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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2067**

State of Minnesota,
Respondent,

vs.

Steven Todd Parker,
Appellant.

**Filed February 10, 2009
Affirmed
Ross, Judge**

Ramsey County District Court
File Nos. K8-06-4343; K9-06-4383

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134, and

Susan Gaertner, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102-1657 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Steven Todd Parker challenges the district court's denial of his motion to withdraw his guilty plea to three counts of first-degree burglary. Parker claims that the district court abused its discretion by denying his motion to withdraw his plea for three reasons: (1) because he misunderstood his plea agreement; (2) because he believed his appeal in a different case would succeed and put him in a better position at sentencing in this case; and (3) because he felt undue pressure from jail deputies. Because Parker's testimony at the plea hearing shows that he understood the agreement and that his plea was accurate, voluntary, and intelligent, we conclude that the district court did not abuse its discretion when it denied his motion to withdraw.

FACTS

Steven Parker pleaded guilty in June 2007 to charges filed in two different complaints. The first complaint charged him with two counts of first-degree burglary and one count of fleeing a peace officer in a motor vehicle. The second complaint charged him with one count of first-degree burglary. He agreed to plead guilty to all three counts of burglary, and the state agreed to dismiss the count of fleeing. Parker also agreed that his sentence under the guidelines would be 60 months' imprisonment for two of the burglary charges, and he acknowledged that he would receive an upward durational departure to 180 months for the third burglary charge. The agreement provided that the sentences would run concurrently with each other and with any previously imposed sentence.

Parker agreed that he qualified as a career offender based on his prior convictions for burglary and because he committed the burglaries as part of a pattern of criminal conduct. The district court verified directly that Parker believed that he had had enough time to discuss the agreement with his attorney and that he wanted to plead guilty.

Parker's attorney discussed the plea petition on the record with Parker. Parker confirmed that he was "clear-headed," had had enough time to discuss the case with his attorney, and was very satisfied with his legal representation. He also stated that he understood his trial rights and the penalties and consequences of his plea, including the "aggravated departure" sentence. Parker's attorney next covered the "Petition Regarding Aggravated Sentence" with Parker. Parker agreed that he had reviewed the entire document with his attorney. He understood that the state was seeking an aggravated sentence on one of the burglary charges and that he was entitled to a jury trial on the factors that would constitute an aggravated sentence. His attorney asked him if he understood the career offender statute and if he agreed that he fit the description. Parker replied that he understood the statute and agreed that he was a career offender.

The prosecutor then expounded on the factual basis of the plea with Parker. After Parker discussed the details of each of the burglaries, the prosecutor asked him, "Are you pleading guilty to these offenses because you think you're guilty?" Parker replied, "I am guilty." The prosecutor also questioned Parker about his prior convictions. Parker agreed that he had most recently been convicted in Dakota County of two counts of burglary, theft of a motor vehicle, and fleeing a police officer, and he acknowledged that those crimes were committed in September 2005. Parker agreed that he had been

convicted of 10 or more burglaries and that he committed the three offenses to which he had just pleaded guilty as part of a pattern of criminal conduct. Based on Parker's testimony, the district court found that he understood the plea agreement and knowingly and voluntarily waived his rights to a trial. The district court accepted Parker's guilty plea and scheduled the sentencing hearing for July 26, 2007.

But on July 12, 2007, Parker moved to withdraw his plea. He argued that he was entitled to withdraw his plea because "he believes he will be successful in appealing his case(s) and sentence(s) in Dakota County, and therefore, he believes his plea agreement for an upward departure in these cases would constitute a manifest injustice and it would be fair and just to allow said withdrawal." He argued that he misunderstood the career offender statute and the consequences of admitting that he committed the offenses as part of a pattern of criminal conduct.

The state opposed Parker's motion. It argued that no manifest injustice exists and that it would be unfair and unjust for the district court to allow Parker to withdraw his plea. The state contended that Parker "is not a virgin to the criminal justice system. The three offenses to which he pled guilty . . . will be his 21st, 22nd and 23rd felony convictions; 13 of his previous 20 convictions are burglaries." It argued that Parker "simply cannot claim that he's unknowledgeable either about the career offender statute and how it works and what constitutes a pattern of criminal conduct, and he cannot claim that he did not understand the nature of the plea agreement that he reached in this particular case." The district court denied Parker's request to withdraw his plea because

it concluded that withdrawal is not necessary for a fair and just outcome and that withdrawal would prejudice the prosecution. This appeal follows.

DECISION

Parker argues that the district court abused its discretion by denying his pre-sentence motion to withdraw his guilty plea. A defendant has no absolute right to withdraw a guilty plea. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Whether to permit withdrawal of a guilty plea before sentencing falls within the broad discretion of the district court, which may allow the withdrawal “if it is fair and just to do so.” Minn. R. Crim. P. 15.05, subd. 2. “The defendant bears the burden of proving that there is a fair and just reason for withdrawing his plea.” *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007) (quotation omitted). When making its decision, the district court must weigh the reasons advanced by the defendant for withdrawal against any prejudice the state would likely incur from any actions it took in reliance on the defendant’s guilty plea. Minn. R. Crim. P. 15.05, subd. 2. We will reverse a district court’s denial of a motion to withdraw a guilty plea only in the “rare case” in which we can fairly conclude that the district court abused its discretion. *State v. Tuttle*, 504 N.W.2d 252, 256 (Minn. App. 1993).

A constitutionally valid guilty plea “must be accurate, voluntary, and intelligent (i.e., knowingly and understandingly made).” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). To be accurate, the plea must rest on a proper factual basis. *Id.* “The voluntariness requirement insures that the guilty plea is not in response to improper inducements or pressures.” *State v. Wukawitz*, 662 N.W.2d 517, 522 (Minn. 2003). “To

be intelligently made, a guilty plea must be entered after a defendant has been informed of and understands the charges and direct consequences of a plea.” *State v. Byron*, 683 N.W.2d 317, 322 (Minn. App. 2004), *review denied* (Minn. Sep. 29, 2004). Parker claims that his plea was neither intelligent nor voluntary and that he established a “fair and just” reason to withdraw it based on (1) his misunderstandings regarding aggravating factors and the meaning of “pattern of criminal conduct,” (2) his belief that he might succeed in an appeal from a different conviction, and (3) his assertion that he felt undue pressure while in jail. We address each of these bases separately.

Alleged Misunderstandings

Parker’s testimony at the plea hearing and his signed plea agreement and petition demonstrate that his plea was intelligently made and also that he understood the aggravating factors and enhanced sentence that would follow. Parker testified that he had discussed his case with his counsel, discussed the potential aggravated sentence, and understood he was waiving his rights to both a trial and a jury determination of whether he met the definition of a career offender. He agreed that because of his 14 prior felony convictions, including at least 10 burglaries, he is a career offender. Parker also answered more than two dozen questions relating to his understanding of the case, his preparation for court, and the rights he was waiving. He signed a “Petition Regarding Aggravated Sentence,” which states, “I understand the prosecution is seeking a sentence greater than that called for in the sentencing guidelines. Specifically, I understand that the sentence in this case will be 180 months.” Parker testified that he reviewed these documents with his attorney, that he signed them, that he understood and agreed that he

met the requirements of the career offender statute, and that he committed the burglaries in a pattern of criminal conduct.

Parker's claim that he misunderstood is belied by his testimony, his plea petitions, and his experience. Because Parker's plea was entered after he was informed of the charges and because Parker's testimony shows that he understood both the plea and the direct consequences of the plea, his plea was intelligently made. We conclude that the district court did not abuse its discretion by denying Parker's plea withdrawal motion based on his purported misunderstandings.

Belief that Appeal in Another Case Might Succeed

Parker argues that the district court should have allowed him to withdraw his plea because of his belief that he would prevail in an appeal from his Dakota County conviction. In that case, the district court sentenced Parker to 38 years in prison. *See State v. Parker (Parker I)*, 2008 WL 2965925 (Minn. App. Aug. 5, 2008). After Parker was sentenced in *Parker I*, he agreed to the plea agreement in this case, which provides that the "sentences [will] run concurrent [with] each other and [with] any previously imposed sentence." Parker agreed to prison sentences of 60 months each for two of the burglaries and 180 months for the third burglary. Because the plea agreement provided that the sentences would run concurrently with each other and with the Dakota County sentence, the total sentence of 180 months would constitute only 15 of the 38 years of his previously imposed Dakota County sentence.

After Parker accepted the plea agreement, he apparently formed the belief that his appeal in *Parker I* might succeed. He explained his theory to the district court at his

sentencing hearing. Parker now seems to argue that he is entitled to withdraw his guilty plea because if his appeal in *Parker I* succeeded, his sentence in *Parker I* might be reduced to less than the 15 years that he agreed to serve in this case. Therefore, the argument goes, it would be “fair and just” to allow him to withdraw his plea because there is a chance that if he goes to trial in this case, and if his appeal in *Parker I* results in a sentence of less than 15 years, his total sentence for the crimes in *Parker I* and this case might be shorter than the 15 years contemplated in his plea agreement. In other words, Parker hopes that he might obtain a lighter sentence if he can withdraw his guilty plea and go to trial.

But Parker’s belief does not require the district court to determine that a fair and just reason exists to withdraw his guilty plea. “Although [the fair and just] standard is less demanding than the manifest injustice standard, it does not allow a defendant to withdraw a guilty plea ‘for simply any reason.’” *State v. Theis*, 742 N.W.2d at 646 (quoting *Farnsworth*, 738 N.W.2d at 372). Because guilty pleas facilitate the efficient administration of justice, more than a change of heart is needed to establish a basis to withdraw a guilty plea. *See Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989) (discussing need to protect plea integrity). Parker does not argue that the sentence to which he pleaded is unjust, and he does not contest the state’s premise at the sentencing hearing that “[Parker] got himself a darn good deal.” Because Parker’s postplea, presentence belief that he might get a more favorable sentence by going to trial is not a “fair and just” reason to establish a basis to withdraw, we conclude that the district court did not abuse its discretion by denying his motion for that reason.

Undue Pressure While in Jail

Parker argues that pressure in jail and his feelings of being overwhelmed by the Dakota County sentence induced him to plead guilty, rendering his plea involuntary. Whether a plea is made voluntarily is a question of fact that will not be disturbed unless clearly erroneous.” *Sykes v. State*, 578 N.W.2d 807, 812 (Minn. App. 1998), *review denied* (Minn. July 16, 1998). When a finding of fact is supported by evidence in the record, it is not clearly erroneous. *Id.*

The district court’s finding that Parker’s plea was voluntarily made is supported by evidence in the record. Parker had explained at the plea hearing why he was pleading guilty to the burglaries, stating, “I am guilty.” His signed plea agreement states, “No one—including my attorney, any policeman, prosecutor or judge, or any other person—has threatened me . . . in order to obtain a plea of guilty from me.” Parker did not then mention pressure from the deputies at jail or overwhelming feelings regarding the Dakota County sentence. But even if Parker felt so pressured, “the normal trauma associated with being incarcerated following an arrest is not, by itself, a basis to claim coercion.” *Sykes*, 578 N.W.2d at 813. Parker must show something more to prove that his plea was not voluntarily made, “such as a showing that the state actually induced [him] to plead guilty through actual or threatened physical harm, or by mental coercion overbearing [his] will.” *Id.* (quotations omitted). Parker has failed to establish that he involuntarily entered into the plea agreement because no record evidence suggests that anyone threatened Parker with physical or mental harm, and his own testimony suggests that his

plea was voluntary. The district court did not abuse its discretion by denying his motion for that reason.

The record shows that Parker's guilty plea was accurate, voluntary, and intelligent. We conclude that the district court did not abuse its discretion when it denied Parker's motion to withdraw the plea.

Affirmed.