STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2123

State of Minnesota,
Respondent,

vs.

Tavo Ray Bowman,
Appellant.

Filed August 17, 2010
Affirmed
Harten, Judge*

Blue Earth County District Court
File No. 07-CR-08-3968

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

Ross Arneson, Blue Earth County Attorney, Christopher J. Rovney, Assistant County Attorney, Mankato, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sean M. McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Minge, Presiding Judge; Johnson, Judge; and Harten, Judge.

* Retired judge of the Minnesota Court of Appeals, serving 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

HARTEN, Judge

Appellant challenges the denial of his motion to withdraw his guilty plea, arguing that the district court erred in applying Minn. R. Crim. P. 15.05, subd. 1, and abused its discretion in applying subdivision 2 of that rule. Because we see neither error nor abuse of discretion, we affirm.

FACTS

In December 2008, appellant Tavo Bowman encountered an 11-year-old boy in a skyway. As a result of the encounter, appellant was charged in an amended complaint with (1) attempted first-degree criminal sexual conduct, (2) attempted second-degree criminal sexual conduct, (3) engaging in a pattern of harassing conduct, (4) aggravated harassment (minor victim, sexual or aggressive intent), (5) aggravated harassment (minor victim, no sexual or aggressive intent), and (6) soliciting a child to engage in sexual conduct.

On 26 August 2009, the trial began. The jury was empanelled, sworn in, instructed on procedure, and told to return the next morning. That night, appellant's attorney and the prosecutor negotiated a plea agreement.

The next morning, before the trial proceedings resumed, appellant's attorney told the district court that appellant agreed to plead guilty to aggravated harassment (minor victim, sexual or aggressive intent), in return for the state dismissing the remaining charges. The district court examined appellant to establish that he knew he was giving up his rights, that he stalked a minor knowing it would cause the minor to feel frightened,

that the minor did feel frightened, and that appellant stalked him with sexual or aggressive intent. Appellant was also told that the applicable presumptive guideline sentence was 27 months' imprisonment.

Sometime on or between 28 August and 30 August, the local newspaper reported a statement by the prosecutor disclosing that he would seek appellant's civil commitment.[1]

On 31 August 2009, at appellant's sentencing hearing, appellant's attorney said to the district court:

> I'd like to make a motion[. It was] . . . brought to my attention that after this plea was done . . . we read in the newspaper [the prosecutor's] intention to write a letter to seek civil commitment in this matter. I . . . did not discuss that as an issue or factor with [appellant. Appellant] would be right . . . to say . . . that I did not discuss that as an issue. I did not know it was going to be an issue. And because of that, I would ask that [appellant] be allowed to withdraw his guilty plea at this time.

Appellant's attorney answered "No" when asked if there were any final comments.

The district court denied the motion and sentenced appellant to the presumptive 27 months. Appellant now challenges the denial of his motion.

D E C I S I O N

> Withdrawal [of a guilty plea] is permitted in two circumstances. First, a court *must* allow withdrawal of a guilty plea if withdrawal is necessary to correct a "manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Second, a court *may* allow withdrawal any time before sentencing if it is "fair and just" to do so. Minn. R. Crim. P. 15.05, subd. 2.

State v. Raleigh, 778 N.W.2d 90, 93 (Minn. 2010) (emphasis added).

[1] The record does not include a copy of the newspaper story; apparently, it was never provided to the district court.

1. Minn. R. Crim. P. 15.05, subd. 1

"A manifest injustice exists if a guilty plea is not valid. . . . Assessing the validity of a plea presents a question of law that we review de novo." *Id.* at 94 (citations omitted). To meet his burden of showing that the plea was invalid, appellant must demonstrate that it was inaccurate, involuntary, or not intelligent. *See id.*

Appellant argues that his plea was invalid because, at the time of the plea, he was ignorant of a direct consequence, i.e., being subjected to the civil commitment procedure and possible civil commitment. Ignorance of a direct consequence of a guilty plea is a manifest injustice. *Kaiser v. State*, 641 N.W.2d 900, 903-04 (Minn. 2002). A direct consequence is an occurrence that flows definitely, immediately, and automatically from the guilty plea. *Id.* at 904. Appellant concedes that no published appellate court decision has held that subjection to the civil commitment procedure is a collateral consequence, much less a direct consequence, of a guilty plea to aggravated harassment of a minor victim with aggressive or sexual intent.[2]

Moreover, appellant's attorney said only that he had not discussed the possibility of civil commitment proceedings with appellant; he did not say that appellant was ignorant of that possibility. Appellant fails to show that his plea was unintelligent and therefore invalid and a manifest injustice. The district court did not err in denying the motion to withdraw under Minn. R. Crim. P. 15.05, subd. 1.

[2] Ignorance of a collateral consequence is not a manifest injustice and does not entitle a defendant to withdraw his plea. *See Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998) (dealing with the issue is the context of deportation).

2. Minn. R. Crim. P. 15.05, subd. 2.

Prior to sentencing, the district court may allow a defendant to withdraw a guilty plea if it is fair and just to do so; that decision is reviewed for an abuse of discretion. *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007). Appellant contends that the district court did not consider whether he had a fair and just reason. But the district court explained why it denied the motion to withdraw: "What [the prosecutor] may or may not have said [in regard to seeking civil commitment] is irrelevant on the issue [of the withdrawal of appellant's guilty plea]. He's got nothing to do with it. And whether or not the commitment proceedings come down upon [appellant's] head is entirely an issue that's unrelated to this [sentencing] proceeding. . . ." Appellant provides no refutation of the district court's statement; nor does he show why the prosecutor's statement in the newspaper was relevant to his guilty plea and justified his motion to withdraw the plea.

We conclude that the district court did not abuse its discretion in determining that the prosecutor's statement was not a fair and just reason for appellant to withdraw his valid guilty plea.

Because withdrawal of appellant's plea was not authorized under either Minn. R. Crim. P. 15.05, subd. 1, or Minn. R. Crim. P. 15.05, subd. 2, we affirm the denial of his motion to withdraw his plea.

Affirmed.

Dated:_____ _____

James C. Harten, Judge