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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1965**

Dean Ryan Kline, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 23, 2013
Affirmed
Hudson, Judge**

Olmsted County District Court
File No. 55-CR-12-1849

David W. Merchant, Chief Appellate Public Defender, Cathryn Young Middlebrook, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

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

Mark Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney, Rochester, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant argues that the district court erred by not granting his motion to withdraw his guilty plea, maintaining that, where the plea was neither accurate,

intelligent, nor voluntary because he was intoxicated when he entered his plea, he was not adequately advised of his rights, and the complaining witness recanted. We affirm.

FACTS

In April 2012, appellant Dean Ryan Kline pleaded guilty to one count of felony domestic assault arising out of an incident in February 2012. The complaint alleged that a fight occurred between appellant and his girlfriend, K.A.L., around 6:50 p.m. A witness in the apartment did not observe the fight because it occurred in a closed bathroom, but could hear yelling and screaming. The initially responding police did not observe any signs of physical injury to K.A.L. Later that evening, K.A.L. called the police again to report that she had been assaulted but because of appellant's presence, she had been afraid to tell the police the truth about what had happened. The police interviewed K.A.L., and this time K.A.L. told police that appellant slapped her, dragged her to the floor, and slammed her head repeatedly on the floor. She also stated that appellant prevented her from using her cell phone to call the police. The police observed abrasions on K.A.L.'s forehead and on the back of her head, as well as a red mark on her back.

Appellant was charged with felony domestic assault and interference with a 911 call. Appellant pleaded guilty to the charge of felony domestic assault; the other charge was dismissed. Appellant signed a form plea petition, which indicated, among other things, his competency and his intent to waive his trial rights, and his understanding of the bargain he was accepting in exchange for his guilty plea. However, neither the court nor the parties' attorneys made reference to the plea petition on the record, and appellant

was not questioned about his competency or his rights on the record. The district court sentenced appellant to a stay of imposition and five years' probation.

Between June and July 2012, appellant violated the terms of his probation twice. Following the second violation, appellant was sentenced to 21 months in prison with a stay of execution, and ordered to serve 120 days in jail and complete chemical-dependency treatment. Subsequently, appellant moved to withdraw his guilty plea on the grounds that the complaining witness, K.A.L., had recanted and that he was under the influence of prescription drugs at the time he entered his plea.

Following a hearing, the district court denied appellant's motion from the bench, concluding that the plea appeared "perfectly legitimate." The district court emphasized that victims of domestic assault frequently recant their accusations and that appellant described the assault of K.A.L. with great detail and without prodding. The district court also observed that appellant spoke "clearly" and demonstrated clear thinking when he stated that his motivation to plead guilty was to seek treatment for his drug addiction. This appeal follows.

D E C I S I O N

"A defendant does not have an absolute right to withdraw a valid guilty plea." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). But here, appellant argues that he is entitled to withdraw his plea because withdrawal is necessary to avoid a manifest injustice. If a defendant seeks to withdraw his guilty plea after sentencing, the district court must grant the request upon "proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05.

A “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 main purpose of the accuracy requirement is to protect the defendant from pleading guilty to a more serious offense than he could properly be convicted of at trial.” *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). “The voluntariness requirement helps insure that the defendant does not plead guilty because of any improper pressures or inducements.” *Id.* “The requirement that the plea be knowingly and understandingly made is designed to insure that the defendant understands the charges, the rights being waived and the consequences of the guilty plea.” *Id.*

Appellant argues that his guilty plea was not intelligently given because the district court did not advise him of the rights he was waiving by pleading guilty, which are enumerated in Minn. R. Crim. P. 15.01. The state argues that, although appellant was not informed of his rights on the record, he signed a plea petition form that set forth all of the rights that appellant was agreeing to waive. Rule 15.01, subd. 1, states that “[b]efore the judge accepts a guilty plea, the defendant must be sworn and questioned by the judge with the assistance of counsel as to” the defendant’s various rights, among other things. The advisory committee comments to the rule also suggest that the defendant complete a plea petition form, like the one appellant signed, “and that the defendant be asked upon the inquiry under Rule 15.01 to acknowledge signing the petition, that the defendant has read the questions set forth in the petition or that they have been read to the defendant, and that the defendant understands them, that the defendant gave the answers in the petition, and that they are true.” Minn. R. Crim. P. 15 cmt. The district court neither

elicited the information required under rule 15, nor inquired as to whether appellant read or signed the plea petition agreement. In addition, there is no record of whether appellant's attorney reviewed the plea petition with appellant or that appellant's attorney explained appellant's rights or what rights he was waiving.

However, in *State v. Doughman*, this court stated that it is "desirable, but not mandatory, for a trial court to interrogate a defendant and to require the defendant to sign a 'Petition to Plead Guilty' as suggested in the Minnesota Rules of Criminal Procedure before accepting a guilty plea." 340 N.W.2d 348, 350 (Minn. App. 1983), *review denied* (Minn. Mar. 15, 1984). We observed that "[t]here are other means of building an adequate record on which to evaluate a guilty plea." *Id.* Because the defendant in *Doughman* had recently entered two other guilty pleas and had signed a plea petition in those cases, because he had discussed his rights and options with his attorney, because the prosecutor explained the plea bargain on the record, and because the district court asked the defendant whether he understood some of the rights enumerated under rule 15, this court held that the guilty plea was valid. *Id.* Similarly, in *State v. Wiley*, this court concluded that a plea was valid when the district court asked only one question of the defendant relating to waiver of his rights, but the defendant's counsel testified that he went over the plea petition and waiver of rights with the defendant, and when the defendant had "five criminal history points," and "extensive exposure to the criminal justice system." 420 N.W.2d 234, 237 (Minn. App. 1988), *review denied* (Minn. Apr. 26, 1988).

At bottom, we must determine whether the appellant's guilty plea was made with "sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748, 90 S. Ct. 1463, 1469 (1970). Although the better practice is for judges and attorneys to elicit a defendant's knowing waiver of his rights on the record, we conclude that there are sufficient facts present to establish that appellant's guilty plea was valid. At the time of his plea, appellant had three criminal history points, evidencing knowledge of the inevitable consequences of receiving a conviction. And appellant indicated by his signature that he understood he was waiving those rights enumerated in the plea petition. Appellant indicated that he understood "what's happening here today" and that he was "in agreement with it." The prosecutor elicited appellant's understanding of the sentencing guidelines, the severity level of the offense, the requirements of probation, and the consequences of violating probation. And, significantly, appellant's freely given and detailed statement of the facts underlying the conviction persuades us that the guilty plea was accurate and voluntary.

Appellant further contends that his guilty plea was not accurate because the complaining witness recanted. However, when a defendant admits his guilt by pleading guilty, recantation by the complaining witness does not compel the court to allow a defendant to withdraw the guilty plea. *State v. Tuttle*, 504 N.W.2d 252, 256–57 (Minn. 1993). Moreover, "[t]he general rule is that courts should not grant new trials on the basis of recanted testimony unless the court is reasonably certain that the recantation is genuine." *State v. Risken*, 331 N.W.2d 489, 490 (Minn. 1983). Here, the district court concluded that the victim's recantation was not genuine because her accusation was

apparently credible and because “[i]t’s probably more rule than exception that victims of domestic assault recant at some point.” We agree that the record gives the district court ample grounds to find that the circumstances surrounding the witness’s recantation are dubious, and we conclude that the detailed factual basis provided by appellant, largely without prompting, amply supports the conviction.

Appellant also argues that his plea was not voluntary because he was pressured to agree to a plea deal in order to be released from jail. However, “the normal trauma associated with being incarcerated following an arrest is not, by itself, a basis to claim coercion.” *Sykes v. State*, 578 N.W.2d 807, 813 (Minn. App. 1998), *review denied* (Minn. July 16, 1998). “There must be something in addition, such as a showing that the state actually induced the defendant to plead guilty through actual or threatened physical harm, or by mental coercion overbearing the will of the defendant.” *Id.* (quotations omitted). Appellant presents no evidence that he was threatened with physical harm or that the fact of incarceration was sufficient to overbear his will. Rather, it seems appellant “got precisely the plea bargain that he wanted.” *Id.*

Appellant also argues that his plea was not voluntary because he was under the influence of prescription drugs at the time he entered his plea. Minn. R. Crim. P. 15.01, subd. 1(5)(a), requires the judge to determine whether the defendant “is under the influence of drugs or intoxicating liquor.” Appellant was not asked on the record if he was under the influence of an intoxicant; however, the plea petition appellant signed indicates that he had “not recently been taking pills or other medicines.” Moreover, this court defers to the district court’s judgment as to a defendant’s competency to enter a

guilty plea. *See Wiley*, 420 N.W.2d at 237. We conclude that the record supports the district court's finding that appellant was competent at the time he entered his plea.

Finally, appellant argues that his plea was not voluntary because he was threatened by gang members to plead guilty. Minn. R. Crim. P. 15.01, subd. 1(4)(c), requires the judge to "ensure" that the defendant has not "been threatened by anyone[]" to get the defendant to plead guilty." Although the district court did not specifically inquire about coercion, where the record of the guilty plea indicates that the defendant's plea was the result of "making his own decision," the plea is not coerced. *State v. Ecker*, 524 N.W.2d 712, 719 (Minn. 1994). Appellant stated at the plea hearing that "I'm pleadin' guilty to my actions so I can go get help." Moreover, appellant's attorney stated that appellant wanted to plead guilty to avoid additional criminal history points that were about to accrue in another county, stating that "we're trying to make sure that he gets sentenced now so nothing [that] happens to him shortly here in Dodge County will turn this into a presumptive prison sentence." Therefore, we conclude that appellant's will was not overborne by outside pressures.

Affirmed.