STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1164

John Benedict Bauer, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 27, 2011
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-CR-09-1554

Craig E. Cascarano, Minneapolis, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the district court's denial of his request to withdraw his guilty plea. Because the district court acted within its discretion when it concluded that withdrawal is not necessary to correct a manifest injustice, we affirm.

FACTS

Appellant John Benedict Bauer's house was raided in February 2008, and 628 grams of marijuana were discovered. Appellant retained an attorney (Grigsby) for $3,500 to deal with a forfeiture issue and potential criminal charges stemming from that raid. Appellant's house was raided a second time in June 2008. In January 2009, appellant's house was raided a third time, and he was charged with felony fifth-degree controlled substance possession after 1,300 grams of marijuana were discovered. Ultimately, appellant faced two separate fifth-degree possession charges stemming from the raids.

After the two charges were brought, Grigsby asked appellant for an additional $3,000. Appellant understood that the $6,500 was intended to cover "both [fifth-degree possession] files as well as the forfeiture action." Grigsby represented appellant at several court appearances, including a hearing on a suppression motion. Appellant's motion to suppress was denied, and on July 17, 2009, appellant pleaded guilty to one of the fifth-degree possession charges; the other charge was dismissed. The district court sentenced appellant to one year and one day, stayed for three years, with 45 days in the workhouse. Appellant subsequently moved to withdraw his guilty plea, claiming that he

was improperly induced to plead guilty and that he received ineffective assistance of counsel.

The district court held an evidentiary hearing on appellant's motion in March 2010. Appellant, then represented by another attorney, testified that Grigsby had been suspended from the practice of law sometime after the district court denied appellant's motion to suppress the drug evidence and set a date for trial. When appellant learned of Grigsby's suspension, he asked Grigsby to refund his retainer, but Grigsby refused. Instead, Grigsby gave appellant the choice of accepting substitute counsel or forfeiting the fee. Appellant accepted the substitute counsel (Waxse).

Appellant testified that he did not feel that he had enough time to discuss his case with Waxse before pleading guilty. Appellant claimed that Waxse told him that if he did not "accept the plea bargain that [appellant] would have to move forward lawyerless [and] that she would not represent [him] in trial." He testified that he did not read the plea petition before signing it and that he had agreed to the plea because he "felt like it was [his] only choice." Appellant further testified that he accepted the plea bargain because he "had already paid $6,500, and all [his] assets were frozen by the County, so hiring another attorney wasn't an option at that time." He stated that the thought of going to trial pro se was "not comforting."

The district court denied appellant's motion. With respect to appellant's claim that he was improperly induced into taking the plea, the district court found that

> [appellant] did not provide evidence of his representation agreement with either Grigsby or Waxse. It is unknown if the agreement included an agreement to represent him at trial. It

> is possible that it did not. If so, [appellant] had no basis to expect that Waxse would represent him at a trial.

The district court found that there was no evidence that Waxse was unprepared to go to trial; there was only evidence that Waxse stated that she would not represent appellant at trial and that appellant believed Waxse to be unprepared. The district court found appellant's testimony that he did not read the plea petition to be "not at all credible." The district court further found that appellant understood and accepted the plea and concluded that "[t]here is absolutely no evidence of improper coercion." The district court stated that "[appellant] further testified that he took the plea bargain because he had no money to hire another attorney and did not want to go to trial alone. This explains why [appellant] was induced to take a plea, but it does not support a finding that the inducement was *improper*."

With respect to appellant's ineffective-assistance-of-counsel claim, the district court found that appellant provided no supporting evidence but instead "simply made broad, unsupported statements about what his attorney should have done." The district court also pointed to paragraph five of the plea petition, which states: "My attorney has discussed possible defenses to the crime(s) that I might have." The district court concluded:

> Weighing the evidence provided, it is insufficient to tip in [appellant's] favor. Further, [appellant] would have to show that, but for his attorney's ineffective assistance, the result would have been different. . . . Appellant has not provided *any* evidence tending to show the result would have been different. He has not provided any evidence that he ultimately would not have entered a guilty plea, such as lack of evidence against him.

The district court denied appellant's motion to withdraw his guilty plea. This appeal follows.

D E C I S I O N

This court reviews a district court's denial of a motion to withdraw a guilty plea for an abuse of discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). "A defendant does not have an absolute right to withdraw a valid guilty plea." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Appellant's motion to withdraw his plea was made after sentencing. After sentencing, the district court must allow a defendant to withdraw a plea only "upon timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. "A manifest injustice exists if a guilty plea is not valid." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A valid plea is one that is accurate, voluntary, and intelligent. *Id.*

Appellant based his motion to withdraw his guilty plea on two grounds: first, that his plea was not voluntary because he was improperly induced to plead guilty by the threat of proceeding pro se and second, that his plea was not voluntary because he received ineffective assistance of counsel.

Improper Inducement

The voluntary-plea requirement ensures that a plea is not made in response to improper inducements or pressures. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). Appellant contends that "his plea was improperly induced because his attorney, Ms. Waxse, was not prepared to represent [him] in a trial." But the district court found

that appellant presented no evidence that Waxse was unprepared. While appellant testified that Waxse told him that she would not represent him at trial and that he believed this was because she was unprepared to do so, appellant's belief is insufficient to prove that Waxse was actually unprepared to go forward. We agree with the district court's conclusion that Waxse's statement that she would not represent appellant at trial does not rise to the level of manifest injustice, given these unique facts. Appellant never testified, nor is there anything in the record to suggest, that either Grigsby or Waxse represented to appellant that he or she would represent him at trial. Waxse simply explained to appellant that "she did not inherit the responsibilit[y] . . . to represent [him] for both the forfeiture and both criminal files" and that she would not represent him at trial.

At the plea hearing, appellant agreed that he and Waxse had gone through the plea petition line by line and that Waxse had "explained to [him] that by accepting the offer . . . and pleading guilty to this charge, [he was] giving up [his] right to a jury trial." The district court specifically found appellant's later testimony that he did not read the plea petition to be "not at all credible." This court defers to the credibility determinations made by the district court. *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997). As such, we must assume that appellant read the plea petition, which states that appellant was "satisfied that [his] attorney [wa]s fully informed as to the facts of this case." In addition, the petition states that appellant was not threatened by his attorney or anyone else to induce him to plead guilty. These statements, in combination with appellant's testimony at the plea hearing, show that appellant understood his rights and understood the plea that he was accepting. We

therefore conclude that appellant has failed to prove that he was improperly induced to plead guilty.

Ineffective Assistance of Counsel

A guilty plea may also be involuntary as a result of a defendant receiving ineffective assistance of counsel. *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). To succeed on a claim of ineffective assistance of counsel, a defendant must establish that the representation of defense counsel fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987). Thus, a defendant who has entered a guilty plea must establish with reasonable probability that, but for counsel's alleged errors, the defendant would not have pleaded guilty. *Ecker*, 524 N.W.2d at 718.

We conclude that appellant failed to establish that Waxse's performance fell below an objective standard of reasonableness. The plea petition that appellant signed, and that the district court found that he read, states that appellant's "attorney ha[d] discussed possible defenses" and that appellant was "satisfied that [his] attorney ha[d] represented [his] interests and ha[d] fully advised [him]." The district court was entitled to rely on these statements rather than appellant's "broad, unsupported statements about what his attorney should have done."

In addition, appellant presented no evidence that he would not have pleaded guilty but for Waxse's alleged ineffective representation. The district court denied appellant's motion to suppress the drugs that were found in his apartment. Appellant did not assert

that there was insufficient evidence against him or that he did not receive a favorable outcome as a result of his guilty plea. We conclude, therefore, that his ineffective-assistance-of-counsel argument fails on both prongs of the ineffective-assistance-of-counsel test.

Because we conclude that appellant's guilty plea was accurate, voluntary, and intelligent, the district court acted within its discretion by determining that there was no manifest injustice necessitating the withdrawal of appellant's plea.

Affirmed.