STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1294

State of Minnesota,
Respondent,

vs.

John Herbert Hodge, Jr.,
Appellant.

Filed June 27, 2022
Affirmed
Gaïtas, Judge

Grant County District Court
File No. 26-CR-20-166

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

Justin R. Anderson, Grant County Attorney, Elbow Lake, Minnesota (for respondent)

Kent D. Marshall, Marshall Law Office, Barrett, Minnesota; and

Judie Marshall, Judie Marshall Law LLC, Manchester, Connecticut (for appellant)

Considered and decided by Cochran, Presiding Judge; Bryan, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

On direct appeal from a judgment of conviction for misdemeanor domestic assault, appellant John Herbert Hodge, Jr., challenges the district court's denial of his motion to withdraw his guilty plea made before sentencing. We affirm.

FACTS

In August 2020, Hodge was charged with misdemeanor domestic assault, Minn. Stat. § 609.2242, subd. 1(2) (2020), for hitting his minor son on the arm. Hodge entered into a plea agreement with respondent State of Minnesota in March 2021. In exchange for his plea to the charged offense, the state agreed to recommend a 90-day stayed jail sentence with credit for time that Hodge had already served and up to two years of probation.

Before Hodge's plea hearing, he signed a guilty-plea petition. The petition listed Hodge's constitutional trial rights and acknowledged that he was waiving those rights by pleading guilty. It also identified the agreed-upon sentence, including conditions of probation. One of those conditions was "[w]ithin 60 days of the date of the Court's approval of this petition, I will complete a Domestic Abuse Evaluation and follow any recommendations stemming therefrom, or simply enter directly into a domestic abuse counseling or education program that complies with the requirements of [Minnesota law]." Another condition required Hodge to complete a chemical-use assessment and to follow any recommendations. The plea petition advised that domestic assault convictions are "enhanceable" in Minnesota, explaining that any subsequent offenses within a ten-year period may be charged as more serious offenses. And the plea petition contained an admission of guilt, stating, "I am pleading guilty because on the afternoon of August 8, 2020, I punched my minor son on the shoulder . . . in . . . Grant County, Minnesota. I acknowledge that the punch caused my son some degree of pain or discomfort."

A guilty-plea hearing was held before the district court on March 8, 2021 via a video-conferencing application. Hodge appeared with his attorney. After Hodge waived

his trial rights, the district court asked him about the factual circumstances of the offense. Hodge admitted that he "smacked" his ten-year-old son on the arm and that "it felt uncomfortable to [his son]." The district court asked Hodge whether he had reviewed and understood the guilty-plea petition. Hodge responded affirmatively. The district court determined that Hodge had knowingly and voluntarily waived his trial rights and that there was a sufficient factual basis for the guilty plea.

The district court then turned to the issue of sentencing. Hodge's attorney stated that she was "asking the Court to simply approve the plea agreement" and noted that Hodge was "about two-thirds of the way through a domestic abuse evaluation with [a counselor]." But the prosecutor requested a presentence investigation (PSI) and a separate sentencing hearing. The district court ordered a PSI so "[t]he probation agent can look into the status of the domestic abuse assessment and hopefully determine whether or not there's any additional conditions probation would recommend other than the domestic abuse evaluation." A sentencing hearing was scheduled to follow the PSI process.

One month after the plea hearing, Hodge—who was represented by a new attorney—filed a motion to withdraw his guilty plea. In an affidavit accompanying the motion, Hodge stated the outcome of his guilty plea was "significantly and materially different" than what he "was told when [he] agreed to enter into [the] plea agreement." Hodge alleged that he understood, after discussions with his attorney, that he would never have to make a court appearance in connection with his plea, and that his sessions with a counselor were "adequate for purposes of the plea agreement and that nothing more was going to need to be done." He also acknowledged that, although he had struck his son, "it

was done in a manner that would not qualify as a crime." He claimed that "it would be extremely unfair and a miscarriage of justice" for his plea to stand and that the state would not be prejudiced by his withdrawal of the plea.

On April 26, 2021, the district court held a hearing on Hodge's motion. At the hearing, Hodge reiterated the allegations in his affidavit. Following the hearing, the district court issued a written order denying Hodge's motion. The district court concluded that Hodge's plea was accurate, voluntary, and intelligent, and therefore valid.

On July 7, 2021—and still before sentencing—Hodge filed a second motion to withdraw his guilty plea, alleging that his plea was not accurate, intelligent, or voluntary, that his previous attorney had provided him with ineffective assistance of counsel, that plea withdrawal was required in the interest of justice and fairness, and that he was innocent. The district court held a second motion hearing, at which Hodge repeated the claims in his second motion without producing any additional evidence. After the hearing, the district court again denied Hodge's motion in a written order, determining that the plea was valid, that Hodge's counsel had not provided ineffective assistance, that there was no manifest injustice, that plea withdrawal was not required under the fair-and-just standard, and that Hodge's claim of actual innocence did not necessitate plea withdrawal.

Hodge then appeared before the district court for sentencing. The district court followed the terms of the plea agreement.

Hodge appeals.

DECISION

Hodge challenges the district court's denial of his motion to withdraw his guilty plea. Where, as here, a defendant moves to withdraw a guilty plea before sentencing, the district court may, "[i]n its discretion[,] . . . allow the defendant to withdraw a plea . . . if it is fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2. That decision will be reversed "only in the rare case" that the district court has conclusively abused its discretion. *State v. Jones*, 921 N.W.2d 774, 782 (Minn. App. 2018) (quotation omitted), *rev. denied* (Minn. Feb. 27, 2019). Once a defendant has been sentenced, plea withdrawal is only permissible "if withdrawal is necessary to correct a 'manifest injustice.'" *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010) (quoting Minn. R. Crim. P. 15.05, subd. 1). "A manifest injustice exists if a guilty plea is not valid." *Id.* at 94. To be constitutionally valid, a guilty plea must be intelligent, accurate, and voluntary. *Dikken v. State*, 896 N.W.2d 873, 876 (Minn. 2017). A defendant bears the burden of showing that a guilty plea does not comport with these requirements. *Raleigh*, 778 N.W.2d at 94. Whether a guilty plea is valid is a question of law that appellate courts review de novo. *Id.*

Although Hodge brought his motion to withdraw his guilty plea before sentencing, he argued to the district court that he was entitled to plea withdrawal under both standards—the "fair and just" standard and the "manifest injustice" standard. In denying Hodge's motion, the district court considered both standards separately and determined that plea withdrawal was not required under either standard.

Hodge argues that the district court erred in its application of both standards. He contends that because his guilty plea was not accurate and was not intelligently made, he is entitled to withdraw it under both the "fair and just" and "manifest injustice" standards.

A. Hodge's Guilty Plea Was Accurate

Hodge first argues that the district court erred in denying his plea-withdrawal motion because his plea was not accurate. "For a guilty plea to be accurate, a factual basis must be established showing that the defendant's conduct meets all elements of the offense to which he is pleading guilty." *Jones*, 921 N.W.2d at 779; *see also State v. Iverson*, 664 N.W.2d 346, 349-50 (Minn. 2003).

A person is guilty of misdemeanor domestic assault when he "intentionally inflicts or attempts to inflict bodily harm" on a family member. Minn. Stat. § 609.2242, subd. 1(2). "Bodily harm" is defined as "physical pain or injury, illness, or any impairment of physical condition." Minn. Stat. § 609.02, subd. 7 (2020). Here, Hodge's admissions in the guilty plea petition and on the record established a factual basis for domestic assault. Hodge's petition states, "I am pleading guilty because on the afternoon of August 8, 2020, I punched my minor son on the shoulder . . . . I acknowledge that the punch caused my son some degree of pain or discomfort." And during the guilty plea hearing, the district court asked Hodge to describe the incident in his own words:

> DISTRICT COURT: And the alleged victim in this matter is your son, is that correct?
> HODGE: Yes, Your Honor.
> DISTRICT COURT: How old is your son?
> HODGE: He's ten years old.
> DISTRICT COURT: He's ten years old, all right. And what did you do on, was it August [8th]?

> HODGE: I—I had smacked him on his arm, Your Honor, and he had, you know, it—it felt uncomfortable to him.

Hodge argues that his intent to commit assault was never established because he did not admit to intentionally assaulting his son. Assault-harm, as defined by Minnesota Statutes section 609.02, subdivision 10(2) (2020), is a general-intent crime. *State v. Fleck*, 810 N.W.2d 303, 309-10 (Minn. 2012). "[A] general-intent crime only requires proof that 'the defendant intended to do the physical act forbidden, without proof that he meant to or knew that he would violate the law or cause a particular result.'" *Id.* at 308 (quoting 9 Henry W. McCarr & Jack S. Nordby, *Minnesota Practice* § 44.3 (3d ed. 2001)). Hodge's admission that he struck his son in the arm was sufficient to establish his general intent to commit the assaultive act.

Additionally, Hodge argues that his statement that his son felt only "discomfort" did not satisfy the pain element of the offense. But pain or discomfort is sufficient. *See State v. Struzyk*, 869 N.W.2d 280, 289 (Minn. 2015) ("While the threshold for what constitutes bodily harm under section 609.02, subdivision 7, is minimal, our legal standard nonetheless requires proof of pain or discomfort."). Hodge admitted in the plea petition that he caused his son "pain or discomfort." And during the colloquy, he acknowledged that his son felt "uncomfortable" when he "smacked" him. Hodge's admissions were therefore sufficient to establish the pain element of domestic assault.

Because Hodge admitted to the elements of domestic assault in his guilty-plea petition and during his guilty-plea hearing, there was a sufficient factual basis established for the plea. Accordingly, we conclude that the plea was accurate.[1]

B. Hodge's Guilty Plea Was Intelligent

Hodge also contends that his guilty plea is deficient because it was not intelligently entered.[2] "To be intelligent, a guilty plea must represent a knowing and intelligent choice among the alternative courses of action available." *Dikken*, 896 N.W.2d at 877 (quotation and alterations omitted). "Whether a plea is intelligent depends on what the defendant knew at the time he entered the plea . . . ." *Id.* More specifically, a plea is intelligent when it embodies the defendant's understanding of the charges, the rights he has waived, and, most importantly here, the consequences of entering the plea. *Id.*; *see Nelson v. State*, 880 N.W.2d 852, 858 (Minn. 2016).

Hodge first argues that his plea was not intelligent because he was not informed that he would be required to participate in domestic-abuse programming. But the guilty plea petition that he signed made clear that he would be required to have a domestic-abuse assessment and participate in any recommended programming that satisfies Minnesota law. The plea petition stated:

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[1] Hodge also asserts his "actual innocence." But this argument simply repeats his argument that the plea was not accurate because he did not admit to each element of domestic assault. Because we have concluded that the plea was accurate, we reject this argument.

[2] Although Hodge also challenges the voluntariness of his plea, this argument is simply a restatement of the intelligence argument. And there is no record support for his claim that the plea was involuntary.

> Within 60 days of the date of the Court's approval of this Petition, I will complete a Domestic Abuse Evaluation and follow any recommendations stemming therefrom, or simply enter directly into a domestic abuse counseling or education program that complies with the requirements of Minn. Stat. § 518B.02, subd. 2 [(2020)] and sign releases of information authorizing my probation agent to monitor my progress in that program[.]

Moreover, at the plea hearing, the district court ordered Hodge to participate in the PSI process to ensure his compliance with this condition and he raised no objection.

Similarly, Hodge argues that his plea was not intelligent because he did not know that he would have to obtain a chemical-use assessment. But, again, this condition was specifically discussed in the plea petition. The plea petition states:

> I will undergo a Chemical Use Assessment and provide a copy of the recommendations to my probation agent, or I will sign a release of information allowing the assessor to provide a copy of the Chemical Use Assessment to my agent. I will follow any and all recommendations stemming from the Chemical Use Assessment.

Hodge acknowledged that he had read the guilty-plea petition, including this condition, by signing it. He also told the district court during his guilty-plea hearing that he had read and understood the petition.

Hodge argues that his guilty plea was unintelligent because he did not understand two collateral consequences of pleading guilty: first, that he would face more serious charges for any future assaults because domestic assault is an "enhanceable" offense, and second, that he would be prohibited from possessing firearms for a period of time.

We initially note that the record shows Hodge was twice advised that a domestic assault conviction could be used to enhance the severity of subsequent assault charges. The

guilty-plea petition contains an advisory about the impact of a domestic-assault conviction on future assault charges. And the district court explained the concept of charge enhancement to Hodge during the guilty-plea hearing.

Moreover, the fact that a conviction can be used to enhance the severity of subsequent charges and the impact of a conviction on gun rights are both collateral—and not direct—consequences of the conviction. *See State v. Crump*, 826 N.W.2d 838, 841-43 (Minn. App. 2013) (holding that the possible effect that a plea may have upon a future charge is a collateral consequence that does not render the guilty plea unintelligent), *rev. denied* (Minn. May 21, 2013); *State v. Rodriguez*, 590 N.W.2d 823, 825 (Minn. App. 1999) (holding that the risk of becoming ineligible to possess a firearm is a collateral consequence of a guilty plea), *rev. denied* (Minn. May 26, 1999); *Sames v. State*, 805 N.W.2d 565, 568-69 (Minn. App. 2011) (reaffirming the holding in *Rodriguez* after the United States Supreme Court's decision in *Padilla v. Kentucky*, 559 U.S. 356 (2010), which required attorneys to inform clients whether a plea carries a risk of deportation). A guilty plea is only intelligent if a defendant is aware of the direct consequences of the plea. *See Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). But a defendant's ignorance of collateral consequences does not make the plea unintelligent. *See id.* ("[A] defendant's lack of awareness of a *collateral* consequence of a guilty plea does not render the guilty plea unintelligent and entitle a defendant to withdraw it.") Thus, even if Hodge pleaded guilty without knowing that a domestic assault conviction could enhance future assault charges and impact his gun rights, his plea would still be intelligent.

Finally, Hodge contends that he did not intelligently enter his guilty plea because his counsel provided ineffective assistance. "To prove ineffective assistance of counsel, a defendant must show that (1) his attorney's performance fell below an objective standard of reasonableness, and (2) a reasonable probability exists that the outcome would have been different, but for counsel's errors." *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017) (quotations omitted). Trial counsel is deficient when counsel "does not exercise the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances." *White v. State*, 248 N.W.2d 281, 285 (Minn. 1976) (quoting *United States v. Easter*, 539 F.2d 663, 666 (8th Cir. 1976)). There is a presumption that "counsel's performance fell within a wide range of reasonable assistance." *Bruestle v. State*, 719 N.W.2d 698, 705 (Minn. 2006) (quotation omitted). We review de novo a claim that a guilty plea is invalid by virtue of ineffective assistance of counsel. *Taylor*, 887 N.W.2d at 823. "But we defer to a district court's findings of facts and will not set them aside unless they are clearly erroneous." *State v. Bell*, 971 N.W.2d 92, 106 (Minn. App. 2022) (quotation omitted).

Hodge argues that his counsel's performance was deficient because she failed to advise him of the collateral consequences of the plea, she did not spend enough time with him, and she misinformed him that he could plead guilty to domestic assault without making a court appearance.

Failing to inform a defendant of the collateral consequences of a plea is not deficient performance. *See State v. Ellis-Strong*, 899 N.W.2d 531, 541 (Minn. App. 2017) ("In Minnesota, an attorney's representation does not fall below the objective standard of

reasonableness . . . if the attorney fails to inform a defendant of the collateral consequences of a guilty plea."). We also agree with the district court that the record does not otherwise support Hodge's claims that his attorney's performance was deficient and that he was prejudiced by her performance. In the plea petition, Hodge acknowledged that he had spent sufficient time with his attorney. And Hodge does not explain how he was prejudiced by appearing before the district court to enter his plea. Thus, we reject Hodge's argument that his plea was unintelligent because his counsel provided ineffective assistance.[3]

Hodge has not established that his plea was constitutionally invalid. Therefore, there is no manifest injustice requiring plea withdrawal. Furthermore, this is not the "rare case" where we can conclude that the district court abused its discretion in determining that plea withdrawal was not required in the interest of fairness and justice.

Affirmed.

[3] For these same reasons, we also reject Hodge's standalone argument that he received ineffective assistance of counsel, which relies on the same claims.