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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1311**

State of Minnesota,
Respondent,

vs.

Robert James Jacka,
Appellant.

**Filed July 31, 2017
Affirmed
Smith, John, Judge***

St. Louis County District Court
File No. 69VI-CR-15-1015

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

Mark S. Rubin, St. Louis County Attorney, Michelle M. Anderson, Assistant County Attorney, Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Reilly, Judge; and Smith, John, Judge.

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

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We affirm the district court's denial of appellant Robert James Jacka's motions to withdraw his guilty plea and for a downward durational departure because the district court correctly applied the law and did not abuse its discretion.

FACTS

Deputy Timothy Officer searched Jacka incident to his arrest for obstruction of legal process and disorderly conduct and found an unloaded handgun and ammunition. The state charged Jacka with possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(2) (2014), obstruction of legal process in violation of Minn. Stat. § 609.50, subd. 1(2) (2014), and disorderly conduct in violation of Minn. Stat. § 609.72, subd. 1 (2014).

Jacka entered into a plea agreement and pleaded guilty to possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2). The district court deferred acceptance of the plea until a sentencing worksheet and a presentence investigation report were completed. Before the district court accepted the plea, Jacka moved to withdraw his guilty plea, arguing that it would be fair and just to allow him to do so. The district court denied the motion to withdraw the guilty plea and convicted Jacka of possession of a firearm by an ineligible person. The district court also denied Jacka's motion for a dispositional or durational departure, and sentenced him to 60 months in prison.

DECISION

Jacka contends that the district court erred when it denied his motion to withdraw his guilty plea because he had a right to withdraw his plea before the district court accepted it.

“The interpretation of the rules of criminal procedure is a question of law subject to de novo review.” *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005). A defendant does not have an absolute right to withdraw a plea before sentencing. *See Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). Withdrawal is permitted in two circumstances. First, a district 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, the district court, in its discretion, may allow a defendant “to withdraw a plea at any time before sentence if it is fair and just to do so.” *Id.*, subd. 2.

Jacka contends that he had an absolute right to withdraw his plea because the district court had not yet accepted it. He contends that because the Minnesota criminal rules and Minnesota caselaw are silent on a defendant’s absolute right to withdraw a guilty plea before the district court’s acceptance of the plea, we should follow Fed. R. Crim. P. 11(d)(1), which grants a defendant that right. The state contends that Minn. R. Crim. P. 15.05 and Minnesota caselaw only allow a defendant to withdraw his plea before the district court accepts it if it is fair and just to do so. We agree with the state.

When interpreting rules of criminal procedure, we first consider the plain language of the rule. *State v. Underdahl*, 767 N.W.2d 677, 682 (Minn. 2009).

Where the language is plain and unambiguous, that plain language must be followed. Ambiguity exists only when the language of the rule is subject to more than one reasonable interpretation. . . . Words and phrases are construed according to rules of grammar and according to their common and approved usage. And [w]henver it is possible, no word, phrase, or sentence should be deemed superfluous, void, or insignificant.

State v. Dahlin, 753 N.W.2d 300, 305-06 (Minn. 2008) (alteration in original) (quotations and citations omitted).

Here, the rule permits a 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, subd. 2 (emphasis added). The rule does not state that it only applies after the district court accepts the plea. *See id.*

We addressed this issue in *State v. Tuttle*. 504 N.W.2d 252, 257 (Minn. App. 1993). Tuttle filed a motion to withdraw his guilty plea after a witness recanted her testimony but before the district court accepted the plea. *Id.* at 255. The district court denied the motion and then accepted Tuttle’s plea. *Id.* On appeal, Tuttle argued that the district court should have allowed him to withdraw his plea because it had not yet accepted the plea. *Id.* at 257. We stated that Minn. R. Crim. P. 15.04, subd. 3(1), “does not give a defendant an absolute right to withdraw a plea pending acceptance by the [district] court.” *Id.* We concluded that the district court did not abuse its discretion by refusing to allow Tuttle to withdraw his guilty plea before it accepted the plea. *Id.* at 258.

We reach the same conclusion here. We conclude that the plain language of Minn. R. Crim. P. 15.05, subd. 2 establishes that the fair-and-just standard applies to any withdrawal before sentencing. As we held in *Tuttle*, a defendant does not have an absolute

right to withdraw a plea before the district court accepts it. *Tuttle*, 504 N.W.2d at 257-58. The district court correctly applied the fair-and-just standard.

Jacka contends that the district court abused its discretion when it denied his motion for a downward durational departure because it failed to consider several mitigating factors that made his conduct less serious than the typical offense.

“[Appellate courts] afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). Appellate courts “will not ordinarily interfere with a sentence fall[ing] within the presumptive sentence range, either dispositionally or durationally, even if there are grounds that would justify departure.” *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (alteration in original) (quotation omitted). And “it would be a rare case which would warrant reversal of the refusal to depart.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Jacka was convicted under Minn. Stat. § 624.713, subd. 1(2), which has a mandatory-minimum sentence of five years. Minn. Stat. § 609.11, subd. 5(b) (2014). But the district court must consider mitigating factors, and it may sentence a defendant without regard to the mandatory minimum sentence if it “finds substantial and compelling reasons to do so.” Minn. Stat. § 609.11, subd. 8(a) (2014); see *State v. Curtiss*, 353 N.W.2d 262, 264 (Minn. App. 1984) (remanding to district court for reconsideration of a durational departure because the district court failed to consider factors supporting departure).

In determining Jacka’s sentence, the district court noted that there was a dispute regarding Jacka’s intent, which Jacka contends gives rise to several mitigating factors. But

the district court found that “[t]here certainly is no substantial or compelling circumstance” that would justify a departure and sentenced Jacka to five years. We conclude that the record establishes that the district court sufficiently considered the mitigating factors and did not abuse its discretion in denying Jacka’s motion for downward durational departure.

Affirmed.