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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2417

Jonathan Edward Woods, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 23, 2008
Affirmed
Connolly, Judge

Stearns County District Court
File No. 73-K2-06-4086

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

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

Janelle P. Kendall, Stearns County Attorney, Sarah E. Hilleren, Assistant County Attorney, Administration Center, RM 448, 705 Courthouse Square, St. Cloud, MN 56303 (for respondent)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

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

CONNOLLY, Judge

Appellant argues that his motion to withdraw his guilty plea should be analyzed under the fair-and-just standard because he wanted to withdraw his plea prior to sentencing even though no motion was brought at that time. He also asserts that he received ineffective assistance of trial counsel because his attorney failed to make such a motion prior to sentencing. Because the district court properly applied the manifest injustice standard, appellant's plea was accurate, voluntary, and intelligent, and there was no ineffective assistance of trial counsel, we affirm.

FACTS

Appellant Jonathan Edward Woods was charged in Stearns County District Court with second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2006) and Minn. Stat. § 609.11 (2006), false imprisonment in violation of Minn. Stat. § 609.255, subd. 2 (2006), and possession of a firearm by a felon in violation of Minn. Stat. § 609.165, subd. 1b (2006) after an altercation with his girlfriend. Appellant was offered two options: he could plead guilty to second-degree assault and receive a prison sentence of 49 months, or he could plead guilty to the felon-in-possession charge with a 60-month prison sentence. Appellant pleaded guilty to the felon-in-possession charge. At the time of the plea, appellant did not indicate why he chose to accept the longer sentence.

The parties appeared for sentencing on January 19, 2007. At that time, appellant's counsel explained the reasoning behind appellant's plea to the felon-in-possession charge.

> [Appellant] was presented with two offers; one was plead to the second degree assault with bottom of the box 49-month commit to prison or the felon in possession which was a mandatory minimum 60-month prison commit. At the time when [appellant] and I discussed this matter [appellant] and I fully discussed what could occur as far as when he's placed on supervised release from the Commissioner of Corrections and it was our understanding from [appellant's] information that he gathered from Department of Corrections that if he pled to the felon in possession, that he would not be placed on what's called public risk monitoring, if he pled to the felon in possession. If he pled to the second degree assault he would be placed on public risk monitoring which is a more intensive supervision, supervised release. During this interim commit he was notified by the Commissioner of Corrections that based on the fact that he was charged with second degree assault and only pled guilty to the felon in possession they still were going to place him on public risk monitoring, so basically to sum it up he will be serving 60 months rather than 49 months based on his misunderstanding of what type of supervised release he was going to be placed on at the time of his supervised release.
>
> I spoke to [the prosecutor]. [Appellant's] request was to withdraw his plea of guilty on the felon in possession and enter a plea of guilty to the second degree assault. That was declined, but we would like to just place that on the record as far as that's what we have been talking about and discussing. Our assumption was that the Court was also going to be taking that position and declining his request to withdraw his plea.

Appellant did not move to withdraw his plea at sentencing. He was subsequently sentenced to 60 months in prison.

On August 14, 2007, appellant filed a motion to withdraw his guilty plea. Appellant did not file his motion as a petition for postconviction relief, but the district court treated it as one. After conducting a hearing, the district court denied appellant's request. This appeal follows.

D E C I S I O N

A criminal defendant does not have an absolute right to withdraw a guilty plea. *Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002). The district court may allow a defendant to withdraw a guilty plea *before* sentencing "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 postconviction court may allow a defendant to withdraw a guilty plea *after* sentencing if the motion is timely and withdrawal is "necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. The applicable standard to apply when evaluating a request for plea withdrawal is a question of law, which this court reviews de novo. *See Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003) (discussing standard of review in plea-withdrawal cases).

Appellant argues that the fair-and-just standard should have been applied to his motion to withdraw his guilty plea because he wanted to withdraw his plea prior to sentencing. Other than an affidavit from appellant, the record does not support this assertion. Appellant's counsel explicitly declined to make a formal plea-withdrawal motion at sentencing. When appellant was asked by the district court if he had anything to say before imposition of sentence, he answered "[n]o, I don't." Therefore, there is no indication in the transcript that appellant wished to withdraw his plea at sentencing, and no such motion was made. The district court did not err by refusing to apply the fair-and-just standard.

Appellant brought a motion to withdraw his guilty plea, considered as a petition for postconviction relief by the district court, seven months after sentencing. "The decisions of a postconviction court will not be disturbed unless the court abused its discretion." *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). Likewise, a reviewing court will reverse the district court's denial of a request to permit withdrawal of a guilty plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). The district court considered this request under the manifest-injustice standard.

A manifest injustice occurs if a plea is not accurate, voluntary, and intelligent. *Kaiser*, 641 N.W.2d at 903. "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." *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). But the defendant need only be aware of the direct consequences. *See Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998) ("While we have said that for a guilty plea to be intelligent the defendant must be aware of the consequences of pleading guilty, it is the direct consequences of the guilty plea to which we refer."). "[D]irect consequences are those which flow definitely, immediately, and automatically from the guilty plea—the maximum sentence and any fine to be imposed." *Id.* "[I]gnorance of a collateral consequence does not entitle a criminal defendant to withdraw a guilty plea." *Id.* Appellant argues that being subjected to public risk monitoring is a direct consequence of his decision to plead guilty because it is a further punitive measure. The Minnesota Supreme Court rejected that logic in an analogous case

by stating that "[t]he duty to register as a predatory offender is a regulatory rather than punitive consequence and therefore is a collateral consequence of appellant's guilty plea." *Kaiser*, 641 N.W.2d at 907. The district court summarized:

> Whether [appellant] is subject to public risk monitoring is not a definite, immediate, or automatic consequence of his plea, nor is it punitive and part of [appellant's] sentence. The decision of the Department of Corrections to classify [appellant] as an offender who requires public risk monitoring is a discretionary act within the department. Furthermore, the Minnesota Supreme Court has held that consequences imposed for the purpose of protecting public safety—such as a heightened level of supervision for certain offenders—are collateral consequences. *Kaiser*, 641 N.W.2d at 906 (holding that predatory offender registration is a collateral consequence because it "seeks to increase public safety.").

Appellant further argues that, unlike in *Kaiser*, he affirmatively inquired about this collateral consequence and was given false information. Therefore, because he relied on that information, a manifest injustice occurred. Appellant provides no support for this assertion. Furthermore, appellant does not even identify who gave him the erroneous information. There is no suggestion that the state made any promises to appellant with respect to public risk monitoring in exchange for a plea of guilty. It is clear from the record however, that appellant understood the length of his sentence. Because he understood the maximum sentence to be imposed, appellant's plea was intelligent, regardless of any misunderstanding as to collateral consequences.

Lastly, in a footnote, appellant asks this court to decide from the record that appellant received ineffective assistance of counsel because there was no tactical reason for trial counsel not to make a motion for withdrawal of appellant's guilty plea at

sentencing.[1] Respondent argues that because this issue was not addressed by the district court, it cannot be considered on appeal.

Appellant did not claim that there was ineffective assistance of counsel in his postconviction petition for relief. The state pointed this fact out at the postconviction hearing, and appellant responded that he could amend the pleadings to add this claim. The state articulated that it would not object to the district court allowing appellant leave to amend the petition. Ultimately, the district court did not consider this issue because appellant never made it clear whether or not he would be asserting this claim. This court will generally not decide an issue not raised in the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

However, because we have discretion to reach any issue as the interest of justice may require,[2] we address appellant's claim of ineffective assistance of counsel to note that it does not require reversal. Appellant argues that his trial counsel provided ineffective assistance by failing to file a formal motion to withdraw appellant's guilty plea prior to sentencing. Appellant's counsel seemed convinced that the district court was not going to allow the plea to be withdrawn. Because counsel failed to bring a motion to withdraw appellant's plea prior to sentencing, appellant was subjected to the more rigorous manifest-injustice standard rather than the fair-and-just standard. A district court, however, can properly deny a motion to withdraw a guilty plea based on a

[1] This is untrue. If appellant's counsel had made a motion to withdraw that was granted by the district court, it was possible that his client would have been facing additional jail time because the state would not offer the original plea bargain again.

[2] Minn. R. Civ. App. P. 103.04.

misunderstanding of collateral consequences under the fair-and-just standard. *See Kim v. State*, 434 N.W.2d 263, 266-67 (Minn. 1989) ("Rather, the defendant sought to withdraw on the ground that he did not realize the collateral consequences of his guilty plea . . . . Balancing all of the relevant factors, the trial court concluded that defendant did not demonstrate a fair and just reason to withdraw his plea. Our role is limited to determining whether the trial court abused its discretion in so concluding, and we hold that it did not."). Based on this analysis, it appears that even if appellant's lawyer had brought such a motion prior to sentencing, the district court could have denied it under the more lenient standard without abusing its discretion. Therefore, there was no ineffective assistance of trial counsel.

Affirmed.