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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1298**

State of Minnesota,
Respondent,

vs.

Edward Keith Dembry,
Appellant.

**Filed June 19, 2017
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-15-5801

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica M. Surges, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Peterson, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Edward Keith Dembry challenges his conviction of first-degree criminal sexual conduct. Dembry argues that the district court erred by denying his presentence

motion to withdraw his guilty plea because it was not supported by a sufficient factual basis. He further argues that, even if his plea was accurate, the district court abused its discretion by denying his motion because he established reasons warranting plea withdrawal under the fair-and-just standard. We reject Dembry's arguments and affirm.

FACTS

In May 2015, respondent State of Minnesota charged Dembry with first-degree criminal sexual conduct, third-degree criminal sexual conduct, and second-degree assault. The state alleged that, on March 3, 2015, police officers arrived at North Memorial Hospital to investigate a sexual and physical assault. The officers spoke with L.R., who reported that the previous night, Dembry, her boyfriend, had threatened her, repeatedly struck her with his fists and a mop handle, and sexually assaulted her. The officers observed that L.R. had a number of injuries, including lacerations and bruising. Police later located and arrested Dembry.

On the day trial was set to begin, the parties informed the district court that Dembry had agreed to plead guilty to first-degree criminal sexual conduct in exchange for dismissal of the remaining charges. Dembry executed a corresponding plea petition, which indicated that he was not pleading guilty just to discharge the criminal matter and that he was in fact guilty. However, during the process of establishing a factual basis for his guilty plea, Dembry stated that he was not ready to proceed with the plea because L.R.'s version of the incident in question was incorrect. The district court stopped the plea hearing, and Dembry's jury trial began that afternoon.

The next day, during jury selection, Dembry's counsel informed the district court that Dembry was prepared to accept the plea agreement and admit the factual basis. The district court then accepted Dembry's plea petition, and Dembry and his defense counsel engaged in the following exchange:

Q. Mr. Dembry, we've gone over the parts of the petition that explain . . . that the Court won't accept a plea from anyone who claims to be innocent. And you signed a petition saying that you don't make any claim that you are innocent; is that correct?

A. Yes.

Q. In particular, the allegations in the case with respect to Count 1 of the complaint, is that on . . . March 2nd of 2015 you were in Hennepin County; is that true?

A. Yes.

Q. And that you engaged in sexual penetration with [L.R.]; is that true?

A. Yes.

Q. That immediately prior to engaging in that sexual penetration, you had committed an assault upon her, correct?

A. Yes.

Q. That assault involved significant personal [injury] to her. She was cut in a number of places and bleeding quite a bit, correct?

A. Yes.

Q. And there were pictures of that, correct?

A. Yes.

Q. And that as a result of that incident, you would agree that when you engaged in the sexual penetration, it was without her consent, correct?

A. Yes.

Q. And that the fact that you had so close in time committed an assault upon her, would constitute coercion. Meaning she felt forced into having sex, correct?

A. Yes.

Dembry also responded affirmatively to the state's follow-up question, "Ultimately, sir, do you agree that [L.R.], at that time, did not want to have sexual penetration with you and that she was afraid of you and that is why she submitted to the sexual penetration?"

After defense counsel and the state completed questioning Dembry, the district court stated, “I do find that you made a knowing, intelligent, and voluntary waiver of your trial rights. You’ve given me a sufficient factual basis to find you guilty.”

In the following weeks, Dembry filed a letter with the district court requesting to withdraw his plea, and his counsel filed a motion for a presentence plea withdrawal under Minn. R. Crim. P. 15.05, subds. 1, 2. The district court held a hearing to address Dembry’s plea-withdrawal motion and, in the event that the motion was denied, to sentence him. After the parties presented their respective arguments, the district court orally denied Dembry’s plea-withdrawal motion, referencing only the standard from rule 15.05, subdivision 1, and proceeded to sentencing. The district court later filed its written findings of fact, conclusions of law, and order, denying Dembry’s plea-withdrawal motion under both subdivisions 1 and 2 of rule 15.05.

Dembry appeals.

D E C I S I O N

I. The district court did not err by denying Dembry’s motion to withdraw his plea under the manifest-injustice standard.

Dembry argues that the district court erred by denying his motion to withdraw his guilty plea because the factual basis was established through conclusory, leading questions. Dembry further argues that his plea was inaccurate because the factual basis established did not meet the elements of first-degree criminal sexual conduct.

“A defendant has no absolute right to withdraw a guilty plea after entering it.” *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But the district court must permit a defendant

to withdraw a plea at any time if such withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists if a guilty plea is not valid. *Raleigh*, 778 N.W.2d at 94. We review the validity of a guilty plea de novo. *Id.*

Minnesota law recognizes three requisites for a valid guilty plea: it must be accurate, voluntary, and intelligent. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Dembry's arguments challenge only the accuracy of his plea. For a guilty plea to be accurate, it must be established by a proper factual basis. *Id.* at 647. Requiring that a plea be accurate protects the defendant from pleading guilty to a more serious charge than he or she could be convicted of at trial. *State v. Wukawitz*, 662 N.W.2d 517, 521-22 (Minn. 2003). To satisfy this requirement, "there must be sufficient facts on the record to support a conclusion" that the defendant is guilty of the crime charged. *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (quotation omitted).

To convict Dembry of first-degree criminal sexual conduct, the state was required to prove that he "use[d] force or coercion to accomplish sexual penetration" with another person and caused that person personal injury. Minn. Stat. § 609.342, subd. 1(e)(i) (2014). Dembry argues that he did not admit to any elements of first-degree criminal sexual conduct in responding to his counsel's questioning; instead, he maintains that his answers merely admitted that there were allegations of such a crime. We are not persuaded. While defense counsel began the colloquy with Dembry by referencing the allegations in the complaint, counsel then identified specific allegations and asked whether each allegation was true or correct. By answering "yes," Dembry did not merely acknowledge the existence of each allegation—he admitted the facts alleged. Specifically, Dembry admitted

that he assaulted L.R., which caused L.R. to fear him and constituted coercion, immediately prior to engaging in sexual penetration with her. He further admitted that his assault on L.R. inflicted injuries, which were documented through photographs.

Dembry is correct in asserting that his testimony regarding the factual basis was composed of responses to leading questions. Although Minnesota caselaw discourages district courts from using leading questions and encourages “district courts to take an active role in asking direct questions of defendants during plea hearings,” a guilty plea is not rendered invalid by this “disfavored format” so long as the factual basis elicited is sufficient to support an accurate plea. *Raleigh*, 778 N.W.2d at 95-96. Here, Dembry’s answers met the statutory elements of first-degree criminal sexual conduct. Accordingly, Dembry’s guilty plea was accurate, and the district court did not err by denying his motion under rule 15.05, subdivision 1.

II. The district court did not abuse its discretion by denying Dembry’s motion to withdraw his plea under the fair-and-just standard.

Dembry argues that the district court did not apply the fair-and-just standard in denying his motion to withdraw his guilty plea under rule 15.05, subdivision 2. Dembry further argues that the district court abused its discretion by denying his motion under the fair-and-just standard when he claimed that he was unhappy with his prior counsel and felt coerced into pleading guilty.

Before a sentence is entered, the district court may allow a defendant to withdraw a plea “if it is fair and just to do so.” Minn. R. Crim. P. 15.05, subd. 2. The fair-and-just standard is less demanding than the manifest-injustice standard, but it does not allow a

defendant to withdraw a plea for simply any reason. *Theis*, 742 N.W.2d at 646 (quotation omitted). Under this standard, the district court must consider (1) the reasons to support withdrawal and (2) the prejudice granting the motion would cause to the state based on its reliance on the plea. *Raleigh*, 778 N.W.2d at 97. The defendant bears the burden on the first factor, and the state on the second. *Id.* “Even when there is no prejudice to the state, a district court may deny plea withdrawal under rule 15.05, subdivision 2, if the defendant fails to advance valid reasons why withdrawal is fair and just.” *State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013), *review denied* (Minn. Dec. 31, 2013). We review the district court’s decision to deny a plea-withdrawal motion under rule 15.05, subdivision 2, for an abuse of discretion, reversing only in the rare case. *Raleigh*, 778 N.W.2d at 97.

We first address Dembry’s argument that the district court failed to apply the fair-and-just standard and, instead, considered only the more demanding manifest-injustice standard in denying his plea-withdrawal motion. In support of this argument, Dembry points to the district court’s oral denial of his motion, where the district court referenced only the standard from rule 15.05, subdivision 1. However, as Dembry acknowledges, the district court later filed its written findings of fact, conclusions of law, and order, in which the district court stated that Dembry sought to withdraw his plea under rule 15.05, subdivisions 1 and 2. In its order, the district court applied the correct standards for Dembry’s motion under each respective subdivision. The district court thus did not limit its analysis to the manifest-injustice standard.

In addition, Dembry argues that the district court abused its discretion by denying his motion because his complaints about his prior counsel and coercion warranted

withdrawal of the plea. The district court rejected Dembry's argument regarding his prior counsel as irrelevant, noting that such complaints involved an attorney who had ceased representing Dembry a number of months before his guilty plea. And, contrary to Dembry's assertion that he felt coerced into pleading guilty, the district court found that Dembry was not coerced, noting that Dembry "acknowledged that no one had coerced or forced him to plead guilty," and that "[n]othing in the record indicates [that Dembry] was coerced." Based on these findings, the district court concluded that Dembry had not sustained his burden of establishing a fair-and-just reason for plea withdrawal.

The district court's rejection of Dembry's prior-counsel argument was sound. The record establishes that Dembry's prior counsel was discharged several months before the plea, and there was no assertion that his replacement counsel provided inadequate representation. Instead, Dembry merely claimed that his prior counsel's advice was inconsistent with the advice he received from his replacement counsel. The record also supports the district court's rejection of Dembry's coercion argument. The district court respected Dembry's request to stop the initial plea hearing and proceed to a jury trial. Then, during jury selection, Dembry expressed his desire to stop the trial and accept the plea agreement. Dembry also denied any coercion several times and stated that he wanted to enter the plea. Accordingly, because the record supports the district court's findings and conclusion, we conclude that the district court did not abuse its discretion by denying Dembry's motion under the fair-and-just standard.

Affirmed.