

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1325**

State of Minnesota,
Respondent,

vs.

Shanin Trevon English,
Appellant.

**Filed August 9, 2021
Affirmed
Segal, Chief Judge**

Hennepin County District Court
File No. 27-CR-19-22325

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant brings this appeal arguing that the district court erred by denying his motion to withdraw his guilty plea based on his attorney's conflict of interest. We affirm.

FACTS

The state charged appellant Shanin Trevon English in September 2019 with being an ineligible person in possession of a firearm. Minn. Stat. § 624.713 (2018). He was represented in the case by an attorney in the Hennepin County Public Defender's Office (HCPD). When he was charged with the firearm offense, English had at least three pending felony theft cases in Hennepin County. The alternative public defender team was representing English in the theft cases in order to avoid a potential conflict of interest because the HCPD was representing a codefendant in at least one of those cases.

English ultimately pleaded guilty to the firearm charge, entering a "straight" plea with no agreement between himself and the prosecution regarding the length of sentence or any other conditions. English entered the plea with the intention of seeking a dispositional departure to a probationary sentence in order to obtain chemical-dependency treatment. Under the sentencing guidelines, the firearm charge carried a presumptive executed sentence of 60 months with a commitment to prison.

Following the entry of his guilty plea, the district court granted English conditional release to allow him to enter chemical-dependency treatment prior to his sentencing. When English appeared for his sentencing hearing, however, he submitted to a drug test which showed the presence of THC and cocaine in his system. The district court delayed English's sentencing for three months and continued his conditional release, giving him another chance to engage in treatment. English was required to return to court a couple of weeks later, however, after a required drug test again showed that English had THC and

cocaine in his system. English fled the courtroom and was arrested approximately four months later.

A few days after his arrest and before he was sentenced, English brought a motion to withdraw his guilty plea, claiming that he was deprived of his Sixth Amendment right to conflict-free counsel. English asserted that the HCPD's representation of a codefendant in one or more of the theft cases gave rise to a conflict of interest for the HCPD in his firearm case. English's HCPD attorney advised the court that he only became aware of the alleged conflict after English had entered his guilty plea, approximately seven months earlier. The attorney explained that the usual conflict check at the start of representation was not conducted when he was assigned to represent English in the firearm case. The district court denied the motion, concluding that it was not "fair and just" to allow English to withdraw his plea. The court reasoned that, because English's HCPD attorney was not personally involved in the representation of English or codefendant in any of the theft cases, and had no knowledge of the conflict, the alleged conflict was "immaterial to the choice that Mr. English made to pursue a dispositional departure." English now appeals.

DECISION

The sole issue in this appeal concerns English's claim that he was denied his right to representation by conflict-free counsel and that the district court thereby erred when it denied his motion to withdraw his guilty plea. Motions to withdraw a guilty plea are governed by Minn. R. Crim. P. 15.05. That rule requires courts to allow defendants to withdraw a guilty plea at any time "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. The rule also provides that “[i]n its discretion the court may allow [a] 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. Because English’s motion to withdraw was brought before sentencing, he was entitled to seek withdrawal under the fair-and-just standard, a “less demanding” standard than the manifest-injustice standard. *State v. Ellis-Strong*, 899 N.W.2d 531, 541 (Minn. App. 2017).

We review de novo a district court’s denial of a defendant’s motion to withdraw a plea based on manifest injustice. *Id.* at 535; *see also State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). We review rulings on motions to withdraw a guilty plea under the fair-and-just standard for an abuse of discretion. *Raleigh*, 778 N.W.2d at 97. “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

Although the district court focused its analysis on whether to grant English’s motion under the fair-and-just standard in Minn. R. Crim. P. 15.05, subd. 2, we will analyze both the issue of whether withdrawal of the plea was mandated to correct a “manifest injustice” and whether the district court abused its discretion by denying the motion to withdraw under the fair-and-just standard. We address each in turn below.

I. Manifest-Injustice Standard

English argues that, because his HCPD attorney had a conflict of interest, his constitutional right to effective assistance of counsel was violated and the district court was required to allow English to withdraw his guilty plea to correct a manifest injustice. The

United States and Minnesota Constitutions guarantee criminal defendants the right to effective assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. 1, § 6. “A lawyer’s performance is deficient if he represents a client despite having a conflict of interest.” *State v. Paige*, 765 N.W.2d 134, 140 (Minn. App. 2009).

In general, to constitute ineffective assistance, any deficiencies in counsel’s performance must be prejudicial. *Pearson v. State*, 891 N.W.2d 590, 601 (Minn. 2017) (citing *Strickland v. Washington*, 466 U.S. 668, 692, 104 S. Ct. 2052, 2067 (1984)). And if counsel’s conflict of interest violated a defendant’s Sixth Amendment rights, as English claims here, we may presume prejudice “if the defendant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer’s performance.”¹ *Id.* (quotations omitted). Here, the district court assumed without deciding that English’s HCPD attorney had a conflict of interest. We will also make this assumption and will focus our analysis on the question of whether any such conflict adversely affected the performance of English’s HCPD attorney.

¹ English cites *Mickens v. Taylor*, 535 U.S. 162, 122 S. Ct. 1237 (2002), for the proposition that when a conflict of interest exists and is brought to the court’s attention, prejudice is presumed and automatic reversal is required. However, the Supreme Court emphasized in *Mickens* that it was only addressing the narrow question of “the effect of a trial court’s *failure to inquire* into a potential conflict.” *Mickens*, 535 U.S. at 174, 122 S. Ct. at 1245 (emphasis added). Only if “an attorney *informs* the district court of a probable risk of conflict, and the court *fails to take adequate steps* to ascertain whether an impermissible conflict exists, [then] the defendant’s conviction *must be reversed without inquiry into prejudice* resulting from the alleged conflict.” *Paige*, 765 N.W.2d at 140-41 (emphasis added) (quoting *Cooper v. State*, 565 N.W.2d 27, 32 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997)). English’s assertion that if there is a conflict of interest, then a conviction must be reversed without inquiry into prejudice misstates *Mickens* and related conflict-of-interest caselaw.

English argues that his HCPD attorney's performance was adversely affected because he failed to negotiate "a global settlement" of the firearm and pending theft cases, "because he did not know about them and, even if he did, he did not represent Mr. English on the theft cases." We are not persuaded. We note, first, that the district court concluded that the HCPD attorney must have had some knowledge of the theft cases because the cases were listed in the bail evaluation provided to the attorney at the first appearance and were referenced again at a later date during an off-the-record discussion between the court and counsel.

Second, English's argument fails to link the conflict to the alleged performance deficiency—failure to pursue a "global settlement." The conflict of interest must be the cause of the adverse performance; it is not enough to allege a conflict and an unrelated performance deficiency.

Third, it appears that the decision to enter a straight plea to the firearm charge was deliberate and strategic, not a hapless action tainted by the conflicted loyalties of English's HCPD attorney. As reflected in the comments of English's HCPD attorney at the plea hearing, the decision to enter a straight plea was based on the hope that English could obtain a dispositional departure and thereby avoid an almost certain five-year prison term. The transcript of the plea hearing reveals that, while the district court was clear that no promises were being made, the defense had good reason to believe that a dispositional departure was a real possibility. And, in fact, the district court granted English not one, but two opportunities while on conditional release to engage in chemical-dependency treatment to "prove himself worthy of a dispositional departure on a case that calls for a

60-month prison term.” And, as the district court noted in its order, the consequences for the theft cases were “relatively minimal” compared to the firearm offense and carried no presumptive prison sentence under the sentencing guidelines. The district court reasoned that “it made sense for Mr. English to put all of his eggs in [the] dispositional departure basket.” The decision to enter a “straight” plea thus appears to have been a strategic one and not the consequence of any conflict of interest on the part of the HCPD attorney.

It is also significant that English’s HCPD attorney had no direct involvement in the theft cases and did not know about the conflict until after English pleaded guilty. This further undermines English’s argument that his attorney was laboring under conflicting loyalties that affected the attorney’s performance. Under these circumstances, we discern no adverse effect on the performance of English’s HCPD attorney by reason of the alleged conflict and English is not entitled to a presumption of prejudice.

That does not end our inquiry, however, because even without a presumption of prejudice, English can still obtain relief by demonstrating “a reasonable probability that, *but for* counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Ellis-Strong*, 899 N.W.2d at 536 (emphasis added) (quotations omitted); *see also Strickland*, 466 U.S. at 692, 104 S. Ct. at 2067. Here again, for the same reasons set out above, we are not persuaded that, but for the alleged conflict of interest on the part of his attorney, English would have insisted on going to trial under the circumstances presented here.

We therefore conclude that the district court did not commit error under the manifest-injustice standard when it denied English’s motion to withdraw his guilty plea.

II. Fair-and-Just Standard

We now turn to the issue of whether the district court abused its discretion when it denied English's motion to withdraw his guilty plea under the fair-and-just standard. Rule 15.05 provides that in assessing whether to allow a defendant to withdraw a guilty plea before sentence under the fair-and-just standard, "[t]he court must give due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea." Minn. R. Crim. P. 15.05, subd. 2. "A defendant has no absolute right to withdraw a guilty plea after entering it"; and we will reverse "only in the 'rare case.'" *Raleigh*, 778 N.W.2d at 93, 97.

Here, the district court reviewed the requisite factors and concluded that, while there would be no prejudice to the prosecution by allowing the plea to be withdrawn, such a result would not be "fair and just." The district court appeared to be most influenced by two factors: (1) the lack of evidence that the alleged conflict of interest adversely affected the performance of English's HCPD attorney, and (2) that the motion to withdraw the plea was made only after English had tested positive twice for controlled substances during his conditional release, thereby greatly diminishing his odds of obtaining a dispositional departure. The district court found that the alleged conflict of interest—which was the sole basis for the motion to withdraw—"was immaterial to the choice Mr. English made to pursue a dispositional departure." The court also reasoned:

Mr. English is essentially seeking a do-over following his failures to follow the Court's directives pending sentencing [regarding drug use]. . . . Having likely failed at his chance to

earn a dispositional departure on his most significant case, there is no unfairness in refusing to allow Mr. English to withdraw his plea and start the process again. What is fair and just is to hold Mr. English to the choice he made to enter a straight plea and take his chances.

The court thus considered the evidence and the relevant factors and exercised its discretion to deny the motion. On this record, we conclude that the district court did not abuse its discretion in denying English's motion to withdraw his plea.

Affirmed.