STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0118

State of Minnesota,
Respondent,

vs.

Tobias O. Smith,
Appellant.

Filed December 16, 2008
Affirmed
Bjorkman, Judge

Olmsted County District Court
File No. 55-CR-06-4089

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

Mark A. Ostrem, Olmsted County Attorney, Eric M. Woodford, Assistant County Attorney, 151 Southeast 4th Street, Rochester, MN 55904 (for respondent)

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

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

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

BJORKMAN, Judge

Appellant challenges the district court's denial of his motion to withdraw a guilty plea. Because the district court did not abuse its discretion in finding that appellant's guilty plea was knowing, voluntary, and intelligent, we affirm.

FACTS

Appellant Tobias Smith was charged with one count of aiding and abetting felony aggravated forgery in violation of Minn. Stat. §§ 609.625, subd. 1, .05 (2004), after he and his girlfriend passed a counterfeit $100 bill at a Super America gas station in Rochester. This exchange, involving primarily appellant's girlfriend, was captured on videotape and reported to the police. Appellant's girlfriend told investigating officers that she received the counterfeit bill from appellant.

Appellant was incarcerated at the time the state filed the felony-aggravated-forgery charge against him. He was initially represented by a public defender but moved to terminate that representation and have a new attorney appointed because of a perceived "conflict of interest . . . with the discovery and certain things that should have been brought up here in the proceedings." Appellant was also concerned his attorney had a scheduling conflict on appellant's initial trial date and his trial had to be rescheduled.

The public defender's office agreed to provide a new attorney for appellant, who appeared with him at a pretrial conference on July 12, 2007. At that time, the new attorney had not yet reviewed the file and requested an omnibus hearing date, which the district court set for July 17. At the July 17 hearing, counsel requested that the hearing

date be extended an additional week. Appellant was present at the July 17 hearing and did not object to his counsel's preparedness or competence. On July 24, instead of proceeding with the scheduled omnibus hearing, appellant entered an *Alford* plea of guilty to the charge of felony aggravated forgery. For its part of the agreement, the state recommended that the district court impose only a gross misdemeanor sentence.[1]

In his guilty plea petition, appellant admitted that "[t]he State would be able to prove that [he] aided and abetted [his girlfriend] to pass a $100 counterfeit bill at a Super America in Rochester, MN." He acknowledged that he was "entering [his] plea of guilty freely and voluntarily and without any promises except" the state's agreement to recommend a gross misdemeanor sentence. The district court "accept[ed] the plea as voluntarily, intelligently and accurately made" and sentenced appellant to one-year imprisonment, to be served concurrently with the sentence he was already serving.

Approximately two weeks after his plea and sentencing hearing, appellant sent a letter to the district court asking to withdraw his guilty plea. At the hearing on the motion, appellant was represented by another public defender. The district court denied the motion, finding that there was no "manifest injustice" warranting withdrawal of the plea. This appeal follows.

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[1] In March 2005, the aggravated forgery charge was a felony offense. Minn. Stat. § 609.625, subd. 1, .02, subd. 2 (2004). However, by the time of the plea and sentencing hearing in July 2007, the legislature had enacted a counterfeit-currency statute under which appellant would have been charged with only a gross misdemeanor offense based on the value of the currency involved. Minn. Stat. § 609.632, subds. 3, 4(4), .02, subd. 4 (2006).

D E C I S I O N

This court reviews denials of motions to withdraw guilty pleas under an abuse-of-discretion standard. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).[2]

A defendant does not have an absolute right to withdraw a guilty plea once it has been entered. *Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002). "Public policy favors the finality of judgments and courts are not disposed to encourage accused persons to play games with the courts by setting aside judgments of conviction based upon pleas made with deliberation and accepted by the court with caution." *Id.* (quotations omitted). A defendant may, however, withdraw a guilty plea after sentencing when 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 his guilty plea was not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). A guilty plea is intelligent only if the criminal defendant is aware of his rights under the law and the direct consequences of pleading guilty. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

Here, the district court denied appellant's request to withdraw his plea because it did not "see anything about this situation that indicates . . . that this was anything other than a voluntarily entered into plea bargain where, despite [appellant's] assertion of

[2] Appellant characterizes his motion to withdraw his guilty plea as a postconviction petition, but it appears, because the time for direct appeal had not expired, the district court treated the letter as a post-sentencing motion. *See* Minn. Stat. § 590.01, subd. 1 (2006) (postconviction remedy available only after time for direct appellate relief has expired). And even if the district court had treated appellant's letter as a postconviction petition, our standard of review is the same. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001).

innocence, [he] saw a favorable sentencing arrangement that [he] wanted to take." The district court explained to appellant:

> [T]he time for you to, you know, stand up for yourself, as you say, was when the Court asked you are you voluntarily entering this plea. You said you were. . . . [T]he terms of the deal [you took] were open and obvious, everyone knew you were asserting your innocence, but you were being given gross misdemeanor sentencing treatment of this, . . . which could be a . . . pretty favorable outcome for you in exchange for your guilty plea.

Appellant argues that his plea was not knowing, voluntary, and intelligent because it was induced by fear that he would not receive a fair trial because of his new attorney's lack of preparation. Appellant formed his impressions of his attorney's preparedness based on their conversations and the difficulties counsel apparently had with enforcing discovery requests. Appellant cites the transcript of the November 19, 2007 motion hearing to support this argument, but the pages he references do not establish that counsel was unprepared or that appellant was otherwise threatened or coerced into accepting the plea agreement. Appellant does not allege or present this court with reviewable claims of discovery violations, prosecutorial misconduct, or ineffective assistance of counsel, and does not offer any further evidence supporting his allegation that fear induced his guilty plea.[3]

[3] In his pro se appellate brief, appellant alleges prosecutorial misconduct, discovery violations, conflict of interest, violation of due-process rights, and ineffective assistance of counsel, without any supporting argument or authority. Appellant's only legal argument merely restates appellate counsel's brief, raising only the issue of the voluntariness of his plea. Even if we were to consider appellant's ineffective-assistance-of-counsel claim, we conclude that it has no merit. Appellant has alleged no facts or circumstances that establish his attorney's conduct fell below an objective standard of

The record provides ample support for the district court's findings. During the plea hearing, appellant expressly acknowledged that he understood the plea agreement, was pleading guilty voluntarily, and knew he was giving up his right to a trial. The charge to which he pleaded and the terms of the plea agreement were discussed on the record; he plainly understood the nature of the hearing. Appellant also admitted that if the case proceeded to trial, the state would very likely be able to prove that he committed felony aggravated forgery, and that he wanted "to take advantage of [the plea agreement]" in order "to have a gross misdemeanor on [his] record instead of a felony." Appellant agreed that this was "a pretty good deal."

The record before us establishes that appellant was aware of his rights under the law and the direct consequences of pleading guilty. *Alanis*, 583 N.W.2d at 577. The district court did not abuse its discretion in denying appellant's motion and the court's findings are not clearly erroneous.

Affirmed.

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reasonableness and that, but for substandard representation, the result would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 691, 104 S. Ct. 2052, 2064, 2066 (1984); *Hathaway v. State*, 741 N.W.2d 875, 879 (Minn. 2007).