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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2023**

Fredrick Lamart Dunston,
a/k/a Adham Fuad, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 18, 2011
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-08-41601

David W. Merchant, Chief Appellate Public Defender, Michael W. Kunkel, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Minge, Presiding Judge; Peterson, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's order denying his postconviction petition to withdraw his guilty plea. Appellant argues that his guilty plea was involuntary due to coercion and pain in his lower back. We affirm.

FACTS

On August 19, 2008, respondent State of Minnesota charged appellant Fredrick Lamart Dunston a/k/a Adham Fuad with first-degree aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2008).

On November 10, 2008, the parties informed the district court that they had agreed that Fuad would plead guilty to first-degree aggravated robbery; that he would be conditionally released to have back surgery; and that if he complied with the conditions of his release and returned for sentencing, the state would amend the complaint by reducing the charge to attempted first-degree aggravated robbery. In that event, Fuad would receive a 29-month prison sentence. Pursuant to the plea agreement, Fuad pleaded guilty to first-degree aggravated robbery. The following colloquy occurred:

DEFENSE COUNSEL: Mr. Fuad, have you had a chance to read the paperwork you're currently signing?

THE DEFENDANT: Yes.

DEFENSE COUNSEL: And do you understand what you are signing?

THE DEFENDANT: Yes.

DEFENSE COUNSEL: And you've been represented by counsel throughout this entire proceeding?

THE DEFENDANT: Yes.

DEFENSE COUNSEL: And you've never been a patient in a mental hospital?

THE DEFENDANT: No.

DEFENSE COUNSEL: And you're not undergoing psychiatric treatment at this time or on medications?

THE DEFENDANT: No.

DEFENSE COUNSEL: And you're not taking any pills or medication, right?

THE DEFENDANT: No.

DEFENSE COUNSEL: Okay. And you understand that if you do not accept this plea, that you would have a right to have the prosecutor present their case against you and have all their evidence and their witnesses; and you would have a right to examine it and cross-examine it in court?

THE DEFENDANT: Yes.

DEFENSE COUNSEL: And you would have the right to a pretrial before a judge to determine whether the evidence could come into court?

THE DEFENDANT: Yes.

DEFENSE COUNSEL: And you, by doing the plea, you also waive the right to have a jury by 12 of your peers, and all 12 would have to be in agreement to convict you?

THE DEFENDANT: Yes.

DEFENSE COUNSEL: And you understand that you cannot withdraw your plea once it is given?

THE DEFENDANT: Yes.

DEFENSE COUNSEL: . . . You understand that there's been no incentives used to get you to accept the plea, other than which is in the negotiated plea bargain, but no coercion has been used, has it?

THE DEFENDANT: No.

. . . .

DEFENSE COUNSEL: . . . And have I represented you fully and explained all of your rights to you?

THE DEFENDANT: Yes.

Fuad then admitted the factual basis for his plea. The district court ordered the completion of a Sentencing Guidelines Worksheet, scheduled a sentencing hearing on January 15, 2009, and imposed various conditions on Fuad's release.

Fuad later discovered that he needed hip replacement surgery rather than back surgery. But he failed to pass the preoperative physical and his surgery scheduled on

February 1, 2009, was rescheduled to March 24. For reasons not clear in the record, the March 24 surgery was rescheduled to May 19. Fuad failed to appear for surgery on May 19 and his surgery was rescheduled to June 29. Fuad underwent hip replacement surgery on June 29, more than seven months after his guilty plea.

On September 4, before sentencing, Fuad moved to withdraw his guilty plea, arguing at a subsequent hearing that despite his insistence on going to trial, his defense counsel “coerced” him into pleading guilty by telling him several times that a mostly white jury from Hennepin County would likely “hang” him because he is black and the victim is white. He also asserted that he had “intense pain” in his lower back when he entered his guilty plea.

On September 15, the district court denied Fuad’s motion to withdraw his guilty plea. The court concluded that Fuad’s plea was “accurate,” “intelligent,” and “voluntary,” “that he [made] no claim of innocence, that he was satisfied with the representation of his attorney, that he had sufficient time to discuss with his attorney, that he was not under any medical disability at the time he entered his plea,” that the severity of his back pain “was not such as to prevent [him] from making a knowing, voluntary, and intelligent plea,” “[t]hat there is no indication that [he] was on any medications,” and “that there’s no indication of any coercion.”

Pursuant to the terms of the plea agreement, the state amended the charge to attempted first-degree aggravated robbery, and the district court sentenced Fuad to 29 months in prison.

On December 17, Fuad petitioned pro se for postconviction relief. On January 4, 2010, the public defender's office notified the district court by letter that it would be representing Fuad on his petition for postconviction relief and requested a stay. On January 6, before the court received the public defender's letter, it issued an order denying Fuad's petition for postconviction relief. On March 3, the district court vacated its January 6 order and allowed the public defender's office to submit a consolidated petition for postconviction relief on Fuad's behalf.

On September 16, the district court denied Fuad's petition for postconviction relief. This appeal follows.

D E C I S I O N

A criminal defendant may petition the district court for postconviction relief under Minn. Stat. § 590.01 (2008).

“A defendant has no absolute right to withdraw a guilty plea” *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). “Withdrawal is permitted in two circumstances. First, a court must allow withdrawal of a guilty plea if withdrawal is necessary to correct a ‘manifest injustice.’” *Id.* (quoting Minn. R. Crim. P. 15.05, subd. 1). “Second, a court may allow withdrawal any time before sentencing if it is ‘fair and just’ to do so.” *Id.* (quoting Minn. R. Crim. P. 15.05, subd. 2).

“The ‘fair and just’ standard requires district courts to give ‘due consideration’ to 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.” *Id.* at 97 (quoting Minn. R. Crim. P. 15.05, subd. 2). “A defendant bears the burden of advancing reasons

to support withdrawal” and “[t]he State bears the burden of showing prejudice caused by withdrawal.” *Id.*

This court reviews “a district court’s decision to deny a withdrawal motion for abuse of discretion, reversing only in the rare case.” *Raleigh*, 778 N.W.2d at 97 (quotation omitted). “To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Id.* at 94. Whether a plea is valid is a question of law, which this court reviews de novo. *Id.*

Fuad does not argue that the plea is invalid because it was inaccurate or unintelligent. He argues that the plea was involuntary because (1) “despite his insistence on taking the matter to trial . . . his counsel coerced him into pleading guilty by repeatedly telling him that he would be convicted due solely to his race, regardless of the merits of his defense”; and (2) “his decision to plead guilty was also improperly influenced by the pain he was experiencing at the time due to a physical malady . . . for which he would need surgery.”

“Whether a plea is voluntary is determined by considering all relevant circumstances.” *Raleigh*, 778 N.W.2d at 96. “To determine whether a plea is voluntary, the court examines what the parties reasonably understood to be the terms of the plea agreement.” *Id.* “The voluntariness requirement ensures a defendant is not pleading guilty due to improper pressure or coercion.” *Id.*

According to the guilty-plea transcript, Fuad acknowledged that he was not coerced, that he read and understood the plea petition, and that he agreed to plead guilty. Fuad did not indicate that he was doing anything against his own free will or raise any

concerns about his health. At no point during the hearing did Fuad indicate that he was in any pain. At the end of the hearing, the district court gave Fuad an opportunity to raise any concerns he had to the court, which he declined. And Fuad did not have surgery until June 29, 2009, over seven months after the plea, indicating that the pain was not overwhelming. The only evidence of coercion is Fuad's self-serving affidavit and testimony at the plea-withdrawal hearing ten months after his guilty plea.

The district court duly considered Fuad's assertions of coercion and intense pain. Fuad failed to show that his plea is invalid or that it would be fair and just to permit him to withdraw his guilty plea. We therefore conclude that the district court did not abuse its discretion by denying Fuad postconviction relief to withdraw his guilty plea under Minn. R. Crim. P. 15.05, subd. 2, and we affirm.

Affirmed.