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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0360

State of Minnesota,
Respondent,

vs.

Corey Young,
Appellant.

Filed December 10, 2012
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CR-10-27621

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant challenges the district court's denial of his motion to withdraw his guilty plea to a charge of third-degree sale of a controlled substance. We affirm.

FACTS

This appeal arises from the district court's denial of appellant Corey Young's presentence motion to withdraw his plea of guilty to a charge of third-degree sale of a controlled substance. Young pleaded guilty on September 21, 2010. Before Young entered his plea, the prosecutor stated the plea agreement on the record as follows:

> Mr. Young will plead guilty to the third degree drug sale. He will return for sentencing in a couple of weeks, I guess. If he remains law-abiding and returns for sentencing as ordered, the case would be sentenced as an attempt for 24 months. If he does not, if he violates in any way or does not come back for the sentencing on time, he would receive the presumptive 45 month commit.

The district court asked Young if he understood the agreement, and Young stated that he did. The district court then restated the agreement:

> So just so I understand what it is, you are going to plead guilty today to third degree sale. The guidelines call for a 45 month prison commit for that charge. Apparently, the lawyers are agreeing that I would release you from custody right now today and that we'll set a sentencing date. And if between now and that sentencing date you remain law-abiding and show up for sentencing, at that time the State is going to amend this case to an attempt, which would bring the guidelines down to 24 months. That would be the sentence you'd get. Do you understand that?

Young replied, "Yes, sir."

After Young pleaded guilty, his counsel questioned him regarding his rights as follows:

> DEFENSE COUNSEL: Mr. Young, this is a Petition to Enter a Plea of Guilty. I just went over this with you, and that's your signature on the front and back of each page with today's date. Is that correct?

> YOUNG: Yes.
> DEFENSE COUNSEL: Do you understand that by pleading guilty you are giving up your rights to a trial? At a trial you would be presumed innocent. The county would have to prove your guilt beyond a reasonable doubt. I can bring in witnesses for you, and I can question witnesses brought by the county. Those are your trial rights. You are giving up those rights by pleading guilty. Do you understand that?
> YOUNG: Yes.
> DEFENSE COUNSEL: This case is scheduled for trial today, but there's not going to be a trial. Do you understand that?
> YOUNG: Yeah.
> DEFENSE COUNSEL: Do you understand what the offer is in this case?
> YOUNG: Yes.
> DEFENSE COUNSEL: And do you understand what the anticipated consequences are when you come back for sentencing?
> YOUNG: Yes.
> DEFENSE COUNSEL: Do you have any questions that you want to ask me or the judge?
> YOUNG: No.

Young entered a factual basis for his guilty plea, and the district court scheduled the case for a sentencing hearing on October 12. But Young did not appear for sentencing. Young's counsel informed the court that Young was in Chicago because his mother had died. The district court stayed a bench warrant until October 19 and ordered that Young appear with documentation supporting his claim that his mother had died. Young did not appear on October 19. The district court continued the hearing to October 28. Young appeared on October 28, but without the requested documentation. Young informed the court that he forgot to bring the obituary and death certificate to the hearing. The district court continued the hearing to November 1. Young came to the

courthouse on November 1, but left before his case was called. The district court issued a warrant for Young's arrest.

After Young was apprehended, he moved to withdraw his guilty plea. He argued that the record was inadequate to show a knowing and intelligent wavier of his trial rights because the district court file did not contain a signed plea petition and the record did not reflect "a thorough questioning . . . about his understanding of the rights that he was giving up or the consequences of the plea." Young also argued that he was not clearly informed of the sentence that could be imposed. The district court denied Young's motion and sentenced him to serve 45 months in prison. Young appeals the denial of his motion.

D E C I S I O N

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Guilty pleas may be withdrawn only if one of two standards is met. *See* Minn. R. Crim. P. 15.05 (setting forth the manifest-injustice and fair-and-just standards for plea withdrawal). We address each standard in turn.

Manifest Injustice

The district court must allow plea withdrawal at any time "upon a 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. *Theis*, 742 N.W.2d at 646. To be constitutionally valid, a guilty plea must be "accurate, voluntary and intelligent." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

> The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial. The voluntariness requirement insures that the guilty plea is not in response to improper pressures or inducements; and the intelligent requirement insures that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty.

Carey v. State, 765 N.W.2d 396, 400 (Minn. App. 2009) (quotation omitted), *review denied* (Minn. Aug. 11, 2009). "A defendant bears the burden of showing his plea was invalid." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The validity of a plea is a question of law that we review de novo. *Id.*

Young contends that a manifest injustice exists because the record does not "reflect that [he] pled guilty voluntarily and intelligently." Specifically, Young argues that because the district court file does not contain the plea petition referenced in the plea-hearing transcript, "it is impossible to ascertain if [he] properly waived all of his rights and entered his guilty plea voluntarily and intelligently." Young further argues that the transcript of the "plea hearing itself is insufficient" to establish the validity of his plea because "[t]here was [no] inquiry regarding whether [he] was improperly induced into pleading guilty, or if he was threatened or coerced into doing so" and because "there is no record on whether [he] understood the rights he was waiving."

In support of his position that "the record here is so lacking" that it creates a manifest injustice, Young relies on *State v. Casarez*, 295 Minn. 534, 203 N.W.2d 406 (1973) and *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709 (1969). Neither case is apposite. The supreme court in *Casarez* found that there was "no way of determining if

defendant properly waived all of his rights" because a "complete transcript of the court proceedings at the time of the acceptance of defendant's plea of guilty is not available." *Casarez*, 295 Minn. at 534-36, 203 N.W.2d at 407-08. In *Boykin*, the United States Supreme Court found reversible error where the defendant pleaded guilty to five indictments for capital offenses and "the judge asked no questions of [defendant] concerning his plea, and [defendant] did not address the court." *Boykin*, 395 U.S. at 239-44, 89 S. Ct. at 1710-13. But,

> *Boykin* did not hold that a [district] court must specifically inform a defendant of all his constitutional rights before accepting the guilty plea; rather, *Boykin* held that a guilty plea must appear on the record to have been voluntarily and intelligently made and that a waiver of constitutional rights may not be presumed from a silent record.

State v. Propotnik, 299 Minn. 56, 57-58, 216 N.W.2d 637, 638 (1974).

In this case, there is a complete transcript of Young's plea hearing, and it shows that he entered his guilty plea voluntarily and intelligently. At the hearing, Young acknowledged that he had reviewed a plea petition with his attorney and signed the front and back of each page. Significantly, Young does not now claim that he never reviewed the petition with his attorney—he argues only that the plea petition is not in the district court file.

Moreover, Young's attorney reviewed a number of his trial rights with him on the record. Young indicated that he understood those rights, he understood there would not be a trial, he understood the offer, he understood the anticipated consequences at sentencing, and he did not have any questions for his attorney or the court. Although

Young's counsel did not review every trial right on the record at the hearing, it can be presumed from Young's acknowledgments that he reviewed the petition with his attorney and that he was informed of his rights. *See id.* at 58, 216 N.W.2d at 638 (stating that although "defendant was not questioned specifically concerning his right to confront his accusers at a trial . . . we may safely presume that counsel informed him adequately concerning this right" because "the record shows that defendant had full opportunity to consult with his counsel before entering his plea").

Finally, there is nothing on the record to indicate that Young's guilty plea was not voluntary. In fact, Young does not argue that he was improperly induced, threatened, or coerced into pleading guilty. In summary, the record is adequate to show that Young's guilty plea is constitutionally valid, and withdrawal is not necessary to correct a manifest injustice.

Fair-and-Just Standard

The district court has discretion to allow plea withdrawal before sentencing "if it is fair and just to do so. The court must give due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea." Minn. R. Crim. P. 15.05, subd. 2. A defendant bears the burden of advancing reasons to support withdrawal. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). The state bears the burden of showing prejudice caused by withdrawal. *State v. Wukawitz*, 662 N.W.2d 517, 527 (Minn. 2003). Although it is a lower burden, the fair-and-just standard "does not allow a defendant to withdraw a guilty plea for simply any reason."

Theis, 742 N.W.2d at 646 (quotation omitted). Allowing a defendant to withdraw a guilty plea "for any reason or without good reason" would "undermine the integrity of the plea-taking process." *Kim*, 434 N.W.2d at 266. We review a district court's decision to deny a motion to withdraw a guilty plea under the fair-and-just standard for an abuse of discretion, reversing only in the "rare case." *Id.*

Young contends that it is fair and just to allow him to withdraw his plea, arguing that "[t]he lack of a full advisory, combined with a cursory examination of [his] rights and the fact that [he] is not unusually knowledgeable about the legal process fails to establish that [he] entered a valid and intelligent guilty plea." However, as discussed above, Young acknowledged reviewing a plea petition with his attorney. In addition, he told the district court that he understood the rights he was giving up, as well as the negotiated sentence, and that he did not have any questions for his attorney or the court. Young's arguments on appeal—that he "does not appear to be particularly savvy about the criminal justice system" and that "the agreement was more complicated than a typical plea agreement"—are not persuasive. The sentencing worksheet, which Young included in his addendum, indicates that at the time of sentencing, Young had three prior felony convictions, three prior gross-misdemeanor convictions, and one misdemeanor conviction. He was also on probation for a felony-level offense at the time of sentencing. And, the agreement was not complicated: if Young appeared for sentencing, he would receive the benefit of a reduced sentence; if he failed to appear, he would not.

The district court's findings of fact, conclusions of law, and order and memorandum denying Young's motion indicate that it properly applied the law and

thoroughly assessed Young's arguments. Although the district court determined that the potential prejudice to the state is "relatively minimal," it nonetheless denied the motion, reasoning that it must balance the relative prejudice against the reasons set forth by Young. The district court ultimately concluded that Young "has not shown sufficient reason for the Court to allow withdrawal of the plea." *See Raleigh*, 778 N.W.2d at 98 (affirming denial of plea-withdrawal motion, observing that "even if there were no prejudice to the State, the court would still have denied [the] motion because [defendant] failed to advance reasons why withdrawal was 'fair and just'").

In summary, Young has not offered any reason for plea withdrawal that would not undermine the integrity of the plea-taking process. Young may regret his failure to comply with the terms of the plea agreement and his lost opportunity for a reduced sentence, but that is not an adequate reason to allow withdrawal of a valid guilty plea. Thus, the district court did not abuse its discretion by refusing to allow Young to do so.

Affirmed.