STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1611

State of Minnesota,
Respondent,

vs.

Craig Allan Hargreaves,
Appellant.

Filed July 11, 2011
Affirmed
Connolly, Judge

Kandiyohi County District Court
File No. 34-CR-09-446

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

Jennifer Kurud Fischer, Kandiyohi County Attorney, Boyd A. Beccue, Assistant County Attorney, Willmar, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Connolly, Judge; and Larkin, Judge.

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

CONNOLLY, Judge

Appellant challenges his conviction on the ground that the district court failed to exercise its discretion by not considering his oral motion to withdraw his guilty plea. Because the record shows that the district court did consider appellant's motion, we affirm.

FACTS

Appellant Craig Hargreaves was charged with various crimes in a series of four complaints in April – June 2009. The first complaint, dated April 6, 2009, (Complaint 1) charged him with one count of attempted first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct. The second, dated April 29, 2009, (Complaint 2) charged him with four counts of third-degree criminal sexual conduct, two counts of furnishing alcohol to a person under 21, and one count of fifth-degree controlled substance crime. The third, dated May 1, 2009, (Complaint 3) charged him with six counts of first-degree criminal sexual conduct. The fourth, dated June 19, 2009, (Complaint 4) charged him with one count of aggravated first-degree witness tampering and one count of first-degree witness tampering.

At the plea hearing, Complaint 1 was amended to add two counts of first-degree criminal sexual conduct and one count of furnishing alcohol to a person under 21 years of age. In exchange for a presumptive sentence of 144 months in prison, with all sentences served concurrently, appellant pleaded guilty to one count of first-degree criminal sexual conduct in Complaint 1, to an amended count of second-degree criminal sexual conduct

in Complaint 3, and to one count of first-degree witness tampering in Complaint 4; Complaint 2 was dismissed.

In September 2009, appellant, having discharged his counsel and obtained substitute counsel, moved to withdraw his guilty plea. The district court granted his motion, and all charges were reinstated.

In April 2010, the state moved to dismiss Complaint 3 in its entirety. Appellant then pleaded guilty to two counts of second-degree criminal sexual conduct in Complaint 1, two counts of furnishing alcohol to a person under 21 and one count of fifth-degree controlled substance crime in Complaint 2, and one count of first-degree witness tampering in Complaint 4, in exchange for a presumptive sentence of 143 months in prison, with all sentences served concurrently, and dismissal of all other charges.

At the May 2010 sentencing hearing, appellant asked to discharge his attorney. The district court told him that he would not be granted a continuance to hire another attorney and said, "We're ready to go with sentencing today, that's what I plan to do." Appellant replied, "That's why I'm here." The district court said that appellant had already discharged one public defender and would not be entitled to have a third one appointed if he discharged the second, reiterated that the court "would be planning on going through with sentencing today whether or not [appellant] terminate[s] the services of [his attorney]," and asked appellant, "So what do you want to do?" Appellant replied, "I want to withdraw my plea." The district court told him, "Well, you haven't filed a motion to do that, the rules require that."

Appellant replied that he was never told this; that his attorney had told him he could not withdraw his plea; that he wanted a jury to hear his case; and that his attorney had a conflict of interest because, when she was 18, she had accused someone of sexually molesting her and that person was sent to prison. The district court then told appellant, "I'm not granting you your verbal request to withdraw your plea. We are proceeding with sentencing today." After asking appellant again if he wanted to retain his attorney and hearing that he did, the district court attempted to proceed with sentencing. Appellant interrupted with profanities and the statement, "You're prejudiced." Appellant was duly sentenced.

On appeal, he argues that the district court failed to exercise its discretion in considering his motion to withdraw his guilty plea.[1]

D E C I S I O N

Appellant claims that, "despite the fact that [he] attempted to articulate to the court his bases for the withdrawal of his plea," the district court failed to exercise its discretion by considering his motion. Appellant requests that this court remand so that the district court may exercise its discretion. Whether a district court erred by failing to exercise its discretion is subject to de novo review. *See, e.g.*, *State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984) (reversing a district court's decision not to depart from the sentencing guidelines after concluding that the court had "erred in putting aside arguments for departure rather than considering them alongside 'valid reasons' for non-departure" and

[1] Respondent State of Minnesota did not submit a brief.

noting that "[t]his is not that rare case where we interfere with the exercise of discretion, but a case where the exercise of discretion has not occurred").

Appellant relies on *Curtiss*, but *Curtiss* is distinguishable on its facts. There, the record showed that the district court failed to consider the defendant's legitimate reasons for departure, which included the facts that the amount of the theft was a case of beer, that the defendant's prior felony was driving a truck until it was out of gas four months earlier, and that the defendant had a serious alcohol problem. *Id.* at 263-64. Here, the district court specifically told appellant, "I'm not granting you your verbal request to withdraw your plea." The district court clearly knew of appellant's unsupported request for a second withdrawal of his guilty plea and considered that request as a motion to withdraw. And while appellant argues that he is entitled "to have the court consider his stated reasons," he has stated no reasons that would compel or even support withdrawal.

In his pro se supplemental brief, appellant asks this court to consider all the materials from his case because (1) the prosecuting attorney lied; (2) his first attorney had robbed a client and been disbarred; (3) his second attorney was in jail during appellant's court appearance and plea bargained her way out of jail by promising to give up appellant's case; (4) the sheriff refused to come forward with information; and (5) the victim was guilty of the conduct of which he accused appellant. Appellant provides no

factual or legal support for any of these assertions, and we conclude that they are without merit.[2]

Affirmed.

[2] Appellant also argues that his simple statement, "I want to withdraw my plea" was a valid motion within the meaning of Minn. R. Crim. P. 15.05. Because the district court treated appellant's statement as a motion, that argument is moot, and we do not address its merits.