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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2057**

State of Minnesota,
Respondent,

vs.

Dionte Marsa Hubbard,
Appellant.

**Filed October 7, 2013
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Hennepin County District Court
File No. 27-CR-12-1118

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, III, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant
Public Defender, Chelsie Mika Willett, Special Assistant Public Defendant, St. Paul,
Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Halbrooks, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Dionte Hubbard agreed to plead guilty to being a prohibited person in possession of a firearm and two counts of second-degree aggravated robbery in an atypical plea deal. Under the deal, the state would consent to the release of Hubbard from custody to visit his sick grandmother, and it would dismiss the aggravated robbery charges if Hubbard appeared for his sentencing; but the state would not dismiss any charges if Hubbard failed to appear. Hubbard failed to appear. A month later police arrested him after an armed standoff, and he asked the district court not to accept his guilty pleas. Hubbard successfully asked the district court to apply one day of his jail credit to cover his fees and expenses. Hubbard appeals, arguing that the district court erred by accepting his guilty pleas and using one day of jail credit to cover his fees and surcharges. Because the district court acted within its discretion by denying Hubbard's motion, we affirm in part. Because the district court generously but improperly applied jail credit to cover Hubbard's fees and surcharges, we reverse in part and remand for the district court to remedy the error.

FACTS

Dionte Hubbard sold a handgun to a Minneapolis police informant in December 2011. Police arrested Hubbard two weeks later for robbing two people of marijuana, \$40, and cigarettes during a drug deal. The state charged him with one count of being a prohibited person in possession of a firearm and two counts of second-degree aggravated robbery.

Hubbard agreed to plead guilty to all three counts on the day of trial. Because he asked to visit his ailing grandmother, the state agreed to drop the robbery charges if he later appeared for his scheduled sentencing, but he would be convicted of (and sentenced under the presumptive sentences for) all charges if he failed to appear. Hubbard petitioned to plead guilty under the agreement. His petitions avowed that his guilty pleas were not coerced, that he had not been made promises, that he was not pleading guilty because he had been jailed since his arrest, and that he did not claim innocence. Consistent with the plea agreement, the district court deferred accepting Hubbard's guilty pleas, waiting to do so until the pending sentencing.

But Hubbard did not appear for sentencing. The state didn't know where he was until Brooklyn Park police encountered him a month later and arrested him in an armed standoff. He eventually faced sentencing in August 2012.

When Hubbard stood for sentencing, he asked to withdraw his guilty pleas, claiming that he had not been of sound mind when he pleaded guilty, distraught over his grandmother's illness. He also claimed innocence. The district court was not persuaded and denied the request. It accepted Hubbard's previous guilty pleas. It then sentenced him to 60 months in prison for being a prohibited person in possession of a firearm, and to terms of 68 and 21 months, respectively, for the two second-degree aggravated robbery convictions, to run consecutive to each other but concurrent with the gun-possession offense.

The district court noticed that Hubbard had spent 148 days in jail and asked if he would like the court to apply one day of his jail credit against his \$50 fine and \$78 surcharge. The district court explained,

If you want me to, and only if you want me to, and if you request it, I can take one of those days of credit and satisfy the fine and surcharge. If you don't want me to do that, I won't do it. . . . Do you have a preference of what you'd like me to do?

Hubbard requested that one day of jail credit be applied as the district court suggested. The district court granted the request and granted Hubbard 147 days of jail credit, applying one day to eliminate the fine and surcharge.

Hubbard appeals.

DECISION

Hubbard asks us to hold that the district court was bound to accept his request to withdraw his guilty pleas rather than to sentence him under the terms of his plea agreement. The district court has broad discretion to decide whether to grant a defendant's motion to withdraw a guilty plea, and we will not reverse its decision unless it demonstrates a clear abuse of discretion. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). Defendants have no absolute right to withdraw a guilty plea after entering one. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). And guilty pleas may be withdrawn only if one of two standards is met. *Id.*

Hubbard meets neither standard for plea withdrawal. The first is manifest injustice. *Id.* The district court was bound to allow Hubbard to withdraw his guilty plea if granting his plea-withdrawal request was necessary to correct a manifest injustice. *See*

Minn. R. Crim. P. 15.05, subd. 1. No injustice results from denying Hubbard's motion. A "[m]anifest injustice occurs if a guilty plea is not accurate, voluntary, and intelligent." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). Hubbard claims that he pleaded guilty only to get out of jail to see his grandmother, rendering his pleas involuntary. Whether a plea is voluntary is a question of fact, and we leave the district court's fact findings undisturbed unless they are clearly erroneous. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994). To determine if a plea is voluntary, we examine what the parties reasonably understood to be the terms of the plea agreement, and we review to ensure that the plea was not in response to improper pressure or coercion. *Raleigh*, 778 N.W.2d at 96.

Hubbard's argument lacks any support in the record. The district court found that his pleas were voluntary, and it did so after considering Hubbard's admission in his plea petitions that his conduct met the elements of the crimes charged and weighing the relative significance of Hubbard's stated desire to visit his grandmother. The district court reasonably found that the facts underlying Hubbard's guilty pleas undermine his assertion at sentencing that he pleaded guilty only under duress to get out of jail. We are satisfied that the district court had an ample basis on which to conclude that Hubbard understood and appreciated the consequences of his guilty pleas, fully aware of what would result from his failing to return for sentencing.

Hubbard's request also falls short of the second basis for plea withdrawal. The district court may, at its discretion, allow a defendant to withdraw his plea before sentencing for any "fair and just" reason unless the prosecution has been substantially

prejudiced. Minn. R. Crim. P. 15.05, subd. 2; *Raleigh*, 778 N.W.2d at 97. Under the fair-and-just standard, the court must consider both the “reasons advanced by the defendant in support of the motion and any prejudice that granting the motion would cause the prosecution.” Minn. R. Crim. P. 15.05, subd. 2. For the same reasons Hubbard fails to meet the standard for mandatory plea withdrawal, he fails to meet the standard for discretionary plea withdrawal. The district court was not persuaded by any of the claims Hubbard made about his supposedly overwhelming desire to visit his sick grandmother (a desire which, presumably, did not compel Hubbard to extend his liberty one month beyond his scheduled sentencing and then confront police in an armed standoff in which, again presumably, his grandmother was not a participant).

Applying either standard, we hold that the district court did not abuse its discretion in refusing to allow Hubbard to withdraw his guilty plea.

Hubbard also argues that the district court erred by converting one day of his 148 days of jail credit to cover his fee and surcharge. The argument is correct, and the state concedes it. The sentencing court *must* “[s]tate the number of days spent in custody in connection with the offense or behavioral incident being sentenced. That credit *must* be deducted from the sentence and term of imprisonment and *must* include time spent in custody from a prior stay of imposition or execution of sentence.” Minn. R. Crim. P. 27.03, subd. 4(B) (emphasis added). The record implies strongly that the district court was aware of the mandate but wanted to skirt it by urging Hubbard to ask the court to do him a favor. Hubbard asked for and accepted the favor, but now he wants us to hold that

the district court should not have granted it. He's right. The district court had no discretion to do the favor even if Hubbard requested it and the state did not oppose it.

We therefore remand the case to the district court for it to reinstate Hubbard's jail credit and ascribe the fee and surcharge.

Affirmed in part, reversed in part, and remanded.