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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1009**

State of Minnesota,
Respondent,

vs.

Garland Dean Barnes,
Appellant.

**Filed June 23, 2009
Affirmed
Ross, Judge**

Carlton County District Court
File No. 09-CR-06-3434

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

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Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

ROSS, Judge

This appeal requires us to decide whether the district court abused its discretion when it denied Garland Barnes's motion to withdraw his guilty plea to a first-degree controlled substance crime based on his change of heart, his claim of innocence, his claim of coercive pressure to plead guilty, and his belief that he would remain free until his sentencing. We conclude that the district court did not abuse its discretion by denying Barnes's motion, and we affirm.

FACTS

The state charged Barnes with one count of controlled substance crime in the first degree after a state trooper arrested him and found two large bags of cocaine in a duffle bag in Barnes's car. Before trial, Barnes was released and free on bail for a long period during which he and the state volleyed offers and counteroffers of terms for a possible plea agreement. Plea negotiations stalled, but the state renewed its latest plea offer the day of Barnes's jury trial after Barnes showed up two hours late. The offer contemplated a prison sentence of 84 months and had no provision regarding Barnes's continued release before sentencing. Barnes discussed the offer with his counsel and then accepted it. The district court conducted the colloquy directed by Rule 15.01 of the Rules of Criminal Procedure and, convinced that Barnes was guilty and that he understood his rights, accepted the guilty plea. The district court then scheduled sentencing for the next day and ordered Barnes to be taken into custody.

Barnes immediately protested. He maintained that he thought that he would continue to be free on bail until his sentencing. He then moved to withdraw his guilty plea. The district court did not rule on the motion, and Barnes was taken into custody until his sentencing the following day.

Barnes tried to withdraw his guilty plea again at the sentencing. He maintained that he was innocent, that he had pleaded guilty under duress, and that he had not had enough time to consider the plea offer before accepting it. The district court recounted the proceedings from arrest to sentencing, including the plea negotiations. It specifically noted that Barnes had more than one and a half years to decide whether to plead guilty and come to terms with the state. The district court concluded that no grounds existed to justify granting Barnes's motion to withdraw his guilty plea, and it denied the motion. It sentenced Barnes to 84 months' imprisonment. Barnes appeals.

DECISION

Barnes contends that the district court abused its discretion by denying his motion to withdraw his guilty plea. We will reverse the denial of a motion to withdraw a guilty plea only if the district court abused its discretion by denying the motion. *State v. Abdisalan*, 661 N.W.2d 691, 693 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003). A defendant does not have an absolute right to withdraw a guilty plea. *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007). The district court may allow a guilty plea to be withdrawn before sentencing "if it is fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2. The defendant has the burden to prove that a fair and just reason exists for the motion to withdraw the guilty plea. *Farnsworth*, 738 N.W.2d at 371. When

deciding a motion to withdraw a guilty plea under subdivision 2 of rule 15.05, the district court weighs the defendant's reasons against any prejudice suffered by the state for actions taken in reliance on the defendant's plea.

Barnes contends that his innocence is a substantial reason establishing his right to withdraw his guilty plea. But he already established his guilt at the plea hearing by admitting to possessing more than 25 grams of cocaine, and the state was prepared to introduce physical evidence of this fact. The district court had no obligation to believe Barnes's new claim of innocence at sentencing. *See State v. Tuttle*, 504 N.W.2d 252, 256–57 (Minn. App. 1993) (affirming district court's decision to reject defendant's claim of innocence when guilty plea contained admission establishing guilt). The record also supports the reasonable conclusion that Barnes was not apparently seeking to change his plea because of his supposed innocence, but because he was disappointed that his freedom was coming to an abrupt end.

Barnes also contends that he pleaded guilty only because time-pressure and the weightiness of the looming sentence caused him duress. He argued to the district court that he had only one hour to consider the state's offer. But it is clear that Barnes actually had nearly two years to decide whether to plead guilty, and the offer that he accepted on the day of his trial was essentially the same offer that was previously made. Barnes was not blindsided by the offer as he and the state had a history of past negotiations. The district court also had a significant basis not to be persuaded by Barnes's claim of intimidation by the possibility of a 189-month sentence. *See State v. Ecker*, 524 N.W.2d

712, 719 (Minn. 1994) (noting that defendant's motivation to avoid more charges or serious penalties is insufficient to invalidate guilty plea).

Barnes also claims that his motion to withdraw his plea should be granted because his plea was based on his belief that he would be released until sentencing. Our review of the agreement informs us that the district court properly concluded that Barnes's belief was not based on any promise made by the state. *See Kochevar v. State*, 281 N.W.2d 680, 688 (Minn. 1979) (noting that unqualified promises that are part of plea agreement "must be honored or else the guilty plea may be withdrawn"). The prosecutor never mentioned Barnes's continued release as part of the agreement, and Barnes's plea petition also did not mention his presentence custody. Barnes signed the petition, which noted that no one "made any promises . . . to obtain a plea of guilty" from him. This negates any possible promise from the state. *See State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (noting that defendant's signed petition negated his claim of promised probation). After examining all of Barnes's claims, the district court lacked sufficient reasons to grant his motion. *See Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989) (noting that district court should "give due consideration" to defendant's presented reasons as well as possible prejudice to state by granting the motion under fair and just standard).

Barnes argues that the state suffered no prejudice because he moved to withdraw his guilty plea immediately after its entry. Although the state suffered some prejudice by the time sentencing occurred the next day because the prosecutor had released witnesses from subpoena and the district court had released the jury, the prejudice does not appear to have been substantial. But this does not weigh in favor of reversal because Barnes has

established no other reason to question the district court's denial of his motion to withdraw the plea. Barnes may not have considered the full consequences of his guilty plea, but the district court did not abuse its discretion by denying his motion to withdraw the plea.

Affirmed.