STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0742

State of Minnesota,
Respondent,

vs.

Michael A. Knudson,
Appellant.

Filed August 11, 2009
Affirmed
Collins, Judge[*]

McLeod County District Court
File No. 43-K1-05-000374

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

Michael K. Junge, McLeod County Attorney, Mitchell Ristine, Assistant County Attorney, McLeod County Courthouse, 830 11th Street East, Glencoe, MN 55336 (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 Minge, Presiding Judge; Worke, Judge; and Collins, Judge.

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

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

COLLINS, Judge

Appellant challenges the district court's denial of his postconviction petition to withdraw his guilty plea, arguing that he was induced to enter the guilty plea by a genuine misapprehension of his legal position. Appellant also argues pro se that he received ineffective assistance of counsel. We affirm.

D E C I S I O N

Michael Knudson entered an *Alford*[1] plea of guilty to receiving stolen property in violation of Minn. Stat. § 609.53, subd. 1 (2004), charged after police searched his residence and discovered approximately $35,000 worth of stolen property. Six months later, before he was sentenced, Knudson moved to withdraw his guilty plea. His motion was denied, as was his request for reconsideration of the decision, and he appeals.

A petitioner seeking a postconviction remedy must establish facts that show, by a preponderance of evidence, entitlement to relief. Minn. Stat. § 590.04, subd. 3 (2004). We review the denial of a postconviction petition under an abuse-of-discretion standard. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005).

I.

A defendant does not have an absolute right to withdraw a guilty plea. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A defendant may withdraw a guilty plea before or after sentencing if withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. Before sentencing, the district court may permit a

[1] *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970).

defendant to withdraw a guilty plea "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.

Manifest injustice

A manifest injustice exists when a defendant can demonstrate that a guilty plea was not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). Here, the district court found that Knudson failed to demonstrate that withdrawal of his guilty plea was necessary to correct a manifest injustice. The district court also found that the plea was accurate, voluntary, and intelligent, concluding that: (1) a sufficient factual basis for the plea was presented on the record; (2) there was no evidence of coercion; and (3) Knudson was fully knowledgeable of his rights and understood that he was giving up the rights detailed in his rule 15 guilty-plea petition.

To establish a manifest injustice, Knudson must demonstrate that his guilty plea was not accurate, voluntary, and intelligent. The record undeniably supports that the plea was accurate and voluntary. At the plea hearing, the state detailed its intended trial evidence comprising four pages of hearing transcript and a list of the stolen items that were found on Knudson's property. Knudson also testified that he entered his plea freely and voluntarily and that no one had made promises or threats in exchange for the plea.

The thrust of Knudson's argument is that his plea was unknowing because it was based on a genuine misapprehension of his legal position. Knudson contends that his attorney's advice about accepting the plea agreement was based on an erroneous

understanding as to how an inculpatory letter that he had written to his girlfriend had come into the state's possession.

Our review of the record does not establish that Knudson's attorney's misunderstanding about the circumstances by which the state obtained the letter resulted in Knudson having a genuine misapprehension of his legal position. First, the guilty plea and conviction did not rely on the admissibility of the letter. Rather, Knudson's conviction was based on the evidence of stolen items that were found on his property. When Knudson entered his guilty plea, he acknowledged "that if the evidence was presented to the jury *as outlined by* [*the state*] to the court that it would be substantially likely that a jury would find [him] guilty of the offense." (Emphasis added). The evidence outlined by the state did not include a reference to the letter.

Second, because evidence would demonstrate that the letter was obtained by the state through a routine inmate-property-inventory procedure, it appears likely that the district court would have found the evidence to be admissible. *See Illinois v. Lafayette*, 462 U.S. 640, 648, 103 S. Ct. 2605, 2611 (1983) (holding that "it is not 'unreasonable' for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures"); *State v. Cuypers*, 481 N.W.2d 553, 557 (Minn. 1992) (holding that a search of outgoing mail based on a jail regulation that is constitutionally valid is not an unreasonable search and that "[a]n individual's reasonable expectation of privacy is necessarily restricted . . . when the individual asserting that expectation is incarcerated").

Finally, the district court questioned Knudson at length regarding his understanding of his guilty plea, the evidence that would be presented at a trial, Knudson's communications with his attorney before entering the plea, and his understanding of the rights he was giving up by pleading guilty. Knudson assured the district court that he had signed each page and understood the contents of the rule 15 guilty-plea petition, which included the statement that Knudson had "a right to a pre-trial hearing before a judge to determine whether or not the evidence the prosecution has could be used against [him] if [he] went to trial in this case." Knudson circled the responses on the petition form that indicated he did not request and was waiving such a pre-trial hearing. Thus, Knudson was fully aware that he had the right to challenge the letter's admissibility and knowingly waived that right.

Based on our thorough review of the record, the district court did not abuse its discretion by concluding that Knudson failed to demonstrate that withdrawal of his guilty plea was necessary to correct a manifest injustice.

Fair and just

The district court also concluded that it would not be fair and just to grant Knudson's motion. The district court, being in the position to assess Knudson's credibility, found that Knudson was not "induced to plead guilty primarily due to a misapprehension regarding the admissibility of the letter." This finding is supported by Knudson's arguments at the sentencing hearing, which focused primarily on his attorney's alleged inadequate representation and did not allude to the letter. Additionally, as discussed above, Knudson confirmed that he had entered his guilty plea based on the

evidenced outlined by the state, which did not include the letter. Thus, the district court's finding that the admissibility of the letter was not the primary inducement influencing Knudson's plea decision is supported by the record.

The district court also found that the state would be unduly prejudiced by withdrawal of the plea. The state has the burden of establishing that delay would cause undue prejudice to its case. *State v. Byron*, 683 N.W.2d 317, 322 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). Six months had passed since the plea hearing before Knudson moved to withdraw his plea. We have held that the fading of witnesses' memories over time may be prejudicial to the state. *Black v. State*, 725 N.W.2d 772, 776 (Minn. App. 2007). The state had subpoenaed "over two dozen" witnesses for Knudson's trial who were released from the subpoena upon Knudson's guilty plea. The Minnesota Supreme Court has recognized prejudice to the state due to dismissal of 26 subpoenaed witnesses in holding that a district court did not abuse its discretion by denying the defendant's motion to withdraw his plea. *Kim v. State*, 434 N.W.2d 263, 266-67 (Minn. 1989). Weighing the cumulative prejudice to the state against Knudson's weak justifications for withdrawal of his guilty plea, we cannot conclude that the district court abused its discretion by finding that it would not be fair and just to permit plea withdrawal.

II.

Knudson argues in his pro se brief that he received ineffective assistance of trial counsel. "The defendant must affirmatively prove that his counsel's representation 'fell below an objective standard of reasonableness' and 'that there is a reasonable probability

that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)).

Knudson has not pointed us to any specific facts, testimony, or evidence to support his contentions regarding ineffective assistance of counsel. Thus, he has failed to demonstrate that his attorney's representation fell below an objective standard of reasonableness or that the outcome would have been different but for her alleged unprofessional errors. Consequently, Knudson has not met his burden to prove ineffective assistance of counsel.

Affirmed.