STATE OF MINNESOTA
IN COURT OF APPEALS
A09-39

State of Minnesota,
Respondent,

vs.

David Lee Brooks,
Appellant.

Filed February 9, 2010
Affirmed
Johnson, Judge

Olmsted County District Court
File No. 55-CR-07-8818

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

Mark A. Ostrem, Olmsted County Attorney, Jeffrey D. Hill, Assistant County Attorney, Rochester, Minnesota (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Lansing, Judge; and Stoneburner, Judge.

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

JOHNSON, Judge

David Lee Brooks pleaded guilty to one count of fifth-degree possession of a controlled substance and one count of possession of drug paraphernalia. Before his

sentencing hearing, he moved to withdraw his guilty plea on the ground that it would be fair and just for the district court to allow him to do so. The district court conducted an evidentiary hearing at which it received testimony from Brooks and denied the motion. We affirm.

FACTS

In September 2007, Brooks was in a hotel room with another person when law enforcement officers searched the room in response to a report of suspicious activity. The officers found crack cocaine and instruments used to smoke crack cocaine. The state charged Brooks with one count of fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1) (2006), and one count of possession of drug paraphernalia in violation of Minn. Stat. § 152.092 (2006).

Brooks's case was set for trial on August 27, 2008. The case was called at approximately 9:00 a.m. that morning. While a venire panel was waiting, the district court handled some administrative matters, reviewed the witness list, and ruled on a pretrial motion. Soon thereafter, Brooks's trial counsel, an assistant public defender, informed the district court that Brooks wished to plead guilty to the charged offenses. The district court called a short recess to allow Brooks and his counsel to prepare a plea petition. The district court then conducted a plea hearing and accepted Brooks's guilty plea.

On September 11, 2008, privately retained counsel appeared on behalf of Brooks. On the same day, counsel filed a motion to withdraw Brooks's guilty plea and also filed a two-page affidavit executed by Brooks. In the affidavit, Brooks expressed his

dissatisfaction with the pretrial performance of his trial counsel and with trial counsel's belief that Brooks likely would be convicted. Brooks's affidavit concludes by stating, "I didn't have time to consider the plea, was confused, under duress and feeling generally pressured. I also believe that I have a valid defense on the merits which I wish to set forth at the time of trial."

Four days later, the district court held an evidentiary hearing on Brooks's motion. The district court recited the procedural history of the case, received oral testimony from Brooks, and heard oral argument from counsel for the parties. At the conclusion of the hearing, the district court made oral findings and denied the motion from the bench. In October 2008, the district court imposed a sentence of 21 months of imprisonment, which is the presumptive sentence. Brooks appeals.

D E C I S I O N

Brooks argues that the district court erred by denying his presentence motion to withdraw his guilty plea. A defendant does not have an absolute right to withdraw a guilty plea. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A district court may, in its discretion, grant a defendant's presentence motion to withdraw a guilty plea if the district court determines that it would be "fair and just" to allow withdrawal. Minn. R. Crim. P. 15.05, subd. 2. The rules of criminal procedure also allow for the withdrawal of a guilty plea to prevent manifest injustice, *see* Minn. R. Crim. P. 15.05, subd. 1, but Brooks does not argue that he is entitled to plea withdrawal under the manifest-injustice standard.

The "fair and just" standard does not allow a defendant to withdraw a plea "for simply any reason." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quotation omitted). In applying the "fair and just" standard, the district court must give "due consideration . . . to the reasons advanced by the defendant" in support of the motion and "any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea." *State v. Kaiser*, 469 N.W.2d 316, 319 (Minn. 1991) (quotation omitted). The "'ultimate decision' of whether to allow withdrawal under the 'fair and just' standard is 'left to the sound discretion of the trial court, and it will be reversed only in the rare case in which the appellate court can fairly conclude that the trial court abused its discretion.'" *Id.* at 320 (quoting *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989)).

It is "fair and just" to allow a defendant to withdraw a guilty plea before sentencing if the plea is invalid. *Id.* at 319. To be valid, a guilty plea "must be accurate, voluntary, and intelligent." *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007). If a guilty plea fails to meet any of these three requirements, it is invalid. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). As the supreme court has explained,

> 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 (footnote omitted). Thus, if a person's guilty plea was not accurate, voluntary, or intelligent, a district court must permit the person to withdraw his plea. *Theis*, 742 N.W.2d at 650.

In his appellate brief, Brooks does not expressly contend that his plea was involuntary. Rather, he contends that it would be unfair and unjust to not allow him to withdraw his guilty plea because his

> decision to plead guilty was far less the product of reasoned decision making and much more the result of improper pressure from the perceived inadequacy of his counsel, the apparent inevitability of his conviction, and the resulting pressure to cut his losses at the expense of his original desire to exercise his constitutional rights.

It is notable that Brooks does not contend that his trial counsel applied direct pressure on him to plead guilty. *See Ecker*, 524 N.W.2d at 718-19 (considering argument that guilty plea was involuntary because attorneys pressured appellant to plead guilty). Instead, Brooks contends that he simply felt pressured by the circumstances he faced.

The district court denied Brooks's motion at the conclusion of the evidentiary hearing. The district court's oral ruling is relatively long and detailed, occupying approximately five pages of the hearing transcript. The district court noted that, during his plea hearing, Brooks stated that he had reviewed the plea petition and did not voice any of the concerns that he expressed in his affidavit. The district court also noted that Brooks did not appear to have a strong defense based on the fact that the person he apparently intended to be his leading witness, the other person who was present in the

hotel room at the time of the search, testified at a probable-cause hearing that the drugs seized by law enforcement officers belonged to Brooks.

The district court's ruling is supported by the district court record and reflects both a deliberate consideration of Brooks's arguments and a careful exercise of the court's discretionary authority. In addition, the district court's conclusion is buttressed by the fact that Brooks has had multiple encounters with the legal system. While being cross-examined by the prosecutor, Brooks did not dispute that he has been convicted of a crime at least 18 times, that he has pleaded guilty at least 12 times, and that he has experienced a jury trial at least twice. Brooks's extensive experience with the criminal justice system weighs against his argument that he felt pressured to plead guilty. *See State v. Camacho*, 561 N.W.2d 160, 168 (Minn. 1997) (reasoning that experience with legal system is relevant to whether waiver of *Miranda* rights is knowing, voluntary, and intelligent).

Brooks also contends that the state would not have been prejudiced by the withdrawal of his guilty plea. As an initial matter, we must consider Brooks's contention that the state bears the burden of proving undue prejudice. He cites *State v. Hoagland*, 518 N.W.2d 531 (Minn. 1994), for this proposition, but that case is inapplicable because it concerns the question whether an eight-year delay in filing a postconviction petition was sufficient to justify denial of the petition. *Id.* at 535-37. Brooks also cites an unpublished case of this court, which in turn cites *State v. Wukawitz*, 662 N.W.2d 517 (Minn. 2003). But *Wukawitz* also is inapplicable because it concerns the question whether, upon a determination that a term of conditional release was unlawfully imposed, the alternative remedy of sentence modification is appropriate if the state would be

unduly prejudiced by withdrawal of the plea. *Id.* at 526-27. Brooks's argument that the state must prove undue prejudice is inconsistent with supreme court caselaw, which

> clearly states that the defendant has the burden of proving that there is a "fair and just" reason for wanting to withdraw his plea and that the trial court "is to give due consideration not just to the reasons advanced by the defendant but to "any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea."

Kaiser, 469 N.W.2d at 319 (quoting *Kim*, 434 N.W.2d at 266); *see also* Minn. R. Crim. P. 15.05, subd. 2. In a more recent supreme court opinion on the issue, the question was framed simply as "whether Farnsworth met his burden of establishing a fair and just reason to withdraw his plea." *Farnsworth*, 738 N.W.2d at 372. These statements indicate that the defendant's burden on a motion brought pursuant to rule 15.05, subdivision 2, encompasses the issue of prejudice. We are unaware of any supreme court caselaw holding that the state bears the burden on that issue.

At the motion hearing, the state argued that it would be prejudiced by the withdrawal of Brooks's guilty plea because the prosecutor had invested time in preparing for a trial that never occurred and because the county attorney's staff had located its witnesses and coordinated their appearance at the courthouse. The state also noted that it was uncertain whether its witnesses would be available if and when the case was called for trial again. These reasons are sufficient to establish that the state would be prejudiced by the withdrawal of Brooks's guilty plea. The supreme court has made clear that the type of prejudice identified by the state is sufficient if a defendant's reasons for seeking withdrawal are weak:

> The tender and acceptance of a plea of guilty is and must be a most solemn commitment. While the state has no reason to imprison a man for a crime which he did not commit, "[w]e are not disposed to encourage accused persons to 'play games' with the courts at the expense of already overburdened calendars and the rights of other accused persons awaiting trial" by setting aside judgments of conviction based upon pleas made with deliberation and accepted by the court with caution.

Chapman v. State, 282 Minn. 13, 16, 162 N.W.2d 698, 700 (1968) (alteration in original) (quoting *Everett v. United States*, 336 F.2d 979, 984 (D.C. Cir. 1964)).

In sum, the district court did not abuse its discretion by denying Brooks's motion to withdraw his guilty plea.

Affirmed.