor decided to plead guilty. The district court denied Taylor's motion, and Taylor appealed his conviction.

D E C I S I O N

Taylor challenges the district court's denial of his motion to withdraw his guilty plea, arguing that he satisfied his burden under the fair-and-just standard.¹ Because the district court denied Taylor's motion on the basis of an adverse credibility determination about Taylor's stated reason for plea withdrawal,² the district court did not abuse its discretion.

“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). A plea withdrawal may occur “if one of two standards is met.” *State v. Lopez*, 794 N.W.2d 379, 382 (Minn. App. 2011). First, a district court “must allow” a defendant to withdraw a plea at any time if it is necessary to correct a “manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Second, a district court “may

¹ On appeal, Taylor also argues that the district court conflated the fair-and-just standard for withdrawing a guilty plea with the constitutional standard for claims of ineffective assistance of counsel. We need not address the actual effectiveness or ineffectiveness of Taylor's counsel because Taylor's argument is that his belief regarding ineffectiveness is sufficient to establish a fair-and-just reason to withdraw his plea.

² Taylor does not challenge the credibility findings made by the district court.

allow” a defendant to withdraw a plea before sentencing “if it is fair and just to do so.” *Id.*, subd. 2. The fair-and-just standard is less demanding than the manifest-injustice standard, but does not permit withdrawal “for simply any reason.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quotation omitted). Under the fair-and-just standard, the district court must consider 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.” *Raleigh*, 778 N.W.2d at 97. The defendant bears the burden of advancing reasons to support withdrawal and the state bears the burden of showing prejudice, but the district court may deny a motion to withdraw absent prejudice to the state if the defendant fails to advance a valid reason. *State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013), *review denied* (Minn. Dec. 31, 2013). “We review a district court’s decision regarding a motion to withdraw a guilty plea under the fair-and-just standard for an abuse of discretion, reversing only in the ‘rare case.’” *Id.* at 223 (quoting *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989)).

Taylor argues that his subjective lack of confidence in his counsel is a fair and just reason permitting plea withdrawal because this lack of confidence rendered his guilty plea involuntary. We disagree for two reasons. First, we decline to reverse the district court’s credibility determination. *E.g.*, *State v. Jones*, 921 N.W.2d 774, 783 (Minn. App. 2018), *review denied* (Minn. Feb. 27, 2019) (determining that the district court is in best position to make credibility determinations); *see also Lopez*, 794 N.W.2d at 382 (“more than a change of heart is needed to withdraw a guilty plea”). In this case, the district court disbelieved Taylor’s explanation for his loss of confidence in trial counsel, characterizing

Taylor's testimony as "highly implausible, and objectively unreasonable." Instead, the district court credited the contrary testimony of trial counsel. Regarding the decision not to aggressively cross-examine T.W., Taylor testified that his attorneys did nothing and just sat there. The district court, however, credited the testimony of trial counsel who explained that they made a "strategic decision" to avoid the risk of alienating the jury by accusing T.W. of lying. The trial attorneys, therefore, were not disengaged as Taylor believed, but rather actively weighing the risks of various responses. Regarding the alibi defense, the district court again disbelieved Taylor. Specifically, the district court discredited Taylor's testimony regarding when he claimed to have provided the name of an alibi witness to trial counsel. In addition, Taylor had an opportunity to present the testimony of the alibi witness at the hearing on his motion to withdraw the plea, but did not introduce any such testimony. Similarly, although Taylor had access to his trial counsel's file, he did not seek to introduce any written evidence to support his timeline of events. On this record, we defer to the credibility determination of the district court.

Second, we do not agree with Taylor that a subjective loss of confidence in trial counsel undermines the voluntariness of his decision to plead guilty. To be voluntary, a guilty plea may not be based on "any improper pressures or inducements." *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). The guilty plea must not result from actual or threatened physical harm, or mental coercion, overbearing the will of the defendant. *State v. Ecker*, 524 N.W.2d 712, 719 (Minn. 1994) (quoting *Brady v. United States*, 397 U.S. 742, 750, 90 S. Ct. 1463, 1470 (1970)). We have previously determined that a belief regarding the likelihood of a trial outcome does not cause improper pressure, overbearing

a person's will. See *State v. Tuttle*, 504 N.W.2d 252, 256-57 (Minn. App. 1993) (concluding that "mistaken apprehension of the strength of the state's case" does not justify withdrawal under the fair-and-just standard); see also *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (adopting the plea process in *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970), which allows a defendant to plead guilty while maintaining innocence, as long as the defendant acknowledges that a jury would convict based on the State's evidence). Taylor's stated belief about the ineffectiveness of his counsel is no different. Just like the defendant in *Tuttle* and defendants who enter *Alford* pleas, Taylor believed the trial outcome had become a certainty. At the plea hearing, Taylor stated that he understood the rights he was waiving, the likely sentence he would receive, and the terms of the written plea agreement. He claimed he reached this decision voluntarily and admitted guilt. In light of these statements, Taylor's lack of confidence in his counsel did not overcome his will, rendering involuntary his guilty plea.

Finally, Taylor also argues that the state did not meet its burden of proving prejudice.³ Because Taylor failed to advance valid reasons for withdrawal of his plea, we need not address whether the district court abused its discretion when it concluded that the state would suffer prejudice if the plea was withdrawn and the case retried.

Affirmed.

³ The state did not provide the district court with any evidence of prejudice, but the district court found prejudice because the state relied on the plea in stopping trial and would have to empanel a third jury and subject two preteen witnesses to a second round of testimony.