STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1013

State of Minnesota,
Respondent,

vs.

John Carson Tatum,
Appellant.

Filed November 25, 2013
Affirmed
Halbrooks, Judge

Dakota County District Court
File No. 19HA-CR-11-92

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

James C. Backstrom, Dakota County Attorney, Karen Wangler, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Ross, Judge.

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

HALBROOKS, Judge

In this combined direct and postconviction appeal, appellant argues that the district court abused its discretion by denying his request to withdraw his guilty plea on the

ground that the plea was involuntary. Because appellant's argument lacks support in the record, we affirm.

FACTS

Appellant John Carson Tatum was criminally charged with hiring a minor for prostitution in violation of Minn. Stat. § 609.324, subd. 1(b)(2) (2010); solicitation of a child to engage in sexual contact in violation of Minn. Stat. § 609.352, subd. 2a(1) (2010); and fifth-degree controlled-substance possession in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2010). Tatum pleaded not guilty, and a jury trial was scheduled to begin October 18, 2011. The state subpoenaed ten witnesses, including the victim, in preparation for trial.

On the first day of trial, the prosecutor informed Tatum's attorney, C.L., that the victim had been subpoenaed to testify, had met with and was cooperating with the prosecution, and was planning to testify at trial. C.L. relayed this information to Tatum, and Tatum decided to plead guilty because he did not want to put the victim "through any further emotional duress or discomfort." Pursuant to a plea agreement, Tatum pleaded guilty to the solicitation-of-a-child charge, and the state dismissed the remaining charges.

At the sentencing hearing, Tatum notified the district court that he wanted to discharge his attorney and file a motion to withdraw his guilty plea. The district court continued sentencing. Tatum subsequently filed a pro se motion to withdraw his guilty plea, arguing that C.L. refused to try his case and misled him about the victim's availability to testify at trial. Following a contested evidentiary hearing, in which both

C.L. and Tatum testified, the district court denied Tatum's motion. The district court sentenced Tatum to 43 months' imprisonment.

Tatum filed a notice of appeal but later requested a stay of appeal in order to file a petition for postconviction relief. We granted Tatum's motion and stayed his direct appeal pending postconviction proceedings in district court.

In his postconviction petition, Tatum argued that his plea was involuntary because C.L. was unprepared and unwilling to take his case to trial and had provided Tatum with misleading information about the victim's plan to testify. The district court denied Tatum's petition, concluding that his arguments were without merit. Following that decision, we lifted the stay of appeal.

D E C I S I O N

Tatum appeals the district court's postconviction decision on the sole ground that his plea was involuntary. "When a defendant initially files a direct appeal and then moves for a stay to pursue postconviction relief, we review the postconviction court's decisions using the same standard that we apply on direct appeal." *State v. Beecroft*, 813 N.W.2d 814, 836 (Minn. 2012). We review the determination of whether to allow a defendant to withdraw a guilty plea under an abuse-of-discretion standard. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

The district court must allow a defendant to withdraw his guilty plea upon timely motion and proof 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." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A guilty plea is valid only if it is "accurate,

voluntary and intelligent." *Id.* While the validity of a guilty plea is a question of law subject to de novo review, *Raleigh*, 778 N.W.2d at 94, whether a plea is voluntary is a question of fact, *State v. Dahl*, 516 N.W.2d 539, 544 (Minn. 1994). We will not disturb the district court's factual findings unless they are clearly erroneous. *Dahl*, 516 N.W.2d at 544. A guilty plea is involuntary if rendered in response to improper pressure or coercion. *See Raleigh*, 778 N.W.2d at 96.

Tatum argues that his plea was involuntary because C.L. was unprepared and unwilling to try his case. This assertion garners no support from the record. As the district court noted in both orders, C.L. testified at the plea-withdrawal hearing that he was prepared for trial and that it was always Tatum's decision whether to proceed to trial. C.L. further testified that he prepared for trial by holding a brainstorming meeting with 10-12 attorneys from his office on the facts of the case and potential trial strategies. C.L. arrived at the courthouse on the first day of trial with a trial notebook that he showed to Tatum. The notebook contained C.L.'s notes for cross-examination of each state witness. Tatum has failed to cite any record evidence to support his contention that C.L. was either unprepared to represent him or unwilling to proceed to trial.

Tatum also argues that C.L. improperly pressured him to plead guilty by informing him that the victim had been subpoenaed and was cooperating with the state. Tatum contends that this information is proved specious by the victim's absence from the courthouse on the first day of trial. But uncontroverted record evidence indicates that the victim had been subpoenaed to testify on the second day of trial, had cooperated with the prosecution in preparation of trial, and was planning to testify. The prosecutor relayed

this information to C.L. the first morning of trial, and C.L. informed his client accordingly. There is nothing in the record to indicate that the prosecutor's statements to C.L. about the victim's cooperation with the prosecution were unfounded or misleading, or anything improper about C.L.'s decision to relay that information to Tatum before trial commenced.

Tatum's arguments in support of his petition for postconviction relief are without support in the record. Because Tatum has not established that his plea was involuntary, it was well within the district court's discretion to deny his postconviction petition seeking withdrawal of his guilty plea.

Affirmed.