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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1186**

State of Minnesota,
Respondent,

vs.

Lamia Kerschbaum,
Appellant.

**Filed June 3, 2008
Affirmed
Worke, Judge**

Ramsey County District Court
File No. K9-06-2736

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

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, 50 Kellogg Boulevard West, Suite 315, St. Paul, MN 55102 (for respondent)

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

Considered and decided by Lansing, Presiding Judge; Stoneburner, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's denial of her motion to withdraw her guilty pleas to two counts of kidnapping and one count of solicitation of prostitution, arguing that (1) she was not properly represented by counsel, (2) the district court was not objective in considering her motion, and (3) the state failed to show that it would be prejudiced by having to prosecute her. We affirm.

DECISION

Appellant Lamiea Kerschbaum moved to withdraw her guilty pleas prior to sentencing. The district court may allow a defendant to withdraw a guilty plea "before sentenc[ing] if it is fair and just to do so, giving 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 does not have an absolute right to withdraw a plea before sentencing, and the burden is on the defendant to prove that she is entitled to withdrawal of her guilty plea. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). The decision on a motion to withdraw a guilty plea "is left to the sound discretion of the [district] court, and [that decision] will be reversed only in the rare case in which the appellate court can fairly conclude that the [district] court abused its discretion." *Id.* In determining whether to allow a defendant to withdraw her guilty plea, the district court may consider whether the plea was voluntarily offered and whether the defendant asserted her innocence despite

entering the plea. *State v. Danh*, 500 N.W.2d 506, 509-10 (Minn. App. 1993), *remanded on other grounds*, 516 N.W.2d 539 (Minn. 1994). The district court may also consider whether the defendant was represented by counsel when she entered the guilty plea and whether she was fully informed of her rights. *State v. Knight*, 292 Minn. 419, 423, 192 N.W.2d 829, 832 (1971). If “[n]othing objectively in the record suggests that [the defendant] failed to comprehend the nature, purpose, and consequences of [the] plea[.]” the district court does not abuse its discretion in denying a motion to withdraw the plea. *State v. Abdisalan*, 661 N.W.2d 691, 694 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003).

Appellant was charged with two counts of soliciting prostitution, two counts of kidnapping, two counts of first-degree criminal sexual conduct, and arson. On the day her trial was to begin, appellant pleaded guilty to one count of solicitation and two counts of kidnapping, and the remaining counts were dismissed. Appellant later moved to withdraw her guilty pleas, which the district court denied. Appellant argues that she should have been permitted to withdraw her guilty pleas because (1) her attorney’s representation was inadequate, and (2) she was coerced into pleading guilty in order to prevent her sons from going to prison. For the first time on appeal, appellant also argues that the district court was not objective.

Appellant argues that she should have been permitted to withdraw her guilty pleas because she received inadequate representation. Appellant contends that she attempted several times to discharge her attorney, but was unable to do so. Appellant asserts that her attorney failed to demand a speedy trial, prepare her theory of her defense, or inform

her that her guilty pleas would cause her to lose custody of her children. The district court found that appellant made serious allegations that she could not support, and that appellant's attorney did an "excellent job," was patient and competent, and obtained a favorable plea agreement.

The record supports the district court's findings. First, appellant's attorney did demand a speedy trial on her behalf. Additionally, when appellant pleaded guilty her attorney questioned her on his representation. Appellant agreed that she had worked with her attorney for 11 months, visited with him several times, and spoke with him on the telephone frequently. Appellant had access to her attorney's cell-phone number and during the first three months of the case called him as many as five times a day, including evenings and weekends. Appellant's attorney also provided appellant with copies of 2,400 pages of discovery and copies of her husband's and sons' plea transcripts. Appellant's attorney had a paralegal, two investigators, and another attorney assisting him in the investigation and trial preparation. There is nothing in the record supporting appellant's allegations; thus, appellant failed to show that she received inadequate representation.

Appellant concedes that her allegation of inadequate representation may not be sufficient to permit her to withdraw her guilty pleas, but argues that the district court should have considered that her attorney argued against her motion. At the motion hearing, appellant's attorney responded to appellant's allegations indicating that it would be "unethical and inappropriate" to fully respond to appellant's accusations but that:

we litigated her case and investigated it aggressively over a year. . . . We had two investigators, a paralegal and a second attorney working on this. We were prepared to go to trial. We were selecting a jury. We were ready in all respects. There were witnesses. That much I feel comfortable in saying.

Appellant's attorney made no other comment during the motion hearing. Appellant's attorney did not argue against her motion; rather, he defended his representation. Therefore, appellant failed to show that she received inadequate representation.

Appellant also argues that she felt coerced into pleading guilty. Appellant contends that she was told that if she did not plead guilty her sons would be sent to prison. To be valid, a guilty plea must be accurate, voluntary, and intelligent, that is, knowingly and understandingly made. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). "The voluntariness requirement helps insure that the defendant does not plead guilty because of any improper pressures or inducements." *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). When evaluating the voluntariness of a plea, we consider all relevant surrounding circumstances. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994).

Appellant fails to show that she was coerced into pleading guilty. First, appellant's sons pleaded guilty before she did; thus, there is no indication that appellant pleaded guilty in an effort to prevent her sons from going to prison. Alternatively, because it is unclear exactly what appellant is arguing, she could be arguing that she pleaded guilty to preclude a trial where her sons would testify and perhaps commit perjury. But appellant fails to support this contention. Appellant signed a plea petition indicating that she understood her trial rights and agreed that she was not being coerced

into pleading guilty. Appellant indicated that she was prepared to accept the offer, she had enough time to discuss the offer with her attorney, she was not pleading guilty in order to get things over with, and she understood her trial rights. The court found that appellant knowingly and voluntarily waived her rights and accepted her guilty pleas. Appellant's argument that she was coerced into pleading guilty is not supported by the record.

Appellant also argues that there should be some concern as to the objectivity of the district court because the court stated that it was tempted to allow appellant to withdraw her pleas in order to see how the trial worked out and how she would react to a conviction of all of the offenses. However, appellant cites to no caselaw in support of her argument that she should be allowed to withdraw her pleas because of the district court's comment or the court's alleged failure to "operate at arm's length with appellant." Following the motion hearing, the district court noted that it could have predicted that appellant would attempt to withdraw her guilty pleas. The district court indicated that appellant decided to accept the offer after everyone was prepared to go to trial, after an entire day was spent on pretrial motions, and when they were about to begin jury selection. It appears that the court was merely frustrated that appellant, who has been described as manipulative, waited until the day of trial to decide to plead guilty and then moved to withdraw her pleas based on unsupported allegations. Appellant has not shown that the district court was not objective in considering her motion.

Finally, we must consider any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea. *See*

Minn. R. Crim. P. 15.05, subd. 2. But mere lack of prejudice to the prosecution does not render the withdrawal of the guilty plea fair and just under rule 15.05. In addition, rule 15.05 does not require the district court to make findings on the record as to any possible prejudice the prosecution might suffer. Here, the state prepared for trial for nearly one year; had over 60 witnesses subpoenaed for trial; arranged for transport by writ or otherwise of witnesses; arranged for more than ten police officers to assist in transportation and supervision of witnesses; the matter was ready for trial; the jury had been brought in; jury questionnaires had been prepared; and appellant was the one who wished to forego the trial in exchange for the negotiated settlement. Additionally, the state was prepared to call the victims, who, although willing to testify, expressed relief knowing they did not have to testify. Finally, appellant's sons, who had accepted responsibility for their actions and were doing well in their placements, were relieved to know that they did not have to testify. The record establishes that the state would be prejudiced if appellant were allowed to withdraw her guilty pleas. The district court did not abuse its discretion in denying appellant's motion to withdraw her guilty pleas.

Affirmed.