This opinion is nonprecedential except as provided by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
A22-1380

Andrew Audstin Emerson Brown, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 7, 2023
Affirmed
Larkin, Judge

Mower County District Court
File No. 50-CR-19-1969

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

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

Kristen Nelson, Mower County Attorney, Heather Kjos Schmit, Assistant County Attorney, Austin, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Wheelock, Judge; and Kirk, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the postconviction court's denial of his requests for pre- and post-sentence plea withdrawal. Because appellant failed to provide a fair-and-just reason for pre-sentence plea withdrawal or to show that his guilty pleas were invalid, we affirm.

FACTS

On February 21, 2020, appellant Andrew Brown[1] pleaded guilty to two counts of felony fifth-degree drug possession and one count of gross-misdemeanor careless driving pursuant to a plea negotiation with the state. Brown submitted a petition to plead guilty in which he acknowledged and waived his trial rights. Brown agreed to plead guilty to the three offenses, and respondent State of Minnesota agreed to a statutory stay of adjudication on the two fifth-degree drug possession counts and to dismiss the remaining counts from a separate district court file.

At sentencing, Brown moved the district court for plea withdrawal, and the district court denied his motion. Brown consented to statutory stays of adjudication under Minn. Stat. § 152.18 (2022), and the district court deferred proceedings for up to three years and placed Brown on supervised probation for the fifth-degree drug offenses. The district court also sentenced him to seven days in jail for the gross-misdemeanor careless-driving offense.

[1] The record uses both "Audstin" and "Austin" as the appellant's middle name. The caption on appeal must match the caption used in the district court. *See* Minn. R. Civ. App. P. 143.01. We need not resolve the discrepancy because we are not using appellant's middle name in the text of this opinion.

The district court subsequently revoked the stays of adjudication based on Brown's probation violations. The district court entered judgments of conviction on the fifth-degree drug offenses, stayed execution of the sentences, and placed Brown on probation for two years.

Two years after his pre-sentence plea-withdrawal motion, Brown moved the postconviction court to withdraw his guilty pleas and vacate his convictions. The postconviction court denied his motion.

Brown appeals.

DECISION

Guilty pleas may be withdrawn only if one of two standards is met. *See* Minn. R. Crim. P. 15.05 (setting forth the manifest-injustice and fair-and-just standards for plea withdrawal). The district court may allow plea withdrawal before sentencing "if it is fair and just to do so." *Id.*, subd. 2. "The 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." *Id.* A defendant bears the burden of advancing reasons to support withdrawal. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). "The [s]tate bears the burden of showing prejudice caused by withdrawal." *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). 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).

> Underlying the rule is the notion that giving a defendant an absolute right to withdraw a plea before sentence would undermine the integrity of the plea-taking process. If a guilty plea can be withdrawn for any reason or without good reason at any time before sentence is imposed, then the process of accepting guilty pleas would simply be a means of continuing the trial to some indefinite date in the future when the defendant might see fit to come in and make a motion to withdraw his plea.

Kim, 434 N.W.2d at 266 (quotation and citations omitted).

A district court's decision to deny a motion for pre-sentence plea withdrawal under the fair-and-just standard is reviewed for an abuse of discretion and will be reversed only in a "rare case." *Kim*, 434 N.W.2d at 266.

The district court must allow plea withdrawal 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. A manifest injustice exists if a guilty plea is not valid. *Theis*, 742 N.W.2d at 646. To be valid, a guilty plea must be "accurate, voluntary and intelligent." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

> The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial. The voluntariness requirement insures that the guilty plea is not in response to improper pressures or inducements; and the intelligent requirement insures that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty.

Carey v. State, 765 N.W.2d 396, 400 (Minn. App. 2009) (quotation omitted), *rev. denied* (Minn. Aug. 11, 2009).

"A defendant bears the burden of showing his plea was invalid." *Raleigh*, 778 N.W.2d at 94. The validity of a plea is a question of law that we review de novo. *Id.* We review the denial of a request for postconviction relief for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017).

With these principles in mind, we turn to Brown's arguments in support of plea withdrawal.

Pre-sentence Request

Brown contends that the postconviction court abused its discretion in ruling that the district court properly denied his pre-sentence request for plea withdrawal. Specifically, Brown argues that the district court erred by applying the wrong standard in ruling on his motion, asserting that the court applied the manifest-injustice standard, and not the more lenient fair-and-just standard. He asserts that "the court focused *only* on whether [he] had, at the time of his pleas, made a knowing, voluntary, and intelligent waiver of his right to trial and provided an adequate factual basis for his pleas." (Emphasis added).

As support for his request for plea withdrawal, Brown asserted that he pleaded guilty to avoid being "dragged through court for days on end after." He also explained that he did not agree "with any of the conditions of . . . the plea deal" and that he felt "coerced" into pleading guilty because he "was told [that] was the best deal that was offered to [him], and [he] was being ungrateful." Finally, he asserted that he had significant evidence that would enable him to successfully defend the charges at trial, including "doctors' documents . . . videos, proof of [him] being harassed [, and . . .] [his] own witnesses." Brown argues

that, although those rationales might not have established a manifest injustice, they established a fair-and-just reason for plea withdrawal.

The district court determined that Brown did not provide a valid reason for pre-sentence plea withdrawal, stating:

> [W]e already have a record from the plea hearing. During that hearing . . . Mr. Brown, I did run through all of your rights with you. We covered again whether it was a knowing, voluntary, intelligent waiver of your right to a trial. I found that you made a knowing, voluntary, and intelligent waiver of your right to a trial based on the factual basis at that time. *Not liking the recommendations in the PSI or having changed your mind about the plea agreement is not, at this point, . . . a reason to allow you to withdraw your plea.* Because there has to be something that would show that it was an invalid plea at the time it was made . . . and not just . . . that you changed your mind.

(Emphasis added.) The district court also stated that the state's extension of a plea offer did not constitute coercion.

The district court's explanation shows that it did not apply an incorrect standard when ruling on Brown's request. Brown specifically asserted that his attorney had coerced him to plead guilty. That assertion raised a challenge to the validity of the plea. *See State v. Abdisalan*, 661 N.W.2d 691, 694 (Minn. App. 2003) ("A plea of guilty must not be the product of coercion."), *rev. denied* (Minn. Aug. 19, 2003). Thus, the district court's statements regarding the validity of Brown's plea do not indicate application of the wrong standard. Instead, it was a proper response to Brown's assertion of coercion as a basis for plea withdrawal.

Moreover, the district court's statement that "[n]ot liking the recommendations in the PSI or having changed your mind about the plea agreement is not, at this point, . . . a reason to allow you to withdraw your plea" shows that the court considered the pre-sentence fair-and-just standard for plea withdrawal. Caselaw establishes that a change of mind is not a basis for plea withdrawal. *See*, *e.g.*, *Beltowski v. State*, 183 N.W.2d 563, 566 (Minn. 1971) (stating that the postconviction court properly denied relief on a post-sentence motion to withdraw a guilty plea where defendant's "claim of newly discovered evidence of entrapment amounted to no more on this record than a change of mind"); *State v. Ofor*, No. A08-1450, 2010 WL 3000010, at *3 (Minn. App. Aug. 3, 2010) (concluding that the district court did not abuse its discretion by denying defendant's motion to withdraw his guilty plea, which was based on a change of mind); *State v. Griffin*, No. A17-1729, 2018 WL 3826315, at *4 (Minn. App. Aug. 13, 2018) (concluding that a defendant's "suggestion that he should be allowed to withdraw his guilty plea and stand trial simply because he changed his mind is inconsistent with well-established policy favoring the finality of guilty pleas").[2]

Brown complains that "the state did not show, at the time of sentencing, that it would be prejudiced if [he] was permitted to withdraw his pleas." But because the district court correctly determined that Brown did not provide a fair-and-just reason for pre-sentence plea withdrawal, it was unnecessary for the district court to assess potential prejudice to

[2] Although *Ofor* and *Griffin* are nonprecedential decisions, they are persuasive because they involve similar facts. Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating "nonprecedential opinions may be cited as persuasive authority").

the state. *See Raleigh*, 778 N.W.2d at 98 (affirming denial of plea withdrawal where "[t]he district court noted that even if there were no prejudice to the [s]tate, the court would still have denied Raleigh's motion because Raleigh failed to advance reasons why withdrawal was 'fair and just'").

In sum, this is not a rare case justifying reversal of the district court's discretionary decision not to allow pre-sentence plea withdrawal, and the postconviction court did not abuse its discretion by refusing to grant that relief.

Post-sentence Request

A post-sentence motion for plea withdrawal is treated as a request for postconviction relief. *James v. State*, 699 N.W.2d 723, 727 (Minn. 2005). At the postconviction stage, Brown reiterated the reasons he provided in his pre-sentence request for plea withdrawal, including that his attorney coerced him into pleading guilty by "verbally attack[ing]" him and telling him that "[he] was being ungrateful for the plea[s] that [his attorney] had fought so hard for [him] to get." The postconviction court rejected Brown's assertion that his guilty pleas were invalid, reasoning, in part, that the motion was untimely, resulting in prejudice to the state. Brown argues that the postconviction court erred by considering prejudice to the state when determining whether Brown's guilty pleas were invalid.

Again, a guilty plea must be voluntary to be valid. *Ecker*, 524 N.W.2d at 716. The voluntary requirement ensures that the defendant is not pleading guilty due to improper pressure or coercion. *Raleigh*, 778 N.W.2d at 96. "A plea of guilty must not be the product of coercion." *Abdisalan*, 661 N.W.2d at 694. For example, a guilty plea may not be

produced "through actual or threatened physical harm, or by mental coercion overbearing the will of the defendant." *Ecker*, 524 N.W.2d at 719.

In his petition to plead guilty, Brown expressly stated that he understood the charges, that he was satisfied with his attorney's representation, that he willingly gave up his right to a trial, that he understood and agreed to the terms of the plea negotiation, and that no one *including his attorney* made any promise or threats to persuade him to plead guilty. And at his plea hearing, Brown informed the district court that he had had enough time to discuss his case with his attorney and that "[o]ther than the plea agreement," no one had made any other promises or threats, or otherwise tried to force him to plead guilty.

When assessing the validity of a guilty plea, a reviewing court may rely on statements made by a defendant at the time of his guilty plea, both on the record and in any plea petition. *See Raleigh*, 778 N.W.2d at 96 (relying on an on-the-record exchange between defendant and his attorney to conclude that defendant's plea was voluntary); *Ecker*, 524 N.W.2d at 718-19 (relying on "[t]he record of the guilty plea" to reject a claim that a plea was not voluntary). When a defendant makes inconsistent statements regarding the validity of his guilty plea, "credibility determinations are crucial, [and] a reviewing court will give deference to the primary observations and trustworthiness assessments made by the district court." *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *rev. denied* (Minn. June 11, 1997). Brown's coercion claim is inconsistent with the statements he made in support of the district court's acceptance of his guilty pleas. In the context of these inconsistent statements, the postconviction court's conclusion that Brown's pleas were voluntary encompasses a credibility determination to which we defer.

Indeed, Brown has offered no evidence to show that he was coerced into pleading guilty, other than his attorney's advice that the agreement was "the best deal offered to [him], and [he] was being ungrateful." Simply advising a defendant of a plea offer from the state and the odds of a conviction at trial is not coercion. *See Abdisalan*, 661 N.W.2d at 694-95 (defendant was not coerced when his counsel told him there was a 70% chance he would be convicted). This record does not support a conclusion that Brown's attorney coerced him to plead guilty.

Thus, we are not surprised that Brown's only assignment of error to the postconviction court's determination that his guilty pleas were voluntary is the court's consideration of prejudice to the state. Brown argues that "[u]nlike the fair-and-just standard . . . the manifest-injustice standard does not permit courts to consider the prejudice to the state." Brown does not cite and we are not aware of any precedent prohibiting consideration of any prejudice resulting from the *timing* of a defendant's plea-withdrawal motion under the manifest-injustice standard. In fact, rule 15.05 limits post-sentence plea-withdrawal motions to those that are "timely." Minn. R. Crim. P. 15.05, subd. 1. Thus, it may be reasonable to consider any prejudice to the state resulting from delay when determining whether a post-sentence motion for plea withdrawal is timely. *See James*, 699 N.W.2d at 728 (stating that although rule 15.05, subdivision 1, "requires that the motion be timely made, the language of the rule does not provide guidance on how courts are to determine the timeliness of such a motion"). But we need not decide that issue because Brown has not presented evidence of coercion that would support a determination that his guilty pleas were invalid. Thus, any error stemming from the postconviction court's

consideration of prejudice is harmless and not a basis for relief. *See* Minn. R. Crim. P. 31.01 ("Any error that does not affect substantial rights must be disregarded.").

In sum, the postconviction court did not abuse its discretion by denying Brown's request for plea withdrawal. We therefore affirm without addressing the state's argument that Brown forfeited appellate review by failing to appeal the district court's denial of his pre-sentence request for plea withdrawal.

Affirmed.