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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1426**

State of Minnesota,
Respondent,

vs.

Ron Wesley Epps,
Appellant.

**Filed May 13, 2013
Reversed and remanded
Hooten, Judge**

Hennepin County District Court
File No. 27-CR-11-29316

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

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

David W. Merchant, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Judge; Hooten, Judge; and Willis, Judge.*

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

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges the district court's denial of his motion to withdraw his guilty plea to felony domestic assault and his subsequent conviction and gross misdemeanor sentence. Because the district court was excessively involved in plea negotiations and, as a result, appellant's plea is per se invalid, we reverse and remand.

FACTS

Appellant Ron Wesley Epps was charged with two counts of felony domestic assault against his live-in domestic partner. According to the complaint, the victim told Minneapolis police officers, who responded to a call for assistance at the home, that he was assaulted by appellant who began punching him in the face when he refused to give appellant a ride to work. At the time of the incident, appellant had two previous convictions of domestic-abuse no-contact order (DANCO) violations and a conviction of fifth-degree assault.

A jury trial commenced after appellant did not accept the state's final offer to plead guilty to either count in return for a stay of imposition of sentence for three years and three years of probation. During trial, however, appellant pleaded guilty to one of the counts of felony domestic assault with the understanding that the district court would sentence him to a gross misdemeanor sentence. The district court accepted appellant's plea over the state's objection to sentencing the charge as a gross misdemeanor. During the waiver of his trial rights, appellant asked if "it's understandable that this is a gross misdemeanor, not a felony, right, I'm pleading to, right?" Appellant's counsel answered

in the affirmative and proceeded to establish the felony-enhancement aspect of the charge. For purposes of clarification, the state inquired whether appellant understood that “the offense that [he was] pleading guilty to is currently a felony, but the Judge is going to sentence you to a gross misdemeanor.” The attorneys and the judge then engaged in additional attempts to clarify that appellant would receive a gross misdemeanor sentence.

At the sentencing hearing before a different judge, the state disclosed that appellant had been subsequently charged with an additional felony for a DANCO violation and requested that sentencing be continued along with trial on the new charge. Appellant also claimed that he had received ineffective assistance of counsel and his plea had been entered under duress. The matter was then continued for a hearing before the judge who had presided over appellant’s guilty plea. At this hearing, appellant again questioned the validity of his plea and the matter was again continued in order to obtain a transcript of the plea hearing. Appellant then moved to withdraw his guilty plea. The district court summarily denied appellant’s motion to withdraw his guilty plea and sentenced him to 365 days in jail. This appeal follows.

D E C I S I O N

Appellant argues that the district court excessively involved itself in the plea bargaining process by promising appellant a gross misdemeanor sentence in exchange for a felony guilty plea, and also that the district court erred by failing to consider appellant’s pre-sentence motion for withdrawal of his guilty plea. The state agrees that the guilty plea is per se invalid pursuant to *State v. Anyanwu*, 681 N.W.2d 411, 415 (Minn. App. 2004) and *Melde v. State*, 778 N.W.2d 376, 379 (Minn. App. 2010). The validity of a

guilty plea is a question of law subject to de novo review, and a defendant bears the burden of showing that his or her plea was invalid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

We agree that appellant's guilty plea is per se invalid under the circumstances of this case. "The district court has a role to play in plea negotiations, but it may not 'usurp the responsibility of counsel or become excessively involved in plea negotiations and may not improperly inject itself into plea negotiations.'" *Melde*, 778 N.W.2d at 378 (quoting *Anyanwu*, 681 N.W.2d at 414). "When a district court injects itself into plea negotiations, it has removed itself from the role of an independent examiner of the plea negotiations and has stepped into the position of one of the parties to the negotiation by becoming excessively involved in the negotiations themselves." *Anyanwu*, 681 N.W.2d at 414–15 (quotations omitted). "Anytime a district court improperly injects itself into plea negotiations the guilty plea is per se invalid." *Id.* at 415. While appellant did not object to the district court's involvement in his plea, "a defendant has a right to challenge his guilty plea on direct appeal even though he has not moved to withdraw the guilty plea in the district court." *Id.* at 413. Appellant here moved to withdraw his guilty plea prior to sentencing.

Appellant argues that the district court was impermissibly involved in the plea-bargaining process by promising to give appellant a gross misdemeanor sentence in exchange for his guilty plea to felony domestic assault. During his plea colloquy, the following dialogue took place:

APPELLANT’S ATTORNEY: It will show up as a gross misdemeanor.

APPELLANT: All right. Okay.

THE STATE: Okay? But the offense that you are pleading guilty to is a felony. The Judge is just giving you –

THE COURT: – a dispositional departure and a durational departure.

APPELLANT’S ATTORNEY: I think we’re making this a little more difficult than it has to be. At the end of the day, . . . you will be getting a gross misdemeanor.

The judge made additional comments in furtherance of the effort to explain to appellant that he would be receiving a gross misdemeanor sentence.

There is no evidence that there was a specific plea agreement between the state and appellant, and the district court affirmatively aided the effort to explain to appellant that he would be receiving a gross misdemeanor sentence on his plea. The district court’s ultimate sentence followed these assurances. “It is improper for a district court to offer the defendant an anticipated sentencing result that is not part of an existing agreement between the defendant and the prosecutor.” *Melde*, 778 N.W.2d at 378; *see also Anderson v. State*, 746 N.W.2d 901, 905 (Minn. App. 2008) (“Impermissible participation includes such things as the court’s direct involvement in the negotiations, its imposition of a plea agreement, or its promise to impose a particular sentence.”).

Our conclusion that the district court’s excessive involvement in plea negotiations rendered appellant’s plea per se invalid is consistent with our prior case law. In *State v. Vahabi*, this court reversed based on improper district court involvement in the plea-negotiation process when the “record [failed to] completely disclose what occurred before the [defendants] tendered their guilty pleas.” 529 N.W.2d 359, 361 (Minn. App.

1995). This court noted the state's objection to the sentencing arrangement, from which it concluded "that no plea agreement had been reached, particularly not an agreement on the terms announced by the [district] court." *Id.* The district court "outlined an arrangement" that was objected to by the state, leading us to conclude that "[t]he parties to [the inappropriate] plea agreement were the court and the defendants, not the prosecution and the defendants." *Id.* at 360–61. In *Vahabi*, there was "no record of what point the prosecution and defense had arrived at in their negotiations when the trial court made its 'representation' to the defendants." *Id.* at 361. In *Anyanwu*, we noted that the district court "directly and unequivocally promised the defendant a particular sentence in advance, and forced the plea bargain on the prosecutor over the prosecutor's objections." 681 N.W.2d at 415. This occurred in conjunction with the defense attorney's assurances, who "indicated that Anyanwu would plead guilty to all three counts in a straight plea to the Court with the understanding that the Court would give him a sentence of 210 months in prison." *Id.* at 412 (quotation omitted).

Here, the district court assured appellant, who was concerned that he was only pleading to a gross misdemeanor, that the felony charge would be sentenced as a gross misdemeanor. In light of the prosecutor's objection to this disposition, we agree with appellant and the state that appellant's plea is per se invalid. We therefore reverse the district court's denial of appellant's motion to withdraw his guilty plea and remand this matter for further proceedings.

Reversed and remanded.