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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0551**

State of Minnesota,
Respondent,

vs.

Tamara Lee Cox,
Appellant.

**Filed December 30, 2013
Reversed and remanded
Huspeni, Judge***

Martin County District Court
File No. 46-CR-12-885

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

Elizabeth W. Bloomquist, Fairmont, Minnesota (for respondent)

T. Oliver Skillings, New Ulm, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and
Huspeni, Judge.

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

UNPUBLISHED OPINION

HUSPENI, Judge

Appellant challenges the district court's denial of her motion to withdraw her guilty plea on the basis that the plea (1) was not intelligently made because the district court did not expressly follow the requirements of Minn. R. Crim. P. 15.02 when taking a plea from an unrepresented defendant and (2) it was fair and just to permit withdrawal before sentencing when the state did not demonstrate prejudice. We reverse and remand.

FACTS

Appellant Tamera Lee Cox was charged with violating a harassment restraining order, under Minn. Stat. § 609.748, subd. 6(b) (2012). She pleaded guilty at her first appearance and was unrepresented by counsel. Before Cox entered her guilty plea, the district court advised her of the charge and that she had a right to “speak with an attorney.” When the district court asked if she wanted to talk to an attorney, Cox responded, “No.” The district court then asked Cox if she pleaded guilty or not guilty, and Cox responded, “Guilty.”

To establish the factual basis for the plea, the district court asked Cox if she knew there was a restraining order. Cox answered, “I didn't know knocking on my window was” The district court interrupted her and repeated the question. Cox answered that she did but that she “did not know knocking on the window was in violation.” Cox explained that she knocked on the window because the neighbor was outside making faces at her son and holding a stick in his hand, which she thought was threatening, so she knocked on the window to let him know she was watching him.

Cox retained counsel and moved to withdraw her guilty plea before sentencing. She argued that withdrawal was necessary under the manifest-injustice standard because she had not been advised of her rights under Minn. R. Crim. P. 15.02, subd. 1, and her guilty plea was, therefore, invalid. Cox also sought withdrawal under the fair and just standard for plea withdrawal before sentencing. The district court denied the motion, holding that Cox's plea was voluntary, accurate, and intelligent and that the reasons for withdrawing the plea did not outweigh the burden withdrawal would place on the state.

D E C I S I O N

“A criminal defendant has no absolute right to withdraw a guilty plea once entered.” *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). “[T]he Minnesota Rules of Criminal Procedure allow a defendant to seek to withdraw a guilty plea in two circumstances.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). First, a district court must permit guilty-plea withdrawal at any time, even after sentencing, if “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a guilty plea is invalid. *Theis*, 742 N.W.2d at 646. In order to be valid, a guilty plea must be voluntary, accurate, and intelligent. *Perkins*, 559 N.W.2d at 688. A plea that does not meet these requirements is invalid and withdrawal is required. *Theis*, 742 N.W.2d at 646. Second, a district court has discretion to allow a defendant to withdraw a guilty plea before sentencing if the defendant proves that “it is fair and just to do so.” Minn. R. Crim. P. 15.05, subd. 2. “Although this standard is less demanding than the manifest injustice standard, it does not allow a defendant to withdraw a guilty

plea for ‘simply any reason.’” *Theis*, 742 N.W.2d at 646 (quoting *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007)).

The validity of a guilty plea under the manifest-injustice standard is a question of law that is reviewed de novo on appeal. *See State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). But withdrawal under the fair-and-just standard is reviewed for an abuse of discretion. *See Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

The purpose of requiring that a guilty plea be intelligent is “to insure that the defendant understands the charges, understands the rights [she] is waiving by pleading guilty, and understands the consequences of [her] plea.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). The Minnesota Rules of Criminal Procedure list “the questions to be asked the defendant concerning [her] knowledge of [her] constitutional rights and [her] waiver of those rights by pleading guilty.” *State v. Wiley*, 420 N.W.2d 234, 237 (Minn. App. 1988), *review denied* (Minn. Apr. 26, 1988). In misdemeanor cases, the defendant “must” be questioned by the court or counsel as to whether the defendant understands the following: (1) the date and place of the crime charged; (2) the maximum possible sentence; (3) that if the defendant is not a citizen, a guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization; (4) that there is a right to the assistance of counsel and that counsel will be appointed for a defendant unable to afford counsel; (5) the right to a trial, including the right to confront and cross-examine witnesses, to subpoena defense witnesses, to testify or remain silent, the presumption of innocence, to have the state prove guilt beyond a reasonable doubt, and to have a contested hearing on the admissibility of evidence; (6) the nature of the offense

charged; and (7) the belief that what the defendant did constitutes the offense charged. *See* Minn. R. Crim. P. 15.02, subd. 1. A district court may also satisfy these requirements in misdemeanor cases by giving a group advisory, but the warning must be recorded, the district court must ask each defendant before pleading guilty if he or she heard and understood the advisory, and the court must question the defendant as to the remaining matters in rule 15.02. *See* Minn. R. Crim. P. 15.03, subd. 1. Alternatively, the rule 15.02 requirements may be satisfied if the defendant has read and signed a plea petition. *See* Minn. R. Crim. P. 15.03, subd. 2.

Nonetheless, a district court's failure to follow the rule does not automatically invalidate a plea. *See Wiley*, 420 N.W.2d at 237. Minnesota courts have not required strict compliance with the rule when the defendant is represented by counsel because it is assumed that counsel will advise the defendant of his or her trial rights. *See id.* (holding that district court's failure to follow the rule 15.01 procedures before accepting guilty plea in felony case did not invalidate plea where defendant was represented by counsel and had prior experience in the criminal-justice system); *see also State v. Hanson*, 360 N.W.2d 460, 462 (Minn. App. 1985) (discussing cases which have upheld guilty pleas despite district court's failure to question defendant about a particular right where defendant was represented by counsel). A "waiver of constitutional rights will not be presumed from a silent record[,]” however. *Hernandez v. State*, 408 N.W.2d 623, 626 (Minn. App. 1987).

At the time of her guilty plea, Cox was unrepresented by counsel, and she did not sign a plea petition. It was, therefore, the district court's responsibility to ensure that Cox

was advised of her trial rights before pleading guilty. *See* Minn. R. Crim. P. 15.02, subd. 1 (stating that the defendant must be questioned by the court or counsel before the court accepts a plea). The transcript of the guilty-plea hearing shows only that before entering her guilty plea, the district court advised Cox of the date and nature of the charge and asked if she wanted to speak to an attorney. Cox was not advised of the trial rights she was waiving by pleading guilty, of her right to appointed counsel, or of the maximum possible sentence. The record does not demonstrate that Cox's guilty plea was intelligently made.

The record also does not establish that Cox was given a group advisory of her rule 15.02 rights. *See* Minn. R. Crim. P. 15.03, subds. 1, 2. This court strictly scrutinizes guilty pleas of pro se defendants who were informed of their legal and constitutional rights through a group advisory. *See Vernlund v. State*, 589 N.W.2d 307, 310 (Minn. App. 1999). Even if Cox was present during a group advisory of rights, the district court failed to ask her if she heard and understood the group advisory. *See Hanson*, 360 N.W.2d at 461, 462-63 (refusing to permit enhancement with prior DWI where district court did not ask if defendant understood rights recited in group advisory).

In sum, the record before us fails to demonstrate that the district court complied with the requirements of rule 15.02. Based on this record, Cox's guilty plea was not intelligently made, and reversal is required.¹ *See Theis*, 742 N.W.2d at 650.

¹ Cox also challenges the accuracy of her plea. Because we are reversing on the grounds that her plea was not intelligent, it is unnecessary to address the accuracy of the plea.

Because reversal is required under the manifest-injustice standard, it is unnecessary to address whether withdrawal should also have been permitted under the fair-and-just standard. *See id.* at 646 (noting that if a guilty plea is invalid, reviewing court need not reach question of whether withdrawal may have been authorized under discretionary fair-and-just standard).²

Reversed and remanded.

² We note, nonetheless, that in denying Cox's motion under the fair-and-just standard, the district court found that Cox's reasons for withdrawal did not outweigh the prejudice that withdrawal would have on the state. In so finding, the district court appears to have placed the burden of demonstrating prejudice on Cox. But the state has the burden of proving prejudice. *See Raleigh*, 778 N.W.2d at 97. Here, the state did not introduce any evidence showing what prejudice it would suffer if Cox was permitted to withdraw her guilty-plea. And the state has not submitted a brief to this court. *See Minn. R. Civ. App. P. 142.03*. Therefore, the state has failed to meet its burden of showing that Cox's reasons for withdrawal are outweighed by prejudice to the state. *State v. Porte*, 832 N.W.2d 303, 313-14 (Minn. App. 2013) (declining to conduct sua sponte harmless error review of jury instruction error where state did not assert harmless error argument in its brief). Accordingly, the district court also abused its discretion in denying guilty-plea withdrawal under the fair-and-just standard. *See State v. Underdahl*, 767 N.W.2d 677, 684 (Minn. 2009) (noting a court abuses its discretion when its findings are not supported by the record).