STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0074

State of Minnesota,
Respondent,

vs.

William Lloyd Hutchinson,
Appellant.

Filed October 15, 2013
Affirmed
Stauber, Judge

Ramsey County District Court
File No. 62CR125505

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Stauber, Judge.

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

STAUBER, Judge

In this direct appeal following appellant's conviction of felony domestic assault, appellant argues that he is entitled to withdraw his guilty plea because the district court

impermissibly interjected itself into the plea negotiations by advising appellant that, "at worst," he would serve 21 months in prison, and then sentenced appellant to 24 months in prison. We affirm.

FACTS

On July 4, 2012, police were dispatched to a residence on a report of a domestic incident. The police observed children running out of the residence and a man, later identified as appellant William Lloyd Hutchinson, yelling and cursing inside the home. Appellant's girlfriend, L.R.J., told the police that appellant threatened to harm her 15-year-old daughter and that when she intervened, appellant grabbed her upper arms "extremely hard." She also stated that appellant threatened her developmentally disabled son by winding up his fist to punch him. The police observed bruising on L.R.J.'s lower left tricep area. In a Mirandized statement, appellant admitted to the police that he chased L.R.J.'s daughter and cursed at her and that he grabbed L.R.J.'s arms. At the time of this incident, appellant had three prior convictions for domestic-violence offenses within the preceding ten years. Appellant was charged with three counts of felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2010).

At a pretrial hearing, appellant's counsel stated that they were close to agreeing to a plea bargain, which would provide that appellant would (1) plead guilty to one count of felony domestic assault while the other two counts would be dismissed; (2) receive conditional release pending sentencing; and (3) move for a downward-durational departure over the state's objection. Appellant stated that he was wary of the agreement because he did not want another felony on his record. The court commented that this

worry was unfounded given appellant's significant criminal history and clarified that the state would oppose his request for a durational departure and seek a guidelines sentence. The court then gave appellant additional time to confer with his attorney.

When the parties came back on the record, the prosecutor explained appellant's options: he could take the deal, or he could go to trial and, if convicted, receive consecutive sentences and an aggravated departure because one victim was a vulnerable adult. Appellant's counsel explained that appellant had four criminal-history points and that, if he did not receive a downward-durational departure, he would be looking at 21 to 28 months in prison, with 14 months to serve on a 21-month sentence. Appellant had already served some of his sentence while in custody. The court stated: "So, that's really what—you know, that's potentially what you're looking at. If you get your points right, you're looking at sitting another twelve months." After further discussion, the court stated:

> I guess your options are: If you enter a plea of guilty today to one count, then it looks like you're looking at, worst case scenario, 21 months; best case scenario would be placed on probation for, you know, X number of years. If not, then, you know, you take your chances . . . .

Appellant was given more time to discuss with his attorney privately and then announced he would accept the deal. The plea agreement was restated for the record, and appellant pleaded guilty and admitted to facts supporting the conviction.

At sentencing, appellant's counsel requested a downward-durational departure, seeking probation. The state opposed the departure request. The district court denied the request and sentenced appellant to 24 months in prison. This appeal followed.

D E C I S I O N

"A guilty plea is per se invalid when the district court abandons its role as an independent examiner and improperly injects itself into the plea negotiations by promising a particular sentence in advance." *State v. Anyanwu*, 681 N.W.2d 411, 412 (Minn. App. 2004). Appellant bears the burden of showing that his guilty plea was invalid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "Assessing the validity of a plea presents a question of law that we review de novo." *Id.* "Although the court should neither usurp the responsibility of counsel nor participate in the plea bargaining negotiation itself, its proper role of discreet inquiry into the propriety of the settlement submitted for judicial acceptance cannot seriously be doubted." *State v. Johnson*, 279 Minn. 209, 216, 156 N.W.2d 218, 223 (1968). This role is "a delicate one, for it is important that [the court] carefully examine the agreed disposition, and it is equally important that [the court] not undermine [the] judicial role by becoming excessively involved in the negotiations." *Id*. at 216 n.11, 156 N.W.2d at 223 n.11. But, "[i]nevitably the judge plays a part in the negotiated guilty plea." *Id*. (quotation omitted).

A district court judge impermissibly participates in the plea negotiation when he promises a defendant a certain sentence over the prosecution's objections. *See Anyanwu*, 681 N.W.2d at 415 (district court improperly promised the defendant "a particular sentence in advance, and forced the plea bargain on the prosecutor over the prosecutor's objections"). However, it is permissible for a judge to explain or reiterate the prosecution's offer to a defendant during the plea negotiations. *See State v. Tuttle*, 504 N.W.2d 252, 257 (Minn. App. 1993) ("[T]he district court was acting properly in

furtherance of its duty to elucidate the terms of the negotiated agreement" when the court clarified the prosecution's offer on the record.); *cf. State v. Vahabi*, 529 N.W.2d 359, 361 (Minn. App. 1995) ("The [district] court did not merely state an existing agreement in different terms than the prosecutor."). Essentially, a district court may not "step[] into the position of one of the parties to the negotiation" in the course of its involvement in the plea negotiation process. *Anyanwu*, 681 N.W.2d at 415 (quotation omitted).

We conclude that the district court judge was merely elucidating the prosecution's offer to appellant, and not imposing a separate agreement on the parties. First, the prosecution never objected to the terms of the plea agreement. In fact, the plea deal that was struck was the same deal that was offered by the prosecution. Second, the court's statement that appellant would be "looking at, worst case scenario, 21 months" is a restatement of appellant's counsel's assessment that, if appellant had four criminal-history points, 21 months is the "low end of the box" sentence he would likely receive following appellant's guilty plea. The judge's statement that 21 months was the "worst case scenario" was, as the state admits, likely a misstatement, since the sentencing guidelines actually provide for a range of 21 to 28 months. *See* Minn. Sent. Guidelines 4, 5 (2011). Because this misstatement did not amount to a promise, and because neither party objected to the agreement, we conclude that the district court was not impermissibly involved in the plea negotiation.

Appellant, in his pro se supplemental brief, appears to argue that his plea was not knowing, voluntary, or intelligent. But, appellant's mere conclusory statement, unsupported by argument or authority, is waived. *See State v. Wembley*, 712 N.W.2d

783, 795 (Minn. App. 2006) ("An assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection." (quotation omitted)), *aff'd*, 728 N.W.2d 243 (Minn. 2007). Therefore, we do not reach the merits of this argument.

Affirmed.