STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1083

State of Minnesota,
Respondent,

vs.

Leon Richard Ketola,
Appellant.

Filed July 15, 2008
Affirmed
Johnson, Judge

Itasca County District Court
File No. 31-CR-06-964

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

John J. Muhar, Itasca County Attorney, Lori J. Flohaug, Assistant County Attorney, 123 Northeast Fourth Street, Grand Rapids, MN 55744 (for respondent)

Blair W. Nelson, 205 Seventh Street Northwest, Suite 3, Bemidji, MN 56601 (for appellant)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Johnson, Judge.

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

JOHNSON, Judge

Leon Richard Ketola entered an *Alford-Goulette* plea of guilty to one count of criminal sexual conduct in the first degree. Before he was sentenced, he moved to

withdraw his plea. The district court denied the motion. Ketola appeals, arguing that his guilty plea was not intelligently made because he did not have a full understanding of the elements of the offense to which he pleaded guilty. We conclude that the district court did not abuse its discretion by denying Ketola's motion to withdraw his plea and, therefore, affirm.

FACTS

In August 2005, the Nashwauk Police Department received a call from the father of a four-year-old girl reporting that the girl had been the victim of a sexual assault. The father stated that, five days earlier, after he picked up the girl from his grandmother's house, the girl was agitated and wanted to leave quickly. Later that evening, she stated that a man known to her father as Ketola had touched her "pee pee." In a subsequent interview with a social worker, the girl described how Ketola had penetrated her vagina with his finger. During the police investigation, Ketola stated to the investigating officer that he understood he "would probably have to plead guilty to something but wanted to know what kind of jail time he would be looking at."

In March 2006, the state charged Ketola with two counts of criminal sexual conduct in the first degree, in violation of Minn. Stat. § 609.342, subd. 1(a) (2004), which prohibits sexual penetration of a person under the age of 13 by a person more than 36 months older than the child. In June 2006, Ketola pleaded guilty to count 1 in an *Alford-Goulette* plea. *See North Carolina v. Alford*, 400 U.S. 25, 38-39, 91 S. Ct. 160, 167-68 (1970); *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977).

At his sentencing hearing in September 2006, Ketola indicated that he wanted to withdraw his guilty plea. The hearing was continued. Two weeks later, Ketola's attorney moved to withdraw from representation, and the district court granted the motion. Two months later, after a second attorney had entered an appearance, Ketola moved to withdraw his guilty plea. In January 2007, the district court denied the motion in a nine-page order and memorandum.

The following month, the district court imposed a sentence of 144 months of imprisonment but granted a downward dispositional departure by staying the prison term, imposing 180 days of jail time, and ordering Ketola to comply with certain conditions of probation. The state dismissed count 2.

Ketola appeals from the denial of his motion to withdraw his guilty plea.

D E C I S I O N

A defendant does not have an absolute right to withdraw a guilty plea. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). But rule 15.05 of the Minnesota Rules of Criminal Procedure provides for two situations in which a guilty plea may be withdrawn. First, a district court must permit a defendant to withdraw a guilty plea upon a showing that withdrawal is necessary to correct "manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Second, a district court may, in its discretion, permit a defendant to withdraw a guilty plea before sentence is imposed "if it is fair and just to do so." *Id*., subd. 2. Ketola's motion invoked both of these provisions, in the alternative, and he reiterates both arguments on appeal. This court reviews a district court's decision to deny a motion

to withdraw a guilty plea for an abuse of discretion. *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007).

A. Manifest Injustice Standard

To be valid, a guilty plea "must be accurate, voluntary, and intelligent." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). If a guilty plea fails to meet any of the three requirements, it is invalid. *Id*. Manifest injustice exists when a defendant can show that a guilty plea was not accurate, voluntary, or intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). When manifest injustice exists, rule 15.05, subdivision 1, requires a district court to permit withdrawal of the plea. *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007).

Ketola's motion is based on his contention that, at the time of the guilty plea, he did not fully understand the elements of the charged offense. More specifically, he contends that he did not know that the applicable statute required the state to prove that he had "sexual or aggressive intent." *See* Minn. Stat. §§ 609.341, subd. 11(c), .342, subd. 1(a) (2006). Thus, he argues that his plea was not intelligently made.

"To be intelligently made, a guilty plea must be entered after a defendant has been informed of and understands the charges and direct consequences of a plea." *State v. Byron*, 683 N.W.2d 317, 322 (Minn. App. 2004). "The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea." *Farnsworth*, 732 N.W.2d at 372 (quotation omitted). Furthermore, if a defendant had a full opportunity to consult with counsel before entering a plea, the court "may

safely presume that counsel informed him adequately concerning the nature and elements of the offense." *State v. Russell*, 306 Minn. 274, 275, 236 N.W.2d 612, 613 (1975). The fact that a guilty plea is counseled "justifies the conclusion that counsel presumably advised defendant of his other rights." *State v. Simon*, 339 N.W.2d 907, 907 (Minn. 1983).

The district court record in this case does not support Ketola's contentions. First, Ketola signed a rule 15 plea petition that describes in detail the charges Ketola faced and specifically states, "I understand the charges made against me in the Complaint." Ketola initialed each page of the five-page petition. As the supreme court explained in *State v. Propotnik*, 299 Minn. 56, 216 N.W.2d 637 (1974), the fact that "the record includes a copy of the petition to enter a plea of guilty which defendant had signed and which he admitted reading and understanding" makes it "proper to conclude that defendant entered his plea voluntarily and intelligently." *Id.* at 58, 216 N.W.2d at 638.

Second, at the plea hearing, Ketola and the district court engaged in a lengthy colloquy concerning the rights that Ketola was waiving by pleading guilty and the reasons he was doing so. Ketola affirmatively acknowledged that his first attorney had gone through the petition with him, that his attorney had answered all of his questions, and that the answers in the petition were true and correct to the best of Ketola's knowledge.

Third, the evidence Ketola offered in support of his motion to withdraw does not rebut the presumption that his first attorney "informed him adequately concerning the nature and elements of the offense." *Russell*, 306 Minn. at 275, 236 N.W.2d at 613.

Contrary to Ketola's suggestion, an affidavit executed by the first attorney does not state that the attorney failed to advise Ketola regarding the elements of the crime. Furthermore, the district court record reflects that Ketola sought and obtained counsel even before he was charged with a crime.

Ketola argues that he has a tendency to become easily excited and anxious and to make rash decisions due to a hearing disorder. But the district court addressed this contention by finding that it "did not notice any indicia of mental impairment, lack of understanding, lack of intellectual ability or incompetence on the part of Mr. Ketola at any of his court appearances. The Court also did not notice any lack of understanding or other issues related to Mr. Ketola's hearing impairment." If a credibility determination is crucial in determining whether a guilty plea was accurate, voluntary, and intelligent, "a reviewing court will give deference to the primary observations and trustworthiness assessments made by the district court." *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997). Thus, we cannot conclude that the district court clearly erred by rejecting Ketola's claims based on his excitement and anxiety at the time of the guilty plea.

Ketola also argues that he did not appreciate that he would be required to register as a predatory offender and be subject to community notification, which caused him to lose his job and his pension. Although a defendant must be advised of direct consequences of a plea, a defendant need not be advised of collateral consequences. *Alanis*, 583 N.W.2d at 578. A requirement to register as a predatory offender is collateral in nature. *Kaiser v. State*, 641 N.W.2d 900, 904 (Minn. 2002). In any event, the district

court found, and the record confirms, that the prosecutor's plea offer, which was attached to and incorporated by reference into the plea petition, advised Ketola that, if he pleaded guilty, he would be required to register as a predatory offender. The prosecutor reiterated that information during the plea proceeding. Accordingly, Ketola cannot establish that his plea was not intelligent on this ground.

Thus, the district court did not clearly err in its factual findings and did not abuse its discretion by concluding that withdrawal of the guilty plea was not necessary to correct manifest injustice.

B. Fair and Just Standard

In the absence of manifest injustice, a district court may, in its discretion, grant a defendant's presentence motion to withdraw a guilty plea if it determines that doing so would be "fair and just." Minn. R. Crim. P. 15.05, subd. 2. The "fair and just" standard for withdrawal of a plea is less demanding than the manifest injustice standard. *Anderson v. State*, 746 N.W.2d 901, 911 (Minn. App. 2008). Nonetheless, the "fair and just" standard does not allow a defendant to withdraw a plea "for simply any reason." *Theis*, 742 N.W.2d at 646 (quotation omitted). 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." *State v. Kaiser*, 469 N.W.2d 316, 319 (Minn. 1991). The "'ultimate decision' of whether to allow withdrawal under the 'fair and just' standard is 'left to the sound discretion of the trial court, and it will be reversed only in the rare case in which the appellate court can fairly

conclude that the trial court abused its discretion.'" *Id.* at 320 (quoting *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989)).

Ketola makes only passing reference to the fair-and-just standard, having concentrated his argument on the manifest-injustice standard. The district court concluded that "[f]airness and justice do not require that the Defendant be allowed to withdraw his plea." The district court came to this conclusion after receiving Ketola's testimony at the plea hearing, reviewing the presentence investigation, and reviewing the affidavits of Ketola and his first attorney. The district court found that the evidence did not support Ketola's argument that his guilty plea was not intelligently made, even considering Ketola's claimed tendency to become excited and make rash decisions. In addition, as the state argued in the district court, the state would be prejudiced if Ketola were allowed to withdraw his plea because the memories of young children may fade quickly. *See* Minn. R. Crim. P. 15.05, subd. 2 (directing the district court to "giv[e] due consideration to . . . any prejudice the granting of the motion would cause the prosecution"). The record supports the district court's ruling. Thus, the district court did not abuse its discretion by declining to permit withdrawal of the guilty plea under the fair-and-just standard.

In sum, the district court did not abuse its discretion by denying Ketola's presentence motion to withdraw his guilty plea.

Affirmed.