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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0572**

State of Minnesota,  
Respondent,

vs.

Sequoyah James Bosto,  
Appellant.

**Filed June 10, 2008  
Affirmed  
Lansing, Judge**

St. Louis County District Court  
File No. 69-DU-CR-06-3571

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

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Lawrence Hammerling, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Johnson, Presiding Judge; Lansing, Judge; and Ross, Judge.

## **UNPUBLISHED OPINION**

**LANSING, Judge**

Before sentencing, Sequoyah Bosto moved to withdraw his guilty plea to second-degree intentional murder. The district court denied Bosto's plea-withdrawal motion. On appeal, Bosto makes two arguments. First, he argues that his motion should have been granted because his plea agreement was contingent on Bosto and another defendant accepting the same plea. Second, he argues that he established a "fair and just" reason for withdrawal. Because Bosto's contingent plea agreement was valid and the district court did not abuse its discretion, we affirm.

### **F A C T S**

This case arises from a murder outside a liquor store near Duluth. In June 2006, a disabled man entered the liquor store, purchased a twelve-pack of beer, and then walked down a nearby alley where he was attacked by two individuals on bikes. The victim was severely beaten, and died the next day.

Sequoyah Bosto was accused of being one of the assailants, and he was charged with second-degree intentional murder, second-degree felony murder, and first-degree aggravated robbery. The prosecutor offered Bosto a plea agreement under which Bosto would plead guilty to second-degree intentional murder and would receive the statutory maximum sentence of forty years. The agreement was contingent on both Bosto and the other assailant accepting the same agreement. The record indicates that the prosecutor said that he would seek an indictment for first-degree murder if Bosto did not accept the agreement.

Bosto accepted the plea agreement. Before sentencing, Bosto fired his attorney and made a pro se motion to withdraw his guilty plea. Bosto argued that he was not guilty of the offense, that his attorney failed to explain possible defenses, that his plea was based on the prosecutor's threat to seek a first-degree indictment, and that his sentence under the plea agreement would be excessive. The district court denied the motion and sentenced Bosto to forty years in prison. Bosto now appeals.

## DECISION

Because guilty pleas facilitate the efficient administration of justice, more than a change of heart is needed to withdraw a guilty plea. *See Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989) (discussing need to protect integrity of pleas). Guilty pleas may be withdrawn based on two grounds. First, a plea may be withdrawn if “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. A defendant can establish manifest injustice by showing that the plea was “not accurate, voluntary, and intelligent.” *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). If a defendant establishes manifest injustice, a timely motion to withdraw must be granted. *Shorter v. State*, 511 N.W.2d 743, 746 (Minn. 1994). Second, before a defendant is sentenced, a plea can be withdrawn “if it is fair and just to do so.” Minn. R. Crim. P. 15.05, subd. 2. We review the district court's application of the “fair and just” standard for an abuse of discretion. *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007).

## I

Bosto first argues that his motion for plea withdrawal should have been granted because his plea agreement was contingent on him and another defendant accepting the

same plea. Contingent plea agreements—in which multiple defendants must accept a “package deal”—create a risk of coercion and are particularly likely to produce involuntary pleas. *State v. Dahn*, 516 N.W.2d 539, 542 (Minn. 1994). The risk of coercion is especially great “in cases involving related third parties, where there is a risk that a defendant, who would otherwise exercise his or her right to a jury trial, will plead guilty out of a sense of family loyalty.” *Id.*

But contingent plea agreements are not per se invalid. *Butala v. State*, 664 N.W.2d 333, 339 (Minn. 2003). To ensure that guilty pleas are voluntary, conditional plea agreements must be disclosed to the district court, and the district court “must then conduct further inquiries to determine whether the plea is voluntarily made.” *Dahn*, 516 N.W.2d at 542. The standard plea inquiry described in Minn. R. Crim. P. 15.01 “cannot adequately discover coercion in these cases.” *Dahn*, 516 N.W.2d at 542.

The Minnesota Supreme Court has not specified what further inquiry must be made. In *Dahn*, the supreme court provided guidance from other jurisdictions, noting that the district court might inquire into seven factors:

whether the prosecutor had a “reasonable and good faith” case against the third party; the strength of the factual basis for the plea; the nature and degree of coerciveness, for example, whether a third party has threatened the defendant; whether the leniency to a third party was an “insignificant factor” in the defendant’s choice to plead guilty; the age of the defendant; whether defendant or the prosecutor had initiated plea negotiations; and whether charges had already been pressed against a third party.

*Id.* at 543 (citing *In re Ibarra*, 666 P.2d 980, 986-87 (Cal. 1983)). The most important consideration is whether the contingent plea agreement was a significant factor in the defendant’s decision to plead guilty. *See id.* (describing this approach as “significant

factor” test and approving of similar approach in which plea is involuntary if defendant entered it primarily because of contingent agreement). Thus, at a minimum, the district court’s questioning must be sufficient to determine whether the benefit to the other defendant was a significant factor in the defendant’s decision to plead guilty.

In this case, Bosto does not dispute that the contingent plea agreement was disclosed to the district court. Instead, Bosto challenges the district court’s subsequent inquiry. During the plea hearing, Bosto’s attorney questioned him as follows:

Q Sequoyah, the other thing that we have not talked about on the record yet is the fact that this is a joint offer. You know that, that means that both you and [the other defendant] need to accept the offer?

A Yes.

Q Has anyone from [the other defendant’s] family or [the other defendant’s] friends or [the other defendant] himself, have any of those folks connected with his case threatened you, forced you, asking you to plead guilty for his sake?

A No.

The plea hearing did not otherwise address the contingent plea agreement. Nonetheless, the hearing adequately addressed the factors described in *Dahn*. It is undisputed that there was a strong factual basis for Bosto’s plea, that the state had a “reasonable and good faith” case against the other defendant, and that charges had already been pressed against the other defendant. The record reveals that Bosto was eighteen years old at the time of the plea hearing and that the contingent agreement was proposed by the state. Thus, the district court could properly consider those factors when deciding whether to accept the plea.

Most importantly, the plea transcript specifically addresses whether the contingent agreement was a significant factor in Bosto's decision to plead guilty. Bosto explained that "the reason why I'm pleading guilty is because I don't want to be indicted on First Degree Murder." Bosto did not express a concern for the other defendant. Given that both Bosto and the other defendant would receive a sentence of identical length, there is no apparent reason to believe that Bosto pleaded guilty to benefit the other defendant. Under the circumstances, the district court's inquiry was sufficient to permit it to determine that the contingency was not a significant factor in Bosto's decision to plead guilty. Thus, Bosto cannot establish that his plea was involuntary or otherwise improper. Accordingly, he is not entitled to plea withdrawal—under either the "fair and just" or the manifest injustice standard—based on the contingent plea agreement.

## II

Before sentencing, the defendant can withdraw a plea if the district court, in its discretion, determines that it would be "fair and just." Minn. R. Crim. P. 15.05, subd. 2. In applying the "fair and just" standard, the district 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 reasons of actions taken in reliance upon the defendant's plea." *Id.* "The ultimate decision is left to the sound discretion of the [district] court, and it will be reversed only in the rare case in which the appellate court can fairly conclude that the [district] court abused its discretion." *Kim*, 434 N.W.2d at 266.

Bosto argues that he established a “fair and just” reason to permit withdrawal based on a number of facts: that he moved to withdraw his plea less than thirty days after entering it, that he was only eighteen years old at the time of the plea, that the proposed sentence was excessive, that this was his first encounter with felony proceedings in the adult criminal-justice system, that the prosecutor threatened to seek a first-degree murder indictment, that Bosto cannot remember the assault, that only a short period of time separates the offense and the plea, that the plea agreement was contingent, and that Bosto’s lawyer failed to properly advise him about the case.

The district court considered and rejected Bosto’s argument in a ten-page order and memorandum. The district court found that Bosto’s lawyer acted properly and “would have been derelict in her duties if she had not advised [Bosto] of the possibility of a first-degree murder indictment.” The district court also determined that the prosecutor could properly threaten Bosto with a first-degree murder indictment. The district court thus concluded that Bosto’s plea was proper and that Bosto therefore failed to meet the “fair and just” standard for plea withdrawal. The record shows that the district court adequately considered all of Bosto’s arguments, and Bosto has presented no basis for concluding that the district court’s ruling was an abuse of discretion. We therefore affirm the district court’s order denying Bosto’s motion to withdraw his plea.

**Affirmed.**