STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1787

State of Minnesota,
Respondent,

vs.

Ronald Allan Renard,
Appellant.

Filed December 30, 2008
Affirmed
Minge, Judge

Washington County District Court
File No. K5-06-86, K4-06-5831

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

Michael A. Welch, Forest Lake City Attorney, 20 North Lake Street, Suite 301, Forest Lake, MN 55025 (for respondent)

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

Considered and decided by Minge, Presiding Judge; Schellhas, Judge; and Johnson, Judge.

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

MINGE, Judge

Appellant challenges the district court's denial of his motion to withdraw his guilty plea, arguing that his plea was not voluntary or intelligent and that the district court did not sentence him in accord with his plea agreement. We affirm.

FACTS

During 2005 and 2006, appellant Ronald Allan Renard was charged with numerous criminal offenses for conduct that occurred on multiple dates. Three of the offenses were misdemeanor traffic violations. The other offenses were misdemeanors and gross misdemeanor crimes against persons, including violating a domestic abuse order for protection. In a letter dated December 20, 2006, the prosecutor sent appellant a plea offer that provided that, if appellant pled guilty to five offenses, the others would be dismissed. The letter also indicated that, if the proposed jail sentences for several of the offenses were "suspended on court conditions," "jail time could be concurrent to any other jail sentences, meaning, the total that you would serve would be 90 days in jail." All of the charges were set for a January 8, 2007 trial, and appellant appeared with counsel. Appellant and his attorney took the morning and early afternoon to review the plea offer. The trial was then rescheduled. Appellant failed to appear on the new trial date, and the district court allowed his attorney to withdraw as counsel of record.

On February 12, 2007, appellant appeared pro se, and, after several hours of further considering the prosecutor's offer, he accepted it and pleaded guilty to five offenses: two counts of gross misdemeanor violation of domestic-abuse orders for

protection, one count of fifth-degree assault, one count of misdemeanor obstructing legal process, and one count of driving after suspension. All other charges were dismissed. During the plea hearing, the district court acknowledged that there was "an agreement about jail time at sentencing," but, without specifying what that agreement was, stated that "the Court has the authority to impose other conditions" in regard to appellant's sentencing. The district court informed appellant during the plea hearing that he was ordered to cooperate with a pre-sentence investigation (PSI) and that his sentence was specifically conditioned upon his cooperating with the PSI. The district court stated:

> What I want you to understand, Mr. Renard, is if you don't cooperate with any of these steps in this presentence investigation process, meaning you blow off the P.O., you don't [sic] for an appointment or you don't do a psych eval, or any of those things, or if you get arrested or commit any offenses then any negotiations you have here may be out the window. Do you understand how that works? Is that a yes?

The appellant replied, "That's a yes." According to the record, there was no discussion at the plea hearing about an unqualified promise of a 90-day cap on jail time.

After the plea hearing, appellant failed to fully cooperate with or attend portions of the PSI. Appellant was arrested twice for failing to cooperate with the PSI and held in custody in order to complete portions of the investigation. Because of appellant's failure to cooperate with the PSI, the district court sentenced him to 365 days on each of the gross misdemeanor violations of domestic abuse protection orders, with all but 100 days stayed, probation for two years with conditions, to run consecutively, and sentenced appellant to 90 days concurrent on each of the misdemeanor offenses, with credit for time served.

On June 12, 2007, appellant filed a motion to withdraw his guilty plea. A hearing on the motion was held, and the district court denied his motion. This appeal follows.

D E C I S I O N

The issue is whether the district court abused its discretion when it refused appellant's motion to withdraw his plea. Abuse of discretion is the appropriate standard of review. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). 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 may withdraw the plea if it is necessary to correct a manifest injustice, Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists when a defendant can show that a plea was not "accurate, voluntary, and intelligent (i.e., knowingly and understandingly made)." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). A plea is intelligent "when the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty" and voluntary if it is not made "in response to improper pressures or inducements." *Alanis*, 583 N.W.2d at 577. When credibility determinations are 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).

A. Understood Proceedings

Appellant contends he was under the influence of methamphetamines at the time of his plea, did not understand the proceedings, did not understand what a plea petition was, did not recall signing his plea petition, and felt pressured to plead guilty because he

did not have an attorney to take his case to trial. Appellant also claims that the district court ordered a sentence that exceeded 90 days of executed jail time, which he asserts violated his plea agreement.

The district court found that appellant's plea was voluntary and intelligent, stating that there was no indication or concern that he was under the influence of or impaired by chemicals and that he knew what was going on. Appellant produced no evidence that, during the plea hearing, he was under the influence of methamphetamines, and he did not identify any factual or legal issue to support his claim that he did not understand as it pertained to his plea, his rights, or the process. As for appellant's claim that he was pressured into pleading guilty, the district court noted that it spent considerable time with appellant on February 12, 2007 to ensure that his plea was voluntary, informed appellant several times that he did not need to plead guilty and could instead go to trial, and felt satisfied that appellant's plea was informed and voluntary. The court also noted that appellant had a great deal of time and the assistance of an attorney prior to the date of his plea.

At the plea hearing, appellant specifically denied being on any medications that would affect his ability to understand the proceedings, tracked and remained fully engaged in the proceedings, and was able to recall specific facts and dates sufficient to enter pleas to all five offenses. Moreover, appellant does not reference any evidence that shows that the district court's observations and trustworthiness assessments were erroneous or resulted in manifest injustice. Based on these findings, we conclude that the

district court did not abuse its discretion when it determined that appellant's plea was voluntary and intelligent.

B. Violated Agreement

We review de novo appellant's claim that the district court violated his plea agreement. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). A defendant may withdraw his plea if an unqualified promise is made as to a sentence to be imposed and that promise is unfulfilled. *State v. Kunshier*, 410 N.W.2d 377, 379 (Minn. App. 1987), *review denied* (Minn. Oct. 21, 1987). The dispositive issue here is whether appellant received an unqualified promise regarding the proposed 90-day cap on jail time.

At appellant's plea hearing, the district court informed appellant that his sentence was specifically conditioned upon his post-plea behavior, and, when asked if he understood, appellant replied, "That's a yes." Thus, appellant agreed and understood that any cap on jail time was conditioned on his cooperation with the PSI. A review of the prosecutor's plea offer letter and the record from the hearing also indicate that, while a 90-day executed sentence was anticipated, appellant was informed that such a cap was not an unqualified promise. By twice failing to cooperate with the PSI, appellant was in breach of his commitment to the court. In this setting, where the proposed cap on jail time was not an unqualified promise and the district court clearly stated appellant's responsibilities, the district court had discretion to order a sentence longer than the proposed 90-day executed jail sentence. Based on this record, we conclude that the sentence ordered by the district court was not a violation of appellant's plea agreement

and that the district court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea.

Affirmed.

Dated: