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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-267**

State of Minnesota,
Respondent,

vs.

Nicholas James May,
Appellant.

**Filed January 17, 2012
Affirmed
Schellhas, Judge**

Scott County District Court
File No. 70-CR-09-16905

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

Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and
Collins, Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's order denying his presentence motion to withdraw his guilty pleas to third-degree assault and disorderly conduct. Appellant argues that it would be fair and just for the court to allow him to withdraw his pleas because he felt pressured to plead guilty. We affirm.

FACTS

Alleging that appellant Nicholas May and his brother assaulted their mother's ex-boyfriend, T.L., respondent State of Minnesota charged May with one count of third-degree assault in violation of Minn. Stat. § 609.223, subd. 1 (2008), and two counts of fifth-degree assault in violation of Minn. Stat. § 609.224, subd. 1(1)–(2) (2008).

On May 19, 2010, pursuant to a plea agreement, May pleaded guilty to third-degree assault and to an added charge of disorderly conduct,¹ and the state agreed to a stay of adjudication on the assault charge and a stay of imposition of sentence on the disorderly conduct conviction with zero to three years' probation and a 45-day cap on local incarceration with sentence alternatives, an anger management evaluation, and no contact with the victim. May also agreed to pay restitution to T.L., jointly and severally with his brother, in the approximate amount of \$17,575.

At the plea hearing, the following colloquy occurred between the district court and May:

¹ In the amended charge of disorderly conduct, the state alleged that May engaged in brawling or fighting in violation of Minn. Stat. § 609.72, subd. 1(1) (2008).

THE COURT: [T]here's a lot of rights you have to give up and the big right you're going to be giving up is your chance to have a contested proceeding on this. So it's . . . going to be over with if I accept your plea. It's going to be over with today and you're not going to be able to come back and say, "I didn't like the deal." So are you prepared to live with the outcome of a guilty plea today and all that it entails?

THE DEFENDANT: Do I have to make the decision today, Your Honor?

THE COURT: You bet.

THE DEFENDANT: I do? Right now?

THE COURT: Yeah. It's not even like a "right now." It's like in probably within about three or four minutes from now it will be over with.

THE DEFENDANT: Okay. Well, yes, Your Honor.

After May entered his pleas of guilty to third-degree assault and disorderly conduct, he was sworn, and defense counsel questioned him about his rights and the factual bases for his pleas. Because of the agreed-upon stay of adjudication, the district court did not accept May's guilty plea to the assault charge but did accept his guilty plea to disorderly conduct.

In September, May moved the court to withdraw his guilty pleas, asserting his innocence and stating that he felt "unfairly convinced to take the plea" because he had two minutes to make a decision, that defense counsel told him he had a "bad judge for a trial," and "that [his] trial had been set for the same day but the jury was already dismissed." May stated that he "didn't really understand this but . . . felt [his] only option . . . was to accept the plea."

The district court denied May's motion, concluding that his pleas were accurate, voluntary, and intelligent, and "[f]airness and justice considerations dictate that a guilty plea withdrawal is not appropriate." Pursuant to the plea agreement, the district court

stayed adjudication on the third-degree assault charge, continued the matter for dismissal for three years, and imposed the conditions of probation. These conditions included 25 days of sentence to service, completion of an anger-management evaluation and recommendations, restitution payment of \$17,775.09 to T.L., no contact with the victim, and maintenance of law-abiding behavior. The court stayed imposition of sentence on May's disorderly conduct conviction and placed him on probation for one year concurrent with his probation on his stay of adjudication on the assault charge, subject to the same conditions of probation.

This appeal follows.

DECISION

“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.” *Id.* (quotation omitted).

Citing *State v. Williams*, 373 N.W.2d 851, 853 (Minn. App. 1985), May argues that “courts should generally be lenient in allowing defendants to withdraw their pleas” before sentencing. But the supreme court discredited this notion in *Kim v. State*, when it said 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.

434 N.W.2d 263, 266 (Minn. 1989) (citations and quotations omitted). “*Kim* rejected the approach of the pre-*Kim* decisions of the court of appeals, which had been saying that the trial courts ought to be liberal and lenient in allowing defendants to withdraw guilty pleas before sentencing.” *State v. Kaiser*, 469 N.W.2d 316, 319–20 (Minn. 1991). May’s assertion that the district court should have been lenient in allowing him to withdraw his pleas is unsupported by current law.

May argues that it would be fair and just to allow him to withdraw his guilty pleas because he was “pressured” to plead guilty by his attorney and “reluctantly” agreed “despite his desire for more time” to decide. But at the plea hearing, May stated that he had read the petition to enter a plea of guilty, that he understood the plea agreement, that he had had enough time to talk about pleading guilty with defense counsel and was ready

to go forward, that he signed the plea agreement freely and voluntarily, that he was waiving his assertion of self-defense, that he was waiving his right to a trial, and that he wanted the court to accept the petition. May made no claim of coercion or undue pressure, and the record reveals none.

This case is not the rare case requiring reversal. *See Raleigh*, 778 N.W.2d at 97 (holding that a defendant's bare assertion that he felt pressured to plead guilty without further evidentiary support did not provide a "fair and just" reason for withdrawal). We conclude that the district court did not abuse its discretion by denying May's motion to withdraw his guilty pleas.

Affirmed.