

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0313**

State of Minnesota,
Respondent,

vs.

Renard Lydell Carter,
Appellant.

**Filed December 19, 2022
Affirmed
Florey, Judge***

Olmsted County District Court
File No. 55-CR-20-5403

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Assistant County Attorney,
Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher Mishek, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Smith, Tracy M., Judge; and
Florey, Judge.

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

NONPRECEDENTIAL OPINION

FLOREY, Judge

Appellant pleaded guilty to killing his pregnant girlfriend and her young daughter. Prior to sentencing, he requested to withdraw his plea, which the district court denied. He argues on appeal that the district court erred in not allowing him to withdraw his plea because fair and just reasons exist to support withdrawal and because his plea was manifestly unjust. We affirm.

FACTS¹

In September 2020, Rochester police discovered the lifeless bodies of K.F. and her two-year old daughter M.F. in their apartment. K.F. was pregnant and had a phone cord tied tightly around her neck; her unborn child did not survive. Police believed that the killings had occurred on September 10 and learned that appellant Renard Lydell Carter had allegedly posted videos to social media depicting him in the process of killing K.F. and standing over her lifeless body. Carter had subsequently fled to South Carolina, where he was arrested after a shootout with police. Respondent State of Minnesota charged Carter with two counts of second-degree murder and one count of second-degree murder of an unborn child. *See* Minn. Stat. §§ 609.19, subd. 1(1), .2662(1) (2020).

Carter was assigned two public defenders to represent him: Sam Shabel and Lauri Traub. Through counsel, Carter attempted to negotiate a plea settlement with the state. On July 12, 2021, the state rejected a plea offer Carter submitted that would have had him

¹ These facts largely originate from the plea hearing and the presentence-plea-withdrawal hearing.

imprisoned for 50 years. The state then informed Carter that there was going to be a grand jury convened to indict him for first-degree murder. On July 15, Carter and the state reached a plea agreement. Using a copy of a previously proposed plea petition, Carter and his attorneys wrote in by hand the amount of months Carter agreed to serve consecutively for each charged count along with the assigned criminal-history score: 426 months and six criminal-history points for the murder of K.F., 326 months and one criminal-history point for the murder of M.F., and 326 months and one criminal history point for the murder of K.F.'s unborn child. A plea hearing was held that same day.

At the plea hearing, Carter confirmed that he wanted the court to accept the agreement as contained in the plea petition. The district court confirmed with Carter that he was not under the influence of drugs or alcohol and was thinking clearly, that he went over the plea petition with his attorneys and understood his rights, that he understood that he did not have to plead guilty, and that he understood that by pleading guilty he was giving up his right to a trial and all associated trial rights. Carter then pleaded guilty to each count, and his attorneys attempted to establish the factual basis for the plea.

Carter testified that on September 10, 2020, he got into an argument with K.F. at the apartment they shared over Carter allegedly cheating on K.F. and K.F.'s alleged threat to terminate her pregnancy. He then testified that he told K.F., "If you want to kill somebody, you want to kill me and my child, my unborn child . . . I'm going to give you something to kill, and I made her kill her own child." He testified that he made K.F. kill M.F. by forcing K.F. to choke her. He described showing K.F. how to choke her daughter by placing his hands over K.F.'s around M.F.'s neck to make her squeeze tighter. Carter agreed that he

intended for his actions to cause M.F.'s death. He then testified that he made K.F. tie a phone cord around her own neck and when she didn't tie it tight enough, he tightened it to the point that it would kill her. He also acknowledged that he knew his actions would lead to the death of the unborn child.

When the state examined Carter, Carter suggested that he "blacked out" during the incident and did not remember it. This prompted Carter's attorneys to reexamine him. During the reexamination, Carter transferred responsibility for M.F.'s death onto K.F., claiming that he put his hands over K.F.'s hands to show her how to apply pressure to M.F.'s airway, that he directed her not to let go, and that he then removed his hands and K.F. choked M.F. for three-and-a-half minutes until she died. Following this testimony, Carter's attorneys asked to speak to the judge. The judge, Carter's attorneys, and the prosecution then went to speak in private outside the presence of Carter and the gallery.

The following exchange occurred:

THE COURT: So we are now outside the presence of the gallery, as well as the defendant. Clearly the factual basis for the child, it was shaky until he said, oh, for three-and-a-half minutes he wasn't—didn't even have his hands on her. So what—where are we at?

PROSECUTOR 1: There is not a factual basis for that count, unless there would be a dramatic revision, which, you know, I don't expect.

PROSECUTOR 2: Based on what's happened today, no.

MS. TRAUB: Can I talk to him? I think we can get him there, I do.

PROSECUTOR 1: I think he would have to say—we need him to say—

MS. TRAUB: We need him to say he put his hands over her hands and squeezed her until she died, and that's what he did.

THE COURT: And explain why he would say that. You know, I don't know if it's—

PROSECUTOR 2: He needs to say that that three-and-a-half minute thing was a lie.

PROSECUTOR 1: That's what I was just going to say. For the family, he has to say that what he just said isn't true.

MS. TRAUB: Got it.

PROSECUTOR 1: And we insist on that, or there is no deal.

MS. TRAUB: Can we take him in the back for a minute?

MR. SHABEL: We appreciate everyone's patience. We're going to try this one more time.

Carter's attorneys spoke with him. During their conversation, his attorneys emphasized that he did not have to plead guilty, but that if he did, he had to admit to killing K.F. and M.F. and not shift blame for those deaths onto K.F.² Carter indicated that he may not be able to do that, but ultimately agreed to move forward with the plea.

When Carter returned to the courtroom, the district court explained to him that it could not accept his plea if Carter did not believe that he was guilty and allowed Carter's attorneys to re-examine him to continue developing the factual basis for the plea. Carter testified that K.F. put her hands around M.F.'s neck but because she was not squeezing hard enough, Carter put his hands over her hands and applied the pressure that caused M.F.

² Traub and Shabel both describe telling Carter that he needed to testify to the same version of facts that he had told them when they initially met: that it was him, not K.F., who committed the murders.

to die. Carter admitted that he lied in his previous testimony that it was K.F. who killed M.F. and stated that he wanted the court to accept his plea of guilty for killing M.F. Carter then clarified that although K.F. wrapped the cord around her neck, he was the one who tightened it until it was tight enough to suffocate her and that he intended to kill her. He also reaffirmed that he knew that his unborn child would die as a result of his actions. Following this testimony, the court found that a factual basis existed to support Carter's pleas of guilty to all three counts and scheduled a sentencing hearing for the end of August.

Prior to sentencing, Carter moved to withdraw his plea, arguing that he was coerced by his attorneys. Because his basis for withdrawal implicated Traub and Shabel, the district court assigned Carter conflict counsel. At a hearing six days later, new counsel represented Carter and asserted that a rule 20 evaluation was necessary to determine his competency and susceptibility to coercion, which the district court ordered. The rule 20 evaluator concluded that Carter was competent to proceed. The district court scheduled a competency and plea-withdrawal hearing for late October.

At the hearing, the district court found Carter competent. Carter then provided testimony to support his plea-withdrawal motion. Carter described being assigned Traub and Shabel as attorneys and how they met with him around seven times prior to the plea hearing on July 15. He expressed dissatisfaction with Traub, stating that he would argue with her a lot and that she would not listen to him when he said he wanted to go to trial. He testified that he only agreed to plead guilty because they pressured him to do so and that he felt like he had no other choice because his attorneys were working against him with the state and the judge. He stated that his attorneys told him, "Look, take this plea

and just be quiet about it.” He cited the court not accepting his original version of facts and stopping the plea hearing for the attorneys and the judge to meet as evidence that they were all working together against him and that he felt helpless as a result. He also testified that he did not understand what it meant to give up his trial rights, that his attorneys used words he could not understand, and that he was scared. Carter explained that he had learning disabilities, mental health issues, and traumatic experiences that made him susceptible to coercion and diminished his ability to understand what was occurring at the plea hearing.

Traub and Shabel also testified. Traub confirmed that she and Carter did not always get along and that Carter told her she was “mean.” She disagreed with Carter’s assertion that he wanted to go to trial and described instead Carter’s consistent efforts to reach a plea agreement with the state. She described that on the morning of July 15, Carter had some reservations about agreeing to the state’s final offer prior to the grand jury convening, but she believed that he understood his options and was fully onboard with entering a guilty plea that day. She also clarified that when she said “I can get him there” at the private meeting with the judge and the prosecution, she meant she could get him to testify to the version of facts that he originally told her, and she emphasized to Carter that he did not have to plead guilty if he did not want to. She denied ever telling Carter he could not go to trial or putting undue pressure on him to plead guilty; she explained that she worked too hard to get her law license to lose it like that and simply explained to Carter that he was likely to lose at trial based on the available evidence, including the video Carter posted showing him killing K.F. She also testified that Carter appeared to understand the advice

she was giving him. Shabel's testimony mirrored Traub's, and he confirmed that Carter understood the proceedings and that they did not pressure him to plead guilty or lie about his actions.

The district court denied Carter's motion to withdraw his plea. It found that Carter's attorneys put no undue pressure on him and that, based on the rule 20 evaluation and his actions at the plea hearing, Carter understood the rights he was waiving by pleading guilty. At sentencing, the district court mistakenly attributed to Carter one criminal-history point for both the murder of M.F. and the murder of the unborn child. The state corrected the district court and explained that because the sentences would be consecutive, the criminal-history score for those two convictions would be zero and Carter's attorney agreed. The district court then sentenced Carter as follows: 426 months with six criminal-history points for the murder of K.F., 326 months with zero criminal-history points for the murder of M.F., and 326 months with zero criminal-history points for the murder of the unborn child. The cumulative sentence amounted to 1,078 months in prison, the same amount contemplated by the plea agreement. Carter appeals.

DECISION

Carter argues that he should be allowed to withdraw his pleas to correct a manifest injustice caused by his plea petition containing inaccurate criminal-history scores and because it would be fair and just to do so. "A defendant has no absolute right to withdraw a guilty plea after entering it." *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016) (quotation omitted). Plea withdrawal is permitted under two circumstances. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). First, a district court may allow a defendant to

“withdraw a plea at any time before sentence if it is fair and just to do so.” Minn. R. Crim. P. 15.05, subd. 2. Second, a district court must allow a defendant to withdraw a guilty plea “[a]t any time” if “withdrawal is necessary to correct a manifest injustice.” *Id.*, subd. 1. The decision to withdraw a presentence guilty plea is left to the sound discretion of the district court and will be reversed only in the “rare case” that the district court abuses its discretion. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). We review de novo whether a manifest injustice rendered a plea constitutionally invalid. *Raleigh*, 778 N.W.2d at 94.

I. The district court did not abuse its discretion when it denied Carter’s presentence motion to withdraw his plea

Carter first argues that he should have been allowed to withdraw his pleas prior to sentencing under the fair-and-just standard because he was unduly coerced into making a plea by his attorneys and because his mental deficiencies rendered him unable to understand the consequences of his decision. “Under the fair-and-just standard, a court considers the reasons a defendant offers to support withdrawal of a guilty plea and the prejudice to the state should withdrawal be permitted.” *State v. Townsend*, 872 N.W.2d 758, 764 (Minn. App. 2015). “The defendant bears the burden of proving, by a preponderance of the evidence, that the facts warrant withdrawal of the guilty plea.” *James v. State*, 674 N.W.2d 216, 218 (Minn. App. 2004), *rev’d on other grounds*, 699 N.W.2d 723 (Minn. 2005). The state bears the burden of showing any prejudice caused by the withdrawal. *State v. Crump*, 826 N.W.2d 838, 841 (Minn. App. 2013), *rev. denied* (Minn. May 21, 2013). But prejudice need not be shown if a defendant cannot establish a good

reason for withdrawal in the first place. *State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013).

Carter first argues that his attorneys unduly coerced him to plead guilty. Carter's argument relies on the conversations he had with his attorneys and his description of them as being overbearing and their insistence that he plead guilty instead of going to trial. Carter's attorneys, however, describe Carter as always being onboard with pleading guilty and stated that they would have gone to trial if Carter had demanded to. In its memorandum of law supporting its order denying Carter's motion to withdraw his plea, the district court adopted Carter's attorneys' version of events. When the question of whether to allow the withdrawal of plea is based largely on the credibility determinations of the district court, we defer to those determinations. *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *rev. denied* (Minn. June 11, 1997). The district court's order indicates that it implicitly credited the testimony of Traub and Shabel and discredited Carter's testimony. And even though Traub asserted in private that she could "get [Carter] there" in reference to getting Carter to plead, the district court credited Traub's clarification that she meant she could get Carter to testify to an accurate account of the facts as she understood them if he still desired to plead guilty. Giving full deference to the district court's implicit credibility determinations, Carter failed to meet his burden of providing compelling reasons for withdrawal and we cannot conclude that the district court abused its discretion by rejecting this argument.

Carter also asserts it would be fair and just to allow him to withdraw his plea because his mental deficiencies made it so he could not understand the proceedings. The district

court found that Carter's mental deficiencies did not prohibit him from understanding the nature of the proceeding and the consequences of pleading guilty. It based its conclusions on the information contained in Carter's competency evaluation and his responses to questions posed by the court and counsel at the plea hearing. It cited to Carter's ability to communicate to the court and counsel when he did not understand the questions posed to him and his acknowledgement that he had plead guilty before as evidence that he made his plea intelligently. These findings are supported by the record. And although the state did not present any of evidence of prejudice, Carter's failure to establish a good reason for withdrawal renders such evidence unnecessary. *Cubas*, 838 N.W.2d at 224. Under our deferential standard of review, we discern no abuse of discretion by the district court in its denial of Carter's motion to withdraw his plea under the fair-and-just standard.

II. Carter suffered no manifest injustice sufficient to render his plea constitutionally invalid.

Carter next argues that he should be allowed to withdraw his plea because it was unintelligent, rendering it manifestly unjust. "A manifest injustice exists if a guilty plea is not valid." *Barrow v. State*, 862 N.W.2d 686, 691 (Minn. 2015). "To be valid, a guilty plea must be accurate, voluntary, and intelligent." *Taylor*, 887 N.W.2d at 823. A court must allow the defendant to withdraw a guilty plea if the defendant proves that the plea was not accurate, voluntary, and intelligent. *See Barrow*, 862 N.W.2d at 689 (placing the burden of proof on the defendant).

The intelligence requirement ensures that the defendant understands the state's charges, the rights being waived, and the consequences of the plea. *Raleigh*, 778 N.W.2d

at 96. The defendant must understand the plea's "direct consequences." *Id.* "Direct consequences are those which flow definitely, immediately, and automatically from the guilty plea. . . ." *Crump*, 826 N.W.2d at 841-42 (quotation omitted). A plea is manifestly unjust if it is based in part on an inaccurate criminal-history score that results in a greater sentence than what was bargained for. *See State v. DeZeler*, 427 N.W.2d 231, 235 (Minn. 1988) (holding that a defendant was entitled to withdraw his guilty plea where a mutual mistake as to the defendant's criminal history score resulted in a lower presumptive sentence than was ultimately imposed).

Carter argues that the criminal-history scores and resulting sentencing durations for his guilty pleas relating to the murder of M.F. and the unborn child were miscalculated at the time he entered his plea. And Carter is partially correct; the plea petition incorrectly stated he would have one criminal-history point for each conviction, not zero. Carter centers his argument on the bargain he struck with the state being that he would receive a *middle-of-the-box* sentence for a severity level 11 offense with a criminal-history score of *one*, not a *top-of-the-box* sentence with a criminal-history score of *zero*. His argument is unavailing; Carter's sentences for each count, 326 months, is within the presumptive range for either of those scenarios. *See Minn. Sent'g Guidelines 4.A (2020)*. Both the plea petition and the plea colloquy grounded the plea in terms of how many months Carter would be sentenced to; it was not based on where those sentences fell in a particular box on the sentencing grid, even if that is how Carter and the state came to agree on a particular duration for the proposed sentence. The length of the sentences imposed for counts two and three, 326 months each, is consistent with what Carter agreed to be sentenced to, even

if the correction of the criminal-history score transformed his sentence to a top of the box sentence for a criminal-history score of zero.

Carter fails to cite to any authority compelling us to reach a different result. One case Carter relies on is *State v. Benson*, 330 N.W.2d 879 (Minn. 1983). In that case, Benson pleaded guilty and agreed to a presumptive sentence of 32 months with the belief that he had a criminal history score of five when it was actually six. 330 N.W.2d at 880. The change in score resulted in a higher presumptive sentence that did not permit a 32-month sentence absent a downward departure. *Id.* Although the district court imposed a 32-month sentence, the supreme court remanded to allow the defendant the opportunity to withdraw his plea as there was no evidence to justify a departure down to 32 months. *Id.* at 880-81. The supreme court recognized that because the sentence Benson agreed to was impermissible under the guidelines, the mutual mistake regarding his criminal-history score rendered his plea unintelligent. *Id.* But unlike in *Benson*, the sentence Carter agreed to was not rendered impermissible by the change in his score; Carter received a lawful sentence within the presumptive sentencing range.

Carter also relies on an order opinion from the supreme court involving a mutual mistake as to the nature of the plea agreement, *State v. Thomas*, No. C3-96-1173, 1997 WL 20348 (Minn. Jan. 14, 1997). In *Thomas*, the supreme court reversed the decision of this court and remanded to the district court to allow Thomas to withdraw his plea after this court found that the plea agreement contemplated an illegal sentence and reduced the imposed sentence by 21 months. 1997 WL 20348, at *2; *see also State v. Thomas*, No. C3-

96-1173, 1996 WL 523798, at *1-2 (Minn. App. Sept. 17, 1996). Because Carter's plea agreement does not contain an illegal sentence, *Thomas* is also inapposite.

Lastly, Carter cites to a nonprecedential decision of this court, *State v. Howard*, No. A03-180, 2004 WL 235805 (Minn. App. Feb. 10, 2004). In *Howard*, the parties reached a plea agreement based on a mistaken belief regarding the severity level of the offense and Howard's criminal-history score and agreed to a presumed executed sentence. 2004 WL 235805, at *1. The correct severity level would have resulted in a presumed stayed sentence based on Howard's corrected criminal-history score. *Id.* at *2. Because the plea was based on an incorrect score that resulted in an executed rather than stayed sentence, we held that Howard should be allowed to withdraw his plea. *Id.* at *3-4. Unlike in *Howard*, the change in Carter's score did not result in a stayed sentence; it simply shifted his sentence to a top-of-the-box sentence for a severity-level-11 offense with a criminal-history score of zero. Thus, this case is also distinguishable.

The erroneous calculation of Carter's criminal-history score included in the plea petition did not result in Carter suffering a manifest injustice. Carter received what he bargained for: in addition to a 426-month sentence for the murder of K.F., he received consecutive 326-month sentences for the murders of M.F. and the unborn child, which are permissible sentences under the sentencing guidelines for his corrected criminal-history score. Therefore, Carter has suffered no manifest injustice and his plea is constitutionally valid.

Affirmed.