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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2111**

State of Minnesota,
Respondent,

vs.

Jose Mardoque Armas,
Appellant.

**Filed December 23, 2008
Affirmed
Johnson, Judge**

Clay County District Court
File No. CR-07-290

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

Brian J. Melton, Clay County Attorney, 807 11th Street North, P.O. Box 280, Moorhead, MN 56560 (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 Johnson, Presiding Judge; Ross, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Jose Mardoque Armas pleaded guilty to a charge of attempting to cash a forged check. Armas asked the district court to delay his sentencing hearing and to release him pending sentencing, but the district court denied his request. Armas then moved to withdraw his guilty plea, stating that he had pleaded guilty so that he could obtain his immediate release, but the district court denied the motion. We conclude that the district court did not abuse its discretion by denying the motion to withdraw the guilty plea and, therefore, affirm.

FACTS

On June 15, 2007, Armas was arrested at Midwest Bank in the city of Barnesville after he attempted to cash a forged check in the amount of \$39,980.60. According to the complaint, Armas told the bank's president that he was associated with an investment group in California that had received the check from a person in the United Kingdom who wished to invest in real estate. The Barnesville bank, however, had been contacted earlier that day by Midwest Bank in the city of Detroit Lakes with information that Armas had entered the bank in Detroit Lakes and attempted to cash a check that was drawn on the checking account of a local company. The Detroit Lakes bank's investigation revealed that the local company had issued a check with that check number but to a different payee and in the amount of \$824.26. Armas was charged with one count of offering a forged check of more than \$35,000 in violation of Minn. Stat. § 609.631, subds. 3, 4(1) (2006).

On July 2, 2007, Armas pleaded guilty pursuant to a plea agreement with the state. Armas and the state agreed that he would receive a stay of imposition of his sentence and 90 days of probationary jail time. The plea agreement contained no provision for release pending sentencing. The district court accepted the plea.

Immediately after the district court accepted his plea, Armas requested a delayed sentencing date and requested that he be released pending the pre-sentence investigation. His attorney explained that he had been in custody for almost three weeks, that he was the sole provider for his family, and that his wife, who lived in California, was due to give birth approximately five weeks later. The state objected to Armas's requested release because of his lack of ties to the community and the severity of his offense. The district court denied Armas's request for release pending sentencing because "[t]hat is not part of the plea agreement."

Armas responded to the district court's denial of his request to be released by saying:

Your Honor, if that's the case, I would like to withdraw my plea because I did plead guilty based on the fact that I needed to get out. I have a family, I have four children, 2, 3, 4 and 10. My wife is due on August 10. I am the only one who works.

The district court denied Armas's motion to withdraw his guilty plea on the ground that a release "was not a part of the plea agreement that's been described to me nor is it in the written plea petition that a condition of the plea is that you be released now." Armas stated that his attorney had told him that he would be released if he pleaded guilty. Later

he clarified his understanding by stating that, “this morning, I found out that he told me that he wasn’t sure about that, but the chances were that it might happen.”

At the sentencing hearing on August 8, 2007, the district court, in accordance with the plea agreement, stayed imposition of Armas’s sentence for 20 years on the condition that he submit to supervised probation for up to 20 years. The district court ordered Armas to serve 55 days in the county jail but awarded him credit for time served in the same amount. Thus, Armas was released on the day of his sentencing hearing. Armas appeals from the denial of his motion to withdraw his guilty plea.

DECISION

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007); *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). There are two situations in which a defendant may withdraw a guilty plea. 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. 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).

Armas’s motion invokes the “fair and just” standard of subdivision 2 of rule 15.05. Even before sentencing, criminal defendants “may not withdraw their guilty pleas for simply any reason.” *Farnsworth*, 738 N.W.2d at 372. When a defendant moves to withdraw his guilty plea before sentencing, the district court may, “[i]n its discretion,”

grant the request, if the court determines that “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. The Minnesota Supreme Court has made clear that a guilty plea is a serious decision that is not to be taken lightly or reconsidered on a whim:

The tender and acceptance of a plea of guilty is and must be a most solemn commitment. While the state has no reason to imprison a man for a crime which he did not commit, “[w]e are not disposed to encourage accused persons to ‘play games’ with the courts at the expense of already overburdened calendars and the rights of other accused persons awaiting trial” by setting aside judgments of conviction based upon pleas made with deliberation and accepted by the court with caution.

Chapman v. State, 282 Minn. 13, 16, 162 N.W.2d 698, 700 (1968) (alteration in original) (quoting *Everett v. United States*, 336 F.2d 979, 984 (D.C. Cir. 1964)). The defendant bears the burden of establishing a fair and just reason for the plea withdrawal. *Farnsworth*, 738 N.W.2d at 371.

Armas argues that it would have been fair and just for the district court to allow him to withdraw his guilty plea because he made his motion in good faith immediately after learning that he would not be released pending sentencing. He emphasizes that the state would not have been prejudiced by the withdrawal of his guilty plea so soon after its entry. In response, the state does not identify any way in which it would have suffered substantial prejudice if the district court had permitted Armas to withdraw his guilty plea

only minutes after it was entered. In that sense, the state did not have strong reasons for resisting Armas's motion.

But Armas also did not have strong reasons in support of his motion. It may be true that Armas had legitimate and admirable personal reasons for wanting to return to his home in California, but he did not have a good reason for believing that pleading guilty on that day would cause him to be immediately released. In essence, Armas ignored his attorney's warnings that pleading guilty on that day might not lead to his release and made an erroneous assumption that he would be released pending sentencing. Armas could have sought to clarify the situation in advance of his plea, but instead he chose to go forward and plead guilty without any assurance that he would be released. During the early part of the plea proceeding, Armas stated that he had not received any promises or threats to encourage him to plead guilty. Later in the hearing, after Armas had moved to withdraw, the district court noted, "You have acknowledged that you knew when you pled guilty this morning that there was no guarantee that you would be released and that there was some question." Thus, Armas's reasons for wanting to withdraw his guilty plea are insufficient to require the district court to grant the motion. *See Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989) (stating that district court should consider defendant's reason as well as potential prejudice to state when determining whether withdrawal would be fair and just).

We note that neither the state nor the district court made any promises to Armas that were not fulfilled. *See State v. Kunshier*, 410 N.W.2d 377, 379 (Minn. App. 1987) (stating that "a defendant should be allowed to withdraw his guilty plea if [a] promise is

not fulfilled”), *review denied* (Minn. Oct. 21, 1987). In addition, this is not a case in which the parties made a mutual mistake concerning a material fact. *See State v. DeZeler*, 427 N.W.2d 231, 235 (Minn. 1988) (holding that withdrawal of guilty plea was proper because of mutual mistake concerning criminal-history score and resulting sentence). Rather, this case is like *Kim*, where the defendant did not fully realize the consequences of his guilty plea. The supreme court affirmed the denial of a motion to withdraw, holding that the defendant’s mistaken understanding was caused by his own failure to heed his counsel’s advice and to explore the potential consequences of a guilty plea. *Kim*, 434 N.W.2d at 266-67.

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

Affirmed.