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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0459**

State of Minnesota,
Respondent,

vs.

Abdirizak Dirie Yusuf,
Appellant.

**Filed April 21, 2009
Affirmed
Klaphake, Judge**

Hennepin County District Court
File No. 27-CR-06-086675

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

Michael O. Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

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

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Abdirizak Dirie Yusuf pleaded guilty to one count each of first-degree criminal sexual conduct and first-degree aggravated robbery and to two counts of second-degree assault in connection with a violent home invasion that occurred on December 17, 2006. As part of the plea agreement, appellant acknowledged a probable sentencing range between 120 and 240 months, waived a sentencing jury, and conceded that there was an aggravating sentencing factor of multiple victims. Before sentencing, however, appellant asked to withdraw his guilty plea, claiming it would be fair and just for the court to permit withdrawal. The district court refused appellant's request and sentenced him to concurrent executed sentences totaling 180 months on the offenses. This appeal followed.

Because the district court did not abuse its discretion by refusing to permit withdrawal of the plea, we affirm.

DECISION

A defendant may withdraw a guilty plea, either before or after sentencing, upon timely motion and proof that withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. The district court may permit a defendant to withdraw a guilty plea before sentence is imposed, "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 prosecutor by reason of actions taken in reliance upon the defendant's plea." *Id.*, subd. 2. This is a less demanding

standard than manifest injustice. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Here, appellant alleges that the district court abused its discretion because it would have been fair and just to permit appellant to withdraw his plea; he does not claim manifest injustice.

There is no absolute right to withdraw a guilty plea; permitting a defendant to withdraw a guilty plea for any reason would undermine the plea process and make it “simply [] a means of continuing the trial to some indefinite date in the future when the defendant might see fit to come in and make a motion to withdraw his plea.” *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989) (quotation omitted). Appellant has the burden of demonstrating a fair and just reason to withdraw his plea. *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007). We will reverse the district court’s decision to deny withdrawal of a plea “only in the rare case” when the district court abuses its discretion. *Kim*, 434 N.W.2d at 266.

Appellant’s reasons for requesting withdrawal of his plea were that he had made a mistake by pleading guilty and he believed he was innocent. Appellant was thoroughly informed of his rights, by both counsel and the court; he acknowledged a factual basis for the plea; he does not allege that he did not understand the proceedings or that he was coerced into pleading guilty or that counsel did not adequately represent his interests. His plea was the result of deliberate negotiation, giving him time to consider all aspects of the plea. He was correctly advised about the possible range of the sentence and the

sentence fell within that range. Based on these circumstances, the district court did not abuse its discretion by refusing to permit withdrawal of the plea.

Affirmed.