STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0680

State of Minnesota,
Respondent,

vs.

Anthony Dale Klitzke,
Appellant.

Filed July 19, 2021
Affirmed
Jesson, Judge

Hennepin County District Court
File No. 27-CR-18-28231

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Melissa Sheridan, Eagan, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Jesson, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

After entering a "straight plea" for intentional second-degree murder and second-degree assault for shooting and killing one man and injuring another at a house party, appellant Anthony Klitzke sought to withdraw his guilty plea. The district court,

finding that allowing Klitzke to withdraw his plea would unfairly prejudice the state, denied his motion. Klitzke appeals. Because the plea was made voluntarily and intelligently, withdrawal would cause prejudice to the state, and Klitzke's pro se arguments are either forfeited or unwarranted, we affirm.

FACTS

In early 2018, a man was killed at a house party in south Minneapolis. According to the complaint, law enforcement officers responded to a call and found an adult male, D.D., lying on the sidewalk outside the home. The officers pronounced him dead at the scene. Witnesses told the officers that while they were standing outside smoking, an individual—later identified as appellant Anthony Klitzke—approached and pointed a handgun at the group. He fired multiple shots and fled. Witnesses also reported that the same shooter shot another victim, C.S., in the thigh. Following an investigation, the state ultimately charged Klitzke with intentional second-degree murder, second-degree felony murder (assault), and second-degree assault with a dangerous weapon. Minn. Stat. §§ 609.19, subds. 1(1), 2(1), .221, subd. 2 (2016). Klitzke was 17 at the time of the offense and he was charged 22 days before he turned 18. The state also identified another individual, C.O., as Klitzke's co-defendant, and charged him with one count of aiding and abetting murder and one count of aiding an offender.

A week before trial, defense counsel requested a continuance because he was "inundated with discovery on a daily basis." According to defense counsel, because the state was still disclosing witness statements made that week, it would be unfair to start a trial without allowing the defense the opportunity to investigate the new evidence. At a

hearing the day before jury selection, the district court denied the continuance request, stating that defense counsel had "plenty of time" to review the evidence. The district court additionally stated that it would cause "extreme prejudice" to the state and the court to continue the matter because all the judges were "inundated with trials" and it would be difficult to schedule a new hearing. At the same hearing, the prosecuting attorney announced that C.O. was granted a reduction in his sentence from the presumptive 306 months' to 180 months' imprisonment in exchange for his plea and testimony against Klitzke. The state then offered a plea deal to Klitzke: plead guilty to intentional second-degree murder and receive a "bottom of the box" sentence of 261 months' imprisonment. The prosecuting attorney said the offer would expire when the jury was sworn. Klitzke declined.

During jury selection, the prosecuting attorney reiterated the offer and said it would expire the following day when the jury was sworn in. Klitzke again declined. But Klitzke asked if he could speak with his mother prior to making a decision, which the district court permitted.

The next morning, Klitzke made a "straight plea" to the charged offenses—two counts of second-degree murder and one count of second-degree murder.[1] There was no discussion on the record about what made Klitzke change his mind or why he did not take the state's plea deal. Klitzke entered a *Norgaard* plea, claiming he was too intoxicated to remember important details the night of the murder but that there was an adequate factual

[1] A straight plea is a plea with no "agreement regarding sentencing." *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 327 (Minn. 2016).

basis against him should he go to trial.[2] Klitzke acknowledged that he talked through the *Norgaard* plea with his attorney and that he understood what he was doing by pleading guilty and giving up his right to a jury trial. Klitzke explicitly agreed that he was not opting for the state's plea agreement and that he understood what he was doing, stating:

> DEFENSE: Your head is clear and you understand what you're doing?
> KLITZKE: Yes.
> . . . .
> DEFENSE: If the judge accepts your plea here today, we proceed towards sentencing after presentence investigation and everything else the court does in between your plea and sentencing. You understand that?
> KLITZKE: Yes.
> DEFENSE: And that by pleading open, we're not necessarily—we don't have any plea agreement with the state as to how you're going to be sentenced. You understand that?
> KLITZKE: Yes.
> DEFENSE: And that we're going to present who you are to the judge and she's going to get facts from all sides and then she will make a decision at the time of sentencing as to what your ultimate sentence would be?
> KLITZKE: Yes.
> DEFENSE: And knowing all that, you still wish to go forward?
> KLITZKE: Yes.

Klitzke then affirmed the following facts: he went to a party and was intoxicated after taking ecstasy, marijuana, alcohol, and Xanax; he was there with co-defendant C.O.; C.O. handed him a gun and asked him to intimidate or shoot D.D.; someone shot D.D. who later died from gunshot wounds; someone also shot C.S.; and witnesses and other physical

[2] *See State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867 (Minn. 1961).

evidence associated with Klitzke—including his house keys and flip flops found next to D.D.'s body—connected Klitzke to the scene. He additionally agreed that a jury would likely find him guilty beyond a reasonable doubt and that he was not claiming to be innocent. The district court found that there was sufficient evidence to support guilty verdicts and that Klitzke entered his guilty plea voluntarily, knowingly, and intelligently.

But, in the court-ordered presentence investigation (PSI), Klitzke changed his story. While he maintained that he was extremely intoxicated when the shooting occurred, he said he remembered most of what happened at the party. He claimed he was with a previously undisclosed witness in the bathroom taking ecstasy when he heard gunshots. He ran out of the house and believed that C.O. might have shot and killed D.D. Klitzke denied his guilt, stating:

> I pled that there is evidence that could convict me, but I did not admit guilt. But I pled to that a jury might find me guilty. But I never had the gun. I did not shoot [D.D.]. The case against me is purely circumstantial, and there is no real evidence. And the judge told me that I am getting between 180 and 261, the bottom of the box. She said she would not go lower than my codefendant and would not go higher than the bottom of the box.

The presentence investigator recommended the presumptive sentence of 306 months for second-degree murder and a consecutive sentence of 36 months for second-degree assault.

At the originally scheduled sentencing hearing, defense counsel requested a continuance based on the statements made in the PSI, which had been released four days earlier. The state objected, arguing that a continuance would be prejudicial to their case, particularly now that the state's main witness, C.O., had been sentenced and had no

obligation to testify against Klitzke if the plea was withdrawn. The district court granted a short continuance. In the meantime, Klitzke filed a motion to withdraw his *Norgaard* plea.

At the rescheduled sentencing hearing, Klitzke argued that the district court should allow him to withdraw his plea for three reasons: (1) he lacked the maturity to understand the criminal justice system and the gravity of his plea because he was a juvenile when the offenses occurred; (2) he was pressured to plead guilty because two of the state's witnesses had added incriminating details to their statements; and (3) an alibi witness that was previously unknown to defense counsel was identified in the PSI. The state argued that the reasons were not adequate and that withdrawal would cause "extreme prejudice" against it.

The district court denied the motion, ruling that Klitzke failed to provide a fair-and-just reason to grant the motion. The district court emphasized the amount of time that Klitzke had to discuss his plea with his attorney and to contact the alibi witness, and stated that the timing of the withdrawal motion was "suspicious," adding that it believed Klitzke panicked after seeing the PSI which was "not a good report for [him]." As for prejudice, the district court stated that the testimony of the state's witness was "very valuable," and the loss of the testimony showed extreme prejudice to the state "just on that factor alone." The district court then sentenced Klitzke to 367 months in prison for intentional second-degree murder and a concurrent sentence of 36 months in prison for second-degree assault.

Klitzke appeals.

DECISION

I. Denying Klitzke's presentencing motion to withdraw his guilty plea was not an abuse of discretion.

Klitzke appeals the district court's denial of his motion to withdraw his guilty plea, arguing that it would be fair and just to do so because his plea was not voluntary or intelligent, and that the state did not demonstrate prejudice.

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). Guilty pleas may only be withdrawn if one of two standards are met: (1) at any time, a plea withdrawal must be permitted if "necessary to correct a manifest injustice"; or (2) a plea may be withdrawn before sentencing when it is fair and just to do so. Minn. R. Crim. P. 15.05, subds. 1-2. The constitutional validity of a guilty plea is a question of law that this court reviews de novo. *Raleigh*, 778 N.W.2d at 94. But we review a district court's decision to deny a motion to withdraw before sentencing for an abuse of discretion will rarely reverse that decision. *Id.* at 97.

Under the less burdensome fair-and-just standard, the defendant bears the burden of providing reasons supporting withdrawal, while the state bears the burden of showing it would be prejudiced by withdrawal. *Id.* We defer to the credibility determinations made by a district court during a plea hearing. *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997). Although it is a lower burden, the fair-and-just standard "does not allow a defendant to withdraw a guilty plea for simply any reason." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quotation omitted).

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). Regardless of which standard is applied, a plea must be valid, meaning that it must be accurate, voluntary, and intelligent. *Theis*, 742 N.W.2d at 646. Here, Klitzke argues only that his plea was not intelligently or voluntarily made, thus we focus our analysis on those factors.

Intelligence

First, Klitzke contends that his plea was not intelligent. The intelligence requirement guarantees that a defendant "understands the charges against him, the rights he is waiving, and the consequences of his plea." *Raleigh*, 778 N.W.2d at 96 (citing *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983)). A defendant bears the burden of showing his plea was invalid. *Id.* at 94. Counsel does not need to explain "*every* consequence" for a plea to be intelligent. *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). But the defendant must know of the direct consequences of a plea, which are "definite, immediate, and automatic and are punitive and a part of a defendant's sentence." *State v. Brown*, 896 N.W.2d 557, 561 (Minn. App. 2017) (quotation omitted), *review denied* (Minn. July 18, 2017). Direct consequences of a guilty plea primarily include the maximum sentence and fine. *Raleigh*, 778 N.W.2d at 96.

Here, when asked about his plea, Klitzke stated that he understood what he was doing, and that the district court would make a decision and determine "the ultimate sentence." In his petition to enter a plea of guilty, Klitzke also acknowledged that he read the criminal complaint, discussed it with his attorney, and understood that he could receive

a sentence between 306 and 416 months in prison, that his open plea could be subject to a downward departure based on his PSI, and that he was giving up his right to a jury trial. For these reasons, Klitzke's guilty plea was intelligent.

Still, Klitzke argues that his plea was not intelligent because he was not an adult when he committed the crime and because making an open plea instead of taking the state's plea deal was illogical. Neither argument is persuasive. First, while Klitzke was 17 when he committed the crime, he was 20 years old when he pleaded guilty. He also had over two years from the date he was charged to jury selection to consult with his lawyer and consider the potential consequences of his situation. Nor is there any indication in the record or his argument that Klitzke was unable to understand the consequences of his plea. Second, with regard to his decision to make an open plea, Klitzke affirmatively agreed that there was no plea agreement with the state when he pleaded guilty, and that he understood the judge would be determining his sentence. This demonstrates that he understood the implication of entering a straight plea.

In sum, Klitzke did not meet his burden of showing that his guilty plea was unintelligent.

Voluntariness

Klitzke also argues that his plea was involuntary. The purpose of requiring guilty pleas to be voluntary is to ensure that the defendant "is not pleading guilty because of improper pressures." *Trott*, 338 N.W.2d at 251. Improper pressure or coercion generally comes from an external source, such as a threat or promise made to induce a defendant to plead guilty. *Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016); *State v. Brown*,

606 N.W.2d 670, 674 (Minn. 2000) ("A guilty plea cannot be induced by unfulfilled or unfulfillable promises . . . ."). Whether a plea is voluntary is determined by considering all relevant circumstances. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994).

Here, the record does not reflect that Klitzke based his plea on any external threats or promises. Klitzke did not note any outside pressures to plead guilty, either in court or in the PSI. His signed plea petition states that no person or entity made promises or threatened him into a plea. And, at least according to the prosecuting attorney, Klitzke chose a straight plea instead of a plea negotiation with the state because he felt that "the court would be more sympathetic." For these reasons Klitzke's guilty plea was voluntary.

But Klitzke contends that he was under stress to plead guilty because one witness "changed his story to include more detailed and incriminating claims," and another witness gave additional incriminating details after being granted immunity. Neither the timing of the witness disclosures nor their incriminating nature amounts to coercion. With regard to timing, the state provided the first witness's statements months before Klitzke pleaded guilty, and the second witness's statements were disclosed the day they were made—three weeks before the trial was set to begin. And the possibility that the witnesses' statements would hurt Klitzke at trial is not an improper pressure. *See State v. Ecker*, 524 N.W.2d 712, 719 (Minn. 1994) (stating that an improper pressure involves "actual or threatened physical harm, or by mental coercion overbearing the will of the defendant" (quotation omitted)). In light of all the relevant circumstances, Klitzke did not meet his burden demonstrating that his plea was involuntary.

In sum, because Klitzke did not meet his burden to demonstrate that his guilty plea was either unintelligent or involuntary, he did not show that it would be fair and just to allow a plea withdrawal.[3] Therefore, the district court did not abuse its discretion when it denied Klitzke's motion to withdraw his guilty plea.

II. Pro se Supplemental Brief

Finally, Klitzke raises a host of issues in his pro se supplemental brief. Included are allegations that (1) a witness lied; (2) discovery was sent late; (3) Klitzke's attorney misrepresented the plea; (4) the judge was biased; (5) the state lied about offering multiple plea offers; (6) the investigators coerced witnesses; and (7) Klitzke did not understand the plea agreement.

Here, for the bulk of the raised issues, Klitzke cites no precedential legal authority in support of his assertions.[4] As such, the assertions are forfeited. *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002); *see also State v. DeWalt*, 757 N.W.2d 282, 290 (Minn. App. 2008) (declining to address pro se arguments that are fully addressed in the public defender's appellate brief).

---

[3] Because Klitzke failed to demonstrate fair and just reasons for withdrawal, we need not reach whether the state showed that a plea withdrawal would result in prejudice. *Raleigh*, 778 N.W.2d at 98. Regardless, the state demonstrated that it would be prejudiced because the state lost their ability to compel testimony from Klitzke's co-defendant—who would have testified that he handed the gun to Klitzke and ordered him to shoot the victim. The co-defendant's sentencing went forward on the belief that Klitzke was also pleading guilty on the same day.

[4] Five of the arguments did not rise above mere assertion. Additionally, two of those assertions, that the prosecution disclosed late discovery and that Klitzke did not understand his plea, were also raised by his attorney in briefing and addressed above.

Klitzke cites to precedential authority in only one of the arguments, contending that his attorney misrepresented the plea. For this argument, Klitzke cites to *State v. Bobo*, 770 N.W.2d 129 (Minn. 2009). In *Bobo*, the defendant argued that he was denied effective assistance of counsel because his attorney chose to cross-examine a witness, allowing damaging grand jury testimony to be entered into the record. *Id.* at 136, 138. It is unclear how *Bobo* is analogous to Klitzke's case, not only because he cites it in reference to his attorney urging him to enter a straight plea in order to get a lower sentence from the district court, but also because the supreme court in *Bobo* did not find the representation to be ineffective. *Id.* at 138-39. The supreme court instead found that the attorney's faulty actions were based on trial strategy, which is not subject to review. *Id.* at 138. Because Klitzke does not demonstrate how his attorney misrepresented the plea or otherwise erred, this argument is unwarranted.

Considering this appeal as a whole, because Klitzke did not demonstrate that it was fair and just to allow a plea withdrawal, the district court did not abuse its discretion when it denied Klitzke's motion to withdraw his guilty plea. And further, the issues raised in Klitzke's pro se supplemental brief are unreviewable for failing to cite to relevant authority or not rising above mere assertions.

Affirmed.