STATE OF MINNESOTA
IN COURT OF APPEALS
A10-841

State of Minnesota,
Respondent,

vs.

Daniel Sidney Schlienz,
Appellant.

Filed January 18, 2011
Reversed and remanded
Klaphake, Judge

Cook County District Court
File Nos. 16-CR-06-115, -551, -568

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

Timothy C. Scannell, Cook County Attorney, Grand Marais, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Richard A. Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Klaphake, Judge; and Halbrooks, Judge.

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

KLAPHAKE, Judge

Appellant Daniel Sidney Schlienz challenges his convictions of third-degree and fifth-degree criminal sexual conduct, violating a restraining order, and gross misdemeanor harassment, arguing that the district court abused its discretion by refusing to permit him to withdraw his guilty pleas to these charges before sentencing.

Because appellant agreed to plead guilty in exchange for a 120-day cap on sentencing and this promise was not honored at sentencing, he established a factual basis for withdrawal of his plea under the fair-and-just standard for plea withdrawals. We therefore conclude that the district court abused its discretion and we reverse and remand.

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). "Public policy favors the finality of judgments and courts are not disposed to encourage accused persons to play games with the courts by setting aside judgments of conviction based upon pleas made with deliberation and accepted by the court with caution." *Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002) (quotation omitted).

The district court must allow a defendant to withdraw a plea "upon 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. If the motion to withdraw a plea is made before sentencing, the district court may in its discretion permit a defendant to withdraw a guilty plea if "it is fair and just to do so." *Id.*, subd. 2.

The fair-and-just standard for withdrawing a guilty plea before sentencing is a "less demanding" one than the manifest-injustice standard. *Theis*, 742 N.W.2d at 646. The district court must weigh the reasons for the defendant's request to withdraw against the prejudice caused to the state by permitting withdrawal. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). The defendant has the burden of advancing reasons for withdrawal, while the state retains the burden of showing prejudice. *Id.* But if a plea agreement contains an unqualified promise that is not honored at sentencing, a defendant may withdraw the guilty plea. *Carey v. State*, 765 N.W.2d 396, 400 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009). The district court's decision under the fair-and-just standard is reviewed for an abuse of discretion. *Raleigh*, 778 N.W.2d at 97.

Before sentencing, appellant moved the district court for permission to withdraw his guilty pleas. Appellant contends that he was induced to plead guilty by the state's offer of a 120-day cap on jail time and that because this promise was not honored, it would have been fair and just to permit withdrawal of his guilty plea.

Here, the plea petition states that appellant understands that his "attorney and the prosecuting attorney agreed that if I entered a plea of guilty, the prosecutor will do the following: P.G. 2cts Crim Sex 3 w/out force, vorder prot. Harassment as a G.M. Stay of imp. 5 yrs pro PSI and Sexual Assessment follow recs Right to challenge Recs if disagree." This is followed by the statement "That if the Court does not approve of this agreement . . . I have an absolute right to withdraw my plea of guilty and have a trial."

In the plea transcript's relevant portion, defense counsel stated:

> The negotiation for [the] sentence is, uh, stay of imposition of sentence, uh, pre-sentence investigation as well as a – a sex offender assessment. We'll come back for sentencing, uh, following recommendations. Um, the State, uh, has offered a 120 day cap on jail time. We intend on offering – arguing for zero or less than that time and I understand the Court's not making promises, but will take into consideration the P.S.I. as well as the sex offender assessment in determining what time – jail time is appropriate.

The state's attorney did not object to this description of the plea agreement; the district court questioned appellant, who agreed that this was his understanding of the plea agreement.

We conclude that appellant was offered and understood that the plea agreement included a 120-day cap on jail time. Although there was some later discussion of the possibility of one year of inpatient sex-offender treatment, this did not include a warning that this would result in incarceration. Further, the district court indicated that if there was something unexpected in the pre-sentence investigation report (PSI), appellant would be permitted to withdraw his plea. The PSI recommended one year of incarceration at the North East Regional Correctional Center (NERCC), a jail located in St. Louis County that required inmates to participate in sex-offender treatment. At sentencing, the district court stayed imposition of sentence on condition that appellant complete one year at NERCC. This conflicts with the unqualified promise of a 120-day cap on jail time made to appellant.

Under these circumstances, appellant met the fair-and-just standard for withdrawal of his plea before sentencing. We acknowledge that the particular timeline of this matter

increases the risk of prejudice to the state's case, but at the time of appellant's request, the district court abused its discretion when it refused to permit appellant to withdraw his guilty pleas.[1] We therefore reverse appellant's conviction and remand this matter to the district court.

Reversed and remanded.

[1] Because of our decision here, we do not address other deficiencies in the plea hearing. Appellant entered *Alford* pleas to these charges. Plea accuracy requires that a plea is made on a proper factual basis. *See Theis*, 742 N.W.2d at 648-49. This is particularly critical in cases involving *Alford* pleas, because they do not involve an admission of guilt; rather, the defendant acknowledges that the evidence to be offered by the state is sufficient to permit a jury to convict beyond a reasonable doubt. *Theis*, 742 N.W.2d at 648-49. Here, defense counsel questioned appellant in a general way about the facts, but without the specific detail required by *Theis*. *Id.* at 649. By answering leading questions, appellant merely acknowledged that he had sexual relations or sexually penetrated the three named victims, and that they were under 16 years of age and he was more than 48 months older. No details, witness statements, stipulations as to facts, or abbreviated testimony were presented on the record. We caution that this type of inquiry is legally insufficient under *Theis*.