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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1450**

State of Minnesota,
Respondent,

vs.

Vincent Ogonnaya Ofor,
Appellant.

**Filed August 3, 2010
Affirmed
Collins, Judge***

Ramsey County District Court
File No. 62-CR-08-1762

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Gerald T. Hendrickson, Interim St. Paul City Attorney, Michael A. Seasily, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Thomas C. Plunkett, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Hudson, 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.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant challenges his conviction of misdemeanor violation of an order for protection (OFP), arguing that the district court abused its discretion in denying his motion to withdraw his guilty plea before sentencing. We affirm.

FACTS

In early 2008 appellant Vincent Ofor was charged with gross misdemeanor harassment and multiple counts of misdemeanor violation of an OFP. Before the scheduled start of trial on June 16, 2008, Ofor's attorney informed the district court of Ofor's intended change of plea, and the court reviewed the terms of the plea agreement. The rule 15 plea petition at paragraph 10 detailed the agreement consisting of (1) Ofor's plea of guilty of a misdemeanor violation of an OFP, (2) dismissal of all remaining charges, (3) a stay of imposition of sentence, and (4) a 15-day cap on any jail time. Ofor signed the plea petition, which included a statement that he was pleading guilty freely and voluntarily and without any promises other than those set forth in the petition.

The terms of the plea agreement were read into the record. Ofor's attorney noted that the agreement did not include a provision that would automatically keep the conviction off of Ofor's record "but that we could come back and argue" for such relief. When the district court asked if there was anything else regarding the plea agreement, Ofor's attorney responded "anyone is free at any time to approach the Court regarding

either a vacate and dismiss¹ or an expungement and I think that's the situation here. But there is going to be a stay of imposition, that's part of the deal from the State."

Ofor was asked to plead and he responded that he was pleading guilty but that he had "no choice." The district court assured Ofor that he still had the choice to plead not guilty and have a trial. Ofor then attempted to explain why he had telephoned his wife (the charged violation of the no-contact OFP), and stated "I really don't feel like I have done anything wrong by that phone call." The district court expressed unwillingness to accept the guilty plea because Ofor had offered explanations that Ofor apparently believed were legal defenses. Ofor responded "let's just plead guilty." But because the district court was "really sensing some reluctance" on Ofor's part, the plea was rejected and the case was reinstated on the calendar for jury trial.

Later that day, after Ofor had taken the opportunity to further consult with his attorney, the case was recalled. The district court was persuaded that Ofor's earlier explanations were merely attempts to mitigate the seriousness and possible consequences of his conduct, and that Ofor understood that the explanations did not amount to legal excuses. The district court directed Ofor's attorney to read aloud from the plea petition and told Ofor to listen carefully and "[i]f you disagree with anything or have any questions, don't be hesitant to speak up." The attorney recited the terms of the agreement as stated in the plea petition, the rights Ofor was giving up, and what was required of Ofor until the day of sentencing to preserve the agreement for a 15-day cap on any jail

¹ "Vacate and dismiss" is apparently a tailored form of criminal disposition utilized in Ramsey County, for which we can find no authority. *See State v. Ohrt*, 619 N.W.2d 790, 792 (Minn. App. 2000) (noting no precedential authority for the disposition).

time. Ofor requested an explanation of the 15-day cap on jail time and his attorney stated that the district court “can’t give you more than 15 days of jail time when you come back for sentencing. We discussed that right?” Ofor confirmed that discussion and acknowledged his signature on the plea petition. After Ofor pleaded guilty and admitted the facts essential to the offense, the district court accepted the plea and ordered a presentence investigation.

At the sentencing hearing a month later, the district court reiterated the terms of the plea agreement stating “[t]he agreement in this case calls for a stay of imposition of sentence and a 15 day cap on any time to serve.” Ofor’s attorney then informed the court of Ofor’s wish to withdraw his guilty plea and have a trial. In articulating the standard to be applied to the plea-withdrawal motion, the district court stated that it would determine if it was “fair and just” to grant the motion giving “due considerations to the reasons advanced by [Ofor] in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of acts taken in reliance upon [Ofor’s] plea.”

After hearing arguments, the district court denied Ofor’s motion, finding that (1) significant time had been devoted to ensure all of Ofor’s concerns were addressed, (2) the plea was intelligent, knowing, and voluntary, and (3) there was no showing that it would be unjust or unfair to proceed to sentencing. The district court stayed the imposition of sentence on terms consistent with the plea agreement and stated that the deal was “very good for [Ofor] because it allows [him] to keep this off [his] record.” The prosecutor interrupted to note the absence of an agreement that would automatically remove the conviction from Ofor’s record upon completion of probation. The district

court immediately corrected itself and clarified that Ofor would have to come back at a later time to argue for such relief. This appeal followed.²

DECISION

A defendant does not have an absolute right to withdraw a guilty plea. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). Under the Minnesota Rules of Criminal Procedure, a defendant may withdraw a plea at any time to correct a manifest injustice or the district court “may allow the defendant to withdraw a plea at any time before sentence if it is fair and just to do so.” Minn. R. Crim. P. 15.05, subds. 1, 2. Appellate courts review a district court’s decision whether to allow a defendant to withdraw a guilty plea for an abuse of discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

The supreme court has stated that, though the fair-and-just standard “is less demanding than the manifest injustice standard, it does not allow a defendant to withdraw a guilty plea for simply any reason.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quotation omitted). The defendant has the burden of demonstrating that it is fair and just to withdraw a plea. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). In assessing whether it is fair and just to allow the withdrawal of a plea, the district court “must give 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

² The State Public Defender’s Office initially declined to represent Ofor on the appeal, and he requested the Minnesota Supreme Court to grant relief from the denial of representation. The supreme court stayed the appeal and Ofor’s request pending its decision in *Morris v. State*, 765 N.W.2d 78, 83 (Minn. 2009) (stating the right to counsel applies to a first review of misdemeanor convictions by post-conviction proceeding), following which the supreme court vacated the stays.

taken in reliance upon the defendant's plea." Minn. R. Crim. P. 15.05, subd. 2. The decision to allow a plea withdrawal before sentencing "is left to the sound discretion of the trial court, and it will be reversed only in the rare case in which the appellate court can fairly conclude that the trial court abused its discretion." *State v. Kaiser*, 469 N.W.2d 316, 320 (Minn. 1991) (quotation omitted).

To be valid, a guilty plea must be "accurate, voluntary, and intelligent." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). The requirement that a plea be voluntary ensures that the plea is not in response to improper inducements or pressures. *Alanis*, 583 N.W.2d at 577. The intelligent-plea requirement ensures that the defendant understands the charges being made, the rights being waived, and the consequences of the plea. *Id.* If a guilty plea is not accurate, voluntary, or intelligent, a defendant should be allowed to withdraw the plea. *Perkins*, 559 N.W.2d at 688.

Ofor challenges the validity of his plea on the grounds that the plea was neither intelligent nor voluntary. Ofor argues that his plea was not intelligent because he never understood the complete terms of his plea agreement and "at no point did anyone ask [Ofor] if he understood the terms of his agreement." However, the plea petition clearly sets forth the agreement, consisting of (1) Ofor's plea of guilty of a misdemeanor violation of an OFP, (2) dismissal of all remaining charges, (3) a stay of imposition of sentence, and (4) a 15-day cap on any jail time. Ofor had legal counsel and signed the plea petition, which included a statement that he was pleading guilty freely and voluntarily and without any promises beyond the terms of the plea agreement. The terms were detailed on the plea-hearing record and both Ofor's attorney and the district court

clarified that, though Ofor could argue for a more favorable disposition at the sentencing hearing, the agreement did not include a so-called “vacate and dismiss” provision. The district court, Ofor’s attorney, and the prosecutor, together, made it exceedingly clear to everyone what was contained in the plea agreement. Ofor’s claim that his plea was not intelligent because he did not know the complete terms of his plea agreement is without merit

Although Ofor’s argument on appeal primarily invokes the manifest-injustice standard, a district court is not required to find manifest injustice in order to allow a defendant to withdraw a guilty plea before sentencing. Minn. R. Crim. P. 15.05, subd. 2. Before sentencing, as here, a district court need only conclude that a plea withdrawal is fair and just. *Id.* The record shows that the district court applied the proper standard in denying Ofor’s motion. Ofor sought to withdraw his plea only because he changed his mind about giving up his right to a jury trial. If a guilty plea can be withdrawn without good reason at any time before a sentence is imposed, “then the process of accepting guilty pleas would simply be 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*, 434 N.W.2d at 266 (quotation omitted). To its distinct credit, the district court refused to accept Ofor’s plea before being convinced that the plea was voluntary. The district court applied the proper standard in analyzing Ofor’s motion to withdraw the plea before sentencing. On the record before us, by no means can we fairly conclude that the district court abused its discretion in denying the motion.

Affirmed.