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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1159**

State of Minnesota,
Respondent,

vs.

Ryan Eugene Loyd,
Appellant.

**Filed May 7, 2012
Reversed and remanded
Harten, Judge***

Hennepin County District Court
File No. 27-CR-10-34589

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

Michael O. Freeman, Hennepin County Attorney, Alan J. Harris, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara J. Euteneur, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Judge; Klaphake, Judge; and Harten,
Judge.

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

UNPUBLISHED OPINION

HARTEN, Judge

Appellant challenges the denial of his motion to withdraw his guilty plea. The same attorney who handled appellant's guilty plea moved to have it withdrawn based on appellant's claim of ineffective assistance of counsel. Because appellant should have been represented by a different attorney to present and argue his motion to withdraw his guilty plea, we reverse and remand.

FACTS

In July 2010, police discovered the body of an unresponsive male later determined to have died of a single gunshot wound after appellant Ryan Loyd and another male, each carrying a gun, ran towards him and fired shots. Appellant was ultimately charged with first-degree murder committed for the benefit of a criminal gang, first-degree murder, second-degree intentional murder committed for the benefit of a gang, second-degree intentional murder, attempted first-degree murder committed for the benefit of a criminal gang, and attempted first-degree murder.

In January 2011, at a hearing on his petition to plead guilty, appellant testified that, among other things, he was not feeling ill or taking medication, had discussed the consequences of entering a plea with his counsel, and had no unanswered questions. He testified that, in July 2010, he and another defendant intended to kill one person and mistakenly killed another. Appellant pleaded guilty to second-degree intentional murder and to attempted second-degree intentional murder; the remaining charges were dropped. He was sentenced to 468 months' imprisonment.

In February 2011, appellant's attorney wrote to tell appellant that he would be resentenced in light of his co-defendant's sentence. Appellant replied in a letter saying that he was unhappy with his attorney's representation and wanted to withdraw his guilty plea and have a trial.

In March 2011, at the resentencing hearing, appellant's attorney told the district court he had received a letter from appellant saying that (1) appellant was "very unhappy" with the attorney's representation of him; (2) appellant had been doing some research and had determined that he should never have pleaded guilty; and (3) appellant wanted to request that his guilty plea be withdrawn and have a trial. The attorney added that appellant was still of this opinion, then said, "So on behalf of [appellant] I would ask the Court to allow him to withdraw his guilty plea, vacate the sentence and allow him to go to trial in this matter."

The district court asked appellant if there was anything he wanted to say; appellant indicated that there was nothing. The district court denied the motion.¹

Appellant challenges the denial, arguing that it was an abuse of the district court's discretion.

D E C I S I O N

This court will reverse the district court's determination of whether to permit withdrawal of a guilty plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). After sentencing, a guilty plea may be

¹ In doing so, the district court expressed his own view that counsel's representation of appellant had been "superb." While we do not challenge the accuracy of the district court's view, we note that, in this context, the expression of that view was problematic.

withdrawn only if withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1.

No facts were presented in support of appellant's ineffective-assistance claim or his motion to withdraw his guilty plea. Appellant argues that he was entitled to adequate representation when his motion was heard, that he did not receive adequate representation because his attorney was not free from conflict, and that his attorney should have addressed the defects in his own representation of appellant to show the district court that his representation was ineffective. Respondent State of Minnesota concedes that the case, if not affirmed, should be "remanded for presentation of the [plea withdrawal] motion by a different attorney." See *Butala v. State*, 664 N.W.2d 333, 341 (Minn. 2003) (noting that, when defendant whose attorneys withdrew because of conflict of interest brought a pro se motion to withdraw his guilty plea, "the better procedure would have been to afford substitute counsel for purposes of making the motion," but concluding that, because the defendant had the assistance of independent counsel at the postconviction hearing on the motion, the denial of the motion could be affirmed); *State v. Paige*, 765 N.W.2d 134, 141-42 (Minn. App. 2009) (remanding motion to withdraw guilty plea for rehearing because counsel who had represented appellant during guilty-plea hearing admitted that he was in "a difficult position" when moving to withdraw guilty plea on ground of ineffective assistance and did not file a motion or make any argument; the district court did not attempt to address attorney's possible conflict; and appellant was not provided with substitute counsel). It is readily understandable that

counsel who undertakes to prove his own ineffectiveness is in a “difficult position” that moreover could create an appearance of impropriety.

Appellant was entitled to have his motion to withdraw his guilty plea on the basis of ineffective assistance of counsel presented by counsel who had not been representing him when the guilty plea was heard. We reverse and remand for proceedings in accord with this opinion.

Reversed and remanded.