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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-831

State of Minnesota,
Respondent,

vs.

Deonte Lajune Nelson,
Appellant.

Filed February 21, 2012
Affirmed
Larkin, Judge

Rice County District Court
File No. 66-CR-10-677

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

G. Paul Beaumaster, Rice County Attorney, Benjamin Bejar, Assistant County Attorney, Faribault, Minnesota (for respondent)

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

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges his conviction of second-degree controlled-substance crime, arguing that the district court abused its discretion by denying his presentence motion to

withdraw his guilty plea. Appellant's arguments in support of plea withdrawal stem from the fact that at the time of the plea, the parties were mistaken regarding appellant's criminal-history score and did not realize that imposition of a sentence in the lower end of the agreed-upon range would have constituted a downward-durational departure. Because the mistake did not render appellant's plea invalid or establish a fair-and-just reason for withdrawal, we affirm.

FACTS

Appellant Deonte Lajune Nelson was charged with three counts of second-degree controlled-substance crime and one count of fleeing a police officer. Appellant petitioned to plead guilty to one count of second-degree controlled-substance crime in exchange for the state's agreement to dismiss the remaining charges and to recommend a 75-month sentence, "assuming 4.5 [criminal history points] at [a severity level of] VIII."[1] Appellant's plea agreement was conditioned on his being "of good behavior," abstaining from use and possession of drugs and alcohol, submitting to random drug testing, cooperating with a presentencing investigation, and appearing for sentencing. Appellant acknowledged that if he failed to comply with any of these terms, the state would be allowed to argue for a "top-of-the-box" sentence and he would be unable to withdraw his plea.

[1] When an individual has a criminal-history score with partial points, the score is rounded down for purposes of calculating a presumptive sentence. Minn. Sent. Guidelines II.B.101 (2008).

At the plea hearing, appellant acknowledged that he understood the terms of the plea agreement. After he admitted a factual basis for the offense, the prosecutor reminded appellant that if he failed to comply with the terms of the plea agreement, the prosecutor "would be able to then argue . . . for a top-of-the-box disposition[,]" and the prosecutor told appellant that the "top-of-the-box disposition with four-and-a-half criminal history points is 105 months."[2] Appellant agreed and said that he wanted to proceed with the agreement. The district court accepted appellant's guilty plea and scheduled a sentencing hearing for a future date.

A sentencing worksheet was completed prior to the sentencing hearing, and it revealed that appellant's criminal-history score was actually six, not four. With a criminal-history score of six, the presumptive sentencing range for appellant's conviction offense was 92-129[3] months, as opposed to 75-105 months. Two days before the scheduled sentencing hearing, appellant moved for a downward-durational departure "based on the plea agreement of the parties." But appellant failed to appear at his sentencing hearing, and a warrant was issued for his arrest. Appellant was apprehended the next day, and he subsequently appeared before the district court for sentencing. Appellant argued that he should be permitted to withdraw his guilty plea because when he entered the plea, "he believed that . . . he had four-and-a-half criminal history points."

[2] When an offender has a criminal-history score of four and is convicted of a second-degree controlled-substance crime, which is a severity-level VIII offense, the presumptive guidelines range is 75-105 months. Minn. Sent. Guidelines IV (2008).

[3] When an offender has a criminal-history score of six and is convicted of a second-degree controlled-substance crime, which is a severity-level VIII offense, the presumptive guidelines range is 92-129 months. Minn. Sent. Guidelines IV.

Appellant further argued that the actual presumptive sentencing range of 92-129 months was substantially more than he bargained for.

Before ruling on appellant's plea-withdrawal motion, the district court held an evidentiary hearing to determine whether appellant had violated the conditions of his plea agreement. After hearing testimony, the district court determined that appellant had violated the drug-testing requirement. Having found that appellant violated a condition of the plea agreement, the district court concluded that the state was entitled to argue for a sentence greater than 75 months. The district court informed the parties that

> I think in this case we can avoid some of the issues because there is an overlap. With a criminal history score of 4, I already made a finding that the State is free to argue more than 75. The understanding was that they could go up to 105 months at a [criminal history score of] 4.
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> If I sentence at a [criminal history score of] 6, 105 months falls within the permissible range of 92-129. So if I sentence between 92-105, then it is not a departure [and] it is not a violation of the plea agreement . . . .

The state indicated its intent to argue for a 105-month sentence and noted that "it is within the 6-point range and, therefore, it won't be a departure; and it does, in fact, live up to the plea agreement, and it gives the exact bargain that [appellant] bargained for." Appellant argued that because he bargained for a 75-month sentence, which now fell outside of the permissible sentencing range, he was entitled to plea withdrawal. Appellant alternatively argued for a downward-durational departure to 75 months, based on his original assumption regarding his criminal-history score.

The district court denied appellant's motion to withdraw his plea, finding the plea accurate because there was no mistake as to the charge pleaded to, intelligent because appellant understood the consequences of his plea to be a sentence between 75 and 105 months, and voluntary because there had been no improper pressure or inducement to plead guilty. The district court found that appellant's criminal-history score was not "part of the agreement" and that "what induced [appellant] to [plead guilty] was that [he] knew [he was] going to be within a range of 75 and no more than 105." The district court acknowledged that if it were to impose a sentence greater than 105 months, it would "have to allow [appellant] to withdraw [his] plea."

The district court sentenced appellant to serve 92 months in prison, reasoning that the sentence fell within the contemplated plea-agreement range of 75 to 105 months and accounted for appellant's failure to abide by the terms of the plea agreement. This appeal follows, in which appellant claims that the district court abused its discretion by denying his request to withdraw his plea.

D E C I S I O N

A defendant does not have an absolute right to withdraw a guilty plea. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). Guilty pleas may be withdrawn only if one of two standards is met. First, 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. Second, the district court has discretion to allow plea withdrawal before sentencing "if it is fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2. 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). Allowing a defendant to withdraw a guilty plea "for any reason or without good reason" would "undermine the integrity of the plea-taking process." *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). We review a district court's decision on a motion to withdraw a guilty plea for abuse of discretion. *Id.*

On appeal, appellant argues for relief under both the manifest-injustice and fair-and-just standards. As to manifest injustice, appellant primarily argues that he should have been allowed to withdraw his plea because it was "not knowing, voluntary, and intelligent because he relied on a criminal history score of 4 points and a promise that he would receive a sentence of 75 months, when in fact his criminal history score was 6 points and a 75-month sentence would have been a durational departure."

To be constitutionally valid, a guilty plea must be "accurate, voluntary and intelligent." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). "Manifest injustice occurs if a guilty plea is not accurate, voluntary, and intelligent . . . ." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997).

> 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.

Alanis, 583 N.W.2d at 577 (footnotes omitted).

According to appellant, he was "induced into a plea agreement based on the assumption that he had a criminal history score of 4 points and he would receive a sentence of 75 months." Appellant asserts that "[h]e never would have entered a guilty plea had he known he was facing a sentence greater than 75 months." He also asserts that "[h]e was never told what the top of the guidelines was for a criminal history score of 4 points." He therefore concludes that he should have been allowed to withdraw his plea "to avoid a manifest injustice."

The record belies appellant's assertions: he was not unconditionally promised a 75-month sentence. The state promised to *recommend* a 75-month sentence. *See State v. DeZeler*, 427 N.W.2d 231, 234 (Minn. 1988) (distinguishing between plea agreements "as to [a] sentence [and] agreements in which the prosecutor promises to recommend a certain sentence"). And that promise was conditioned on appellant's compliance with the terms of the plea agreement. Moreover, appellant was specifically told, on the record, that the top of the guidelines range for his offense was 105 months, assuming a criminal-history score of four, and that a 105-month sentence was a potential consequence of noncompliance with the plea-agreement terms. Finally, although imposition of a 75-month sentence would have required the district court to grant appellant's motion for a downward-durational departure, it was not a promise that could not be fulfilled. *See State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000) (recognizing that promises that cannot be fulfilled constitute improper inducement to plead guilty). In sum, the district court correctly reasoned that so long as the sentence imposed was within the range contemplated by the plea agreement, appellant received a bargained-for sentence and his

plea was not invalid. *See State v. Batchelor*, 786 N.W.2d 319, 324 (Minn. App. 2010) (concluding that the defendant's plea was intelligent and voluntary where he received "precisely what he bargained for" after failing to comply with a condition of his plea agreement), *review denied* (Minn. Oct. 19, 2010).

Appellant offers several other arguments in support of plea withdrawal. None is persuasive. Appellant argues that his violation of the plea-agreement was "not intentional and was technical in nature," contending that the violation "does not justify a sentence 17 months greater than the 75-month sentence contemplated by the plea." We first observe that this argument appears to concern the district court's sentencing decision, which has not been challenged on appeal. We next observe that this argument ignores the conditions associated with the contemplated 75-month sentence. Finally, to the extent that appellant suggests that an unintentional or technical violation of a plea-agreement condition cannot support the imposition of an agreed-upon consequence, his argument conflicts with precedent. This court recently held that due process does not require a district court to find an intentional or inexcusable violation before it imposes a longer sentence based on a defendant's violation of a condition of his plea agreement. *Id.* at 320 (citing *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980) (requiring certain findings, including a finding that the violation was intentional or inexcusable, before a district court may revoke a probationer's probation)).

Appellant also argues, under the fair-and-just standard, that the plea agreement was based on a "mutual mistake" regarding his criminal-history score, once again asserting that he "was induced to plead guilty based on a promise of a 75-month

sentence." As explained above, although the parties were mistaken regarding appellant's criminal-history score, the mistake did not result in the imposition of a greater-than-bargained-for sentence. Thus, fairness does not require withdrawal of the plea. *Cf. DeZeler*, 427 N.W.2d at 235 (concluding that the district court "in fairness" should have allowed the defendant to withdraw his plea where the plea agreement was based on the parties' erroneous assumption that defendant had a criminal-history score that would result in a stayed sentence, but the defendant's actual criminal-history score resulted in the imposition of an executed sentence).

Appellant lastly argues that the state did not show "how it would be prejudiced" by plea withdrawal. The district court must consider prejudice to the state when determining whether to grant a presentence plea-withdrawal motion. Minn. R. Crim. P. 15.05, subd. 2. But a district court may deny the motion even if withdrawal would not prejudice the state. *See State v. Raleigh*, 778 N.W.2d 90, 98 (Minn. 2010) (holding that the district court did not abuse its discretion in denying the defendant's motion to withdraw his plea because "even if there were no prejudice to the State, the court would still have denied [the defendant]'s motion because [he] failed to advance reasons why withdrawal was 'fair and just'").

In conclusion, the district court's reasoning was sound: so long as the district court imposed a sentence that was consistent with the terms that appellant agreed to, the

plea was valid and withdrawal was not warranted. Because the district court did not abuse its discretion by denying appellant's plea-withdrawal motion, we affirm.

Affirmed.

Dated:

Judge Michelle A. Larkin