

*This opinion is nonprecedential except as provided by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
A22-0627**

State of Minnesota,
Respondent,

vs.

Abdul Hakim Omar Erbob,
Appellant.

**Filed March 13, 2023
Affirmed
Bratvold, Judge**

Ramsey County District Court
File No. 62-CR-21-1116

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

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Jesson, Judge; and Klaphake,
Judge.*

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this direct appeal from a judgment of conviction for attempted aggravated robbery, appellant raises two issues. First, appellant argues that the district court applied the wrong legal standard when it denied appellant's motion to withdraw his plea. Second, appellant contends that the district court abused its discretion by adding a six-month enhancement to the presumptive sentence under the Minnesota Sentencing Guidelines. Because the district court applied the legal standard that appellant requested when he made his motion and because any error in applying the legal standard was harmless, we affirm the district court's decision to deny the motion for plea withdrawal. We also affirm appellant's sentence because the district court imposed a sentence within the range authorized by the guidelines.

FACTS

Respondent State of Minnesota charged appellant Abdul Hakim Omar Erbob with one count of attempted aggravated robbery under Minn. Stat. §§ 609.17, subd. 1, .245, subd. 1 (2020). The complaint alleged Erbob attempted to car-jack a vehicle and assaulted the driver on February 27, 2021.

Before the plea hearing on July 1, 2021, the parties entered into an agreement. Erbob agreed to enter a straight guilty plea to the offense, and the state agreed to release Erbob to

a chemical-dependency treatment facility after he entered the plea.¹ At the hearing, Erbob pleaded guilty, testified and agreed that he forced his way into a stopped vehicle, admitted that he “hit” the driver, and agreed that he tried to force the driver out of the vehicle and drive away.

Before the prosecuting attorney elicited the factual basis for Erbob’s plea, Erbob’s attorney asked Erbob about the plea petition. Erbob acknowledged that he had gone over each line in the written plea petition with his attorney, that he understood that he was giving up many rights, including his right to a trial, that no one forced or threatened him to enter a plea, and that he had no questions about the plea petition. Erbob’s attorney submitted the written plea petition, which the district court received. The signed petition stated, among other things, that Erbob understood that “my plea of guilty to this crime may result in deportation.” The district court reserved acceptance of the plea until sentencing. The district court then conditionally released Erbob to a treatment program and set sentencing for September 13, 2021.

Before the sentencing hearing, Erbob left the treatment program. Erbob failed to appear at the sentencing hearing, and the district court issued a warrant for his arrest. Erbob was later arrested on the warrant, and he moved to withdraw his plea in February 2022. Erbob’s motion cited Minnesota Rule of Criminal Procedure 15.05, subdivision 1, and stated that the rule allowed him to “withdraw his guilty plea to correct a manifest injustice.”

¹ A straight guilty plea involves the defendant pleading guilty to the offense without entering into any agreement with the state on the recommended sentence. *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 327 (Minn. 2016).

At a February 7, 2022 sentencing hearing, Erbob's attorney argued that the district court should allow plea withdrawal "to avoid a manifest injustice." Erbob's attorney argued that Erbob "believes that he will be deported if he's sentenced on this attempted agg[ravated] robbery, and he claims he did not know that was on the table." The prosecuting attorney opposed the motion, arguing that Erbob knew that he could be deported and referring to the written plea petition in this case as well as three written plea petitions in Erbob's other cases. Each of the four written plea petitions warned about possible deportation after conviction. The prosecuting attorney also contended that the state would be prejudiced by plea withdrawal given the long delay Erbob caused by leaving treatment and missing his original sentencing hearing. Erbob's attorney offered a brief rebuttal and argued that "it would be really horrible for [Erbob] to be deported" to Somalia because he has no family there.

The district court denied Erbob's motion to withdraw his plea, concluding that Erbob had not established that he suffered a manifest injustice. In support of its decision, the district court cited Erbob's testimony during the plea hearing and the four written plea petitions that "clearly state" deportation was "a possible consequence of this case." After reviewing the presentence-investigation report and hearing arguments, the district court accepted Erbob's plea and sentenced him to 45 months in prison. Erbob appeals.

DECISION

- I. When it denied Erbob’s motion for plea withdrawal, the district court applied the manifest-injustice standard Erbob asserted. Even if the district court applied the wrong legal standard for Erbob’s motion, the error did not affect Erbob’s substantial rights.**

Erbob argues that remand is necessary to allow the district court to consider his plea-withdrawal motion under the fair-and-just standard. The state argues that Erbob never argued the fair-and-just standard during district court proceedings, and alternatively, any error was harmless.

“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, 93 (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.

A district court abuses its discretion if it fails to apply the correct legal standard when ruling on a motion to withdraw a plea. *State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013), *rev. denied* (Minn. Dec. 31, 2013). The decision to allow withdrawal of a guilty plea is left to the sound discretion of the district court and will be reversed only in the “rare case” in which the district court abuses its discretion. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

The district court explicitly considered Erbob's motion to withdraw his plea under the manifest-injustice standard as requested in Erbob's written motion and his attorney's argument at the sentencing hearing. Even if we assume, without deciding, that the district court should have applied the fair-and-just standard, remand is unnecessary because the error did not affect Erbob's substantial rights.² See Minn. R. Crim. P. 31.01 ("Any error that does not affect substantial rights must be disregarded.").

Under the fair-and-just standard, a district court gives "due consideration" to two factors: the reasons the defendant advances in favor of withdrawal and any prejudice withdrawal would cause the state. *Lopez*, 794 N.W.2d at 382. When reviewing the district court's conclusion, we look to the "the entire context in which the defendant's plea of guilty occurred, as demonstrated by the record." *Id.* (quotation omitted).

² As we stated in *State v. Lopez*, a district court's evaluation of a presentence plea-withdrawal motion under only the manifest-injustice standard "may in some circumstances warrant a remand for reconsideration." 794 N.W.2d 379, 385 (Minn. App. 2011). Indeed, Erbob argues that *Cubas*, 838 N.W.2d at 224, and *State v. Opheim*, No. A15-1593, 2016 WL 4262956 (Minn. App. Aug. 15, 2016), require us to remand his case to the district court for consideration under the fair-and-just standard.

Erbob is correct that we remanded plea-withdrawal motions in both cases. We disagree that these cases support remand here because both cases are factually and legally inapposite to Erbob's case. In *Cubas*, we reversed and remanded after determining that the district court abused its discretion when it *granted* a plea-withdrawal motion because the district court did not consider any prejudice to the state. 838 N.W.2d at 225. Here, the district court *denied* a plea-withdrawal motion after considering the grounds Erbob raised. And in *Opheim*, the defendant argued the plea-withdrawal motion under both the fair-and-just and manifest-injustice standards, but the district court did not analyze the motion under the fair-and-just standard. 2016 WL 4262956, at *2. In contrast, Erbob's only argument was that plea withdrawal was necessary to correct a manifest injustice and the district court addressed the grounds Erbob raised.

The district court considered the reasons for plea withdrawal that Erbob advanced. During district court proceedings, Erbob maintained that he should be permitted to withdraw his plea because he was unaware that deportation was a possible consequence of the plea and he was stressed when he entered the plea. First, the district court found that Erbob's testimony during the plea hearing and the information in his four written plea petitions show that Erbob was informed that he could be deported as a result of pleading guilty in this case. The district court also acknowledged that the threat of deportation is "very serious" and causes stress. Second, the district court considered the plain language of the plea petition and Erbob's testimony that he reviewed the petition "line by line" with his attorney, and concluded Erbob understood the consequences of his plea when he entered it.

Because the district court considered and rejected the reasons Erbob submitted in support of his motion to withdraw his plea, the district court's failure to explicitly discuss Erbob's motion under the fair-and-just standard did not affect Erbob's substantial rights. When no fair or just reasons support plea withdrawal, this court need not consider whether withdrawal would prejudice the state. *Cubas*, 838 N.W.2d at 224. Thus, the district court did not abuse its discretion by denying Erbob's motion to withdraw his plea.

II. The district court did not err in imposing Erbob's sentence.

Erbob argues that the district court improperly applied a sentence enhancement when it imposed Erbob's sentence. He contends that under a correct interpretation of the applicable guidelines, his sentence should be reduced by three months. The state disagrees and argues that Erbob received a lawful guidelines sentence. Interpretation of the

Minnesota Sentencing Guidelines is a question of law that we review de novo. *State v. Strobel*, 932 N.W.2d 303, 306 (Minn. 2019).

The parties agree on the following facts relevant to sentencing: Erbob's criminal-history score was three, his offense of conviction was a severity-level eight, and he had one prior violent offense, which triggers an enhancement.

The parties also agree that, under the applicable guidelines, the presumptive sentence for an attempted offense is half the presumptive sentence for a completed offense. Minn. Sent'g Guidelines 2.G.2 (2020). A severity-level-eight offense with a criminal-history score of three has a presumptive sentence of 67 to 93 months. *See* Minn. Sent'g Guidelines 4.A (2020). Because the district court convicted Erbob of attempted aggravated robbery, the presumptive sentence is half, or 33.5 to 46.5 months. Minn. Sent'g Guidelines 2.G.1-2 (2020).

The parties agree that because Erbob's current offense and one prior offense were classified as severe violent offenses, a sentence enhancement applies. The guidelines provide: "If the current offense is a second or subsequent severe violent offense, the presumptive fixed sentence for the current offense, as determined in section 2.C, shall increase by the number of months [indicated on a chart] corresponding . . . to the number of prior severe violent offense convictions." Minn. Sent'g Guidelines 2.G.14.b (2020). If the offense is an attempt, the enhancement is halved. Minn. Sent'g Guidelines 2.G.14.b.1.

The parties also agree that Erbob's enhancement is twelve months, which is halved to six for the attempted aggravated robbery. The parties, however, disagree on how the second-violent-offense enhancement affects Erbob's sentence.

Erbob argues that the guidelines mandate that the district court calculate the presumptive sentence for the completed offense, calculate the enhancement for the completed offense and halve it, add the halved enhancement to the presumptive sentence for the completed offense, and then halve that sum to find the presumptive sentence for an attempt with enhancement for an attempt. According to Erbob's proposed interpretation, his presumptive sentence with enhancement would be 36.5 months to 49.5 months.³ The state argues that the guidelines require the district court to halve the presumptive sentence for the completed offense to find the presumptive sentence for an attempt, halve the enhancement for the completed offense to find the enhancement for an attempt, and then add the two together. The state calculates Erbob's presumptive sentence with enhancement as 39.5 to 52.5 months.

The district court sentenced Erbob to 45 months in prison. This sentence is within the range for the presumptive guidelines sentence under either Erbob's or the state's interpretation of the guidelines. A sentence that is within the range of the applicable sentencing-guidelines grid is lawful and generally not subject to appellate review. *State v. Whittaker*, 568 N.W.2d 440, 453 (Minn. 1997) (stating that an appellate "court generally will not review the district court's exercise of its discretion in sentencing when the sentences imposed are all within the guidelines range"); Minn. Sent'g Guidelines 2.D

³ We note that Erbob's request for relief asks this court to impose a 42-month sentence based on the view that the district court imposed a "middle-of-the-box" sentence. Erbob's brief to this court cites no support for its view that the district court intended to impose a "middle-of-the-box" sentence, and we can find no support in the record.

(2020) (“The sentences provided in the Grids are presumed to be appropriate for the crimes to which they apply.”).

Because Erbob’s sentence falls within the sentencing guidelines applicable to his conviction, we need not determine which party’s interpretation of the guidelines is correct. It is true that the district court did not explain how it arrived at Erbob’s sentence. But the district court need not justify or provide reasoning when imposing a guidelines sentence. *See State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984) (“[A] written explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.”).

After considering the parties’ arguments, we conclude that under either Erbob’s or the state’s interpretation of the applicable guidelines, the district court imposed a permissible guidelines sentence. Thus, we discern no error in the district court’s sentencing decision.

Affirmed.