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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1627**

Lester Leander Wiechmann, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 8, 2017
Affirmed
Kirk, Judge**

Stearns County District Court
File No. 73-CR-12-6188

Cathryn Middlebrook, Chief Appellate Public Defender, Chelsie Willett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

In this postconviction appeal seeking relief from his 2013 conviction of first-degree criminal sexual conduct, appellant argues that the chief judge erred by denying his motion

to remove the district court judge for cause, and the postconviction court abused its discretion by denying appellant's motion to withdraw his guilty plea on the ground that the plea was involuntary. We affirm.

FACTS

On June 29, 2012, respondent State of Minnesota charged appellant Lester Leander Wiechmann with first-degree criminal sexual conduct. The complaint alleged that appellant raped C.H.S. at her apartment.

On November 19, 2013, appellant, who was represented by a public defender, agreed to plead guilty, and, in exchange, the state agreed to a stay of execution on the presumptive 360-month sentence with several conditions. Appellant confirmed on the record that the state had accurately outlined the plea offer and that he understood its terms. Appellant also stated on the record that no attorney, police officer, prosecutor, judge, or any other person made any threats or promises to him that were not contained in the plea agreement.

Appellant signed a plea petition acknowledging that he was represented by counsel, that he had sufficient time to discuss his case and any possible defenses to the charges with his attorney, and that he was satisfied that his attorney had represented his interests and advised him. The plea petition also stated that appellant's attorney had informed him, and that appellant understood, that the prosecutor agreed to a 360-month stayed sentence in exchange for his guilty plea. Appellant also waived his trial rights.

Appellant was sworn under oath, and his attorney questioned him about the offense that occurred on June 22, 2012. Appellant admitted that he had engaged in sexual

penetration of C.H.S. without her consent and that he had caused her physical pain during the sexual assault. The district court accepted the plea petition, found that there was an adequate factual basis to accept appellant's guilty plea, and entered the judgment of conviction on the charge.

At the sentencing hearing, appellant told the presiding judge that he did not trust his attorneys and that he wanted additional judges and attorneys, who were his friends, to chaperone his meetings with his attorneys. The presiding judge replied, "Mr. Wiechmann, I actually think that is borderline delusional for you to make those statements." The district court sentenced appellant to 360 months in prison, stayed, and placed appellant on supervised probation for 30 years, with conditions. Shortly thereafter, appellant violated the terms of his probation, and the district court executed appellant's stayed sentence of 360 months in prison.

On May 4, 2016, appellant filed a petition for postconviction relief, seeking to withdraw his guilty plea on the ground that his plea was not voluntary, but he did not ask for an evidentiary hearing. Appellant included an affidavit with his petition, alleging numerous instances of prosecutorial misconduct, ineffective assistance of counsel, denial of a change of venue, and that he was unable to fire his attorneys. Appellant also alleged that the presiding judge had told him that he was delusional and that he should do whatever his attorneys instructed him to do. Appellant stated that he felt like he had no choice but to accept the plea agreement and probationary sentence.

The chief judge construed appellant's allegation against the presiding judge as a motion seeking the judge's removal from the case under Minn. R. Crim. P. 26.03, subd. 14.

The chief judge denied appellant's motion, concluding that appellant failed to demonstrate that the presiding judge had a personal interest or any knowledge specific to appellant that would constitute a conflict of interest.

On August 12, the postconviction court denied appellant's petition, concluding that withdrawal of appellant's plea was not necessary to correct a manifest injustice. The postconviction court found appellant's allegations against his attorneys to be "farfetched and uncorroborated" as they were directly contradicted by appellant's credible testimony at the plea hearing that established that appellant voluntarily pleaded guilty and that he was not threatened or induced to do so outside of the plea agreement.

This appeal follows.

D E C I S I O N

I. The chief judge did not err by denying appellant's motion to remove the presiding judge for cause.

"A motion to remove for cause is committed to the discretion of the [district] court and [we] will reverse only for an abuse of that discretion." *Hooper v. State*, 838 N.W.2d 775, 790 (Minn. 2013) (quotation omitted). "The mere fact that a party declares a judge partial does not in itself generate a reasonable question as to the judge's impartiality." *State v. Burrell*, 743 N.W.2d 596, 601-02 (Minn. 2008).

Appellant argues that the chief judge erred in failing to remove the presiding judge for cause because the presiding judge's impartiality could reasonably be called into question when he told appellant that he was delusional "if he did not do what his attorneys said and take the guilty plea."

A review of the record establishes that appellant not only completely misstates the presiding judge's comment, but he also fails to recognize that the judge's comment occurred at appellant's sentencing hearing. Therefore, it is impossible that the judge's comment had any effect on appellant's guilty plea. Appellant's claim does not generate any reasonable question concerning the presiding judge's impartiality. *See id.* We see no abuse of discretion by the chief judge in denying appellant's motion to remove for cause.

II. The postconviction court did not err by denying appellant's petition to withdraw his guilty plea on the ground of involuntariness.

A defendant may withdraw a guilty plea after sentencing "upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A guilty plea is invalid and manifestly unjust if it is not accurate, voluntary, and intelligent. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A petitioner seeking postconviction relief has the burden of establishing the facts alleged in the petition by a fair preponderance of the evidence. Minn. Stat. § 590.04, subd. 3 (2016). This court reviews the decision of the postconviction court under an abuse-of-discretion standard. *State v. Rainer*, 502 N.W.2d 784, 787 (Minn. 1993). A voluntary plea is made without improper pressure or inducement; a plea is intelligent when the defendant understands the charges, his legal rights, and the consequences of pleading guilty. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). Whether a plea is voluntary is determined by "considering all of the relevant circumstances surrounding it." *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994) (quotation omitted).

Appellant requests that this court reverse the postconviction court's order denying his petition to withdraw his guilty plea without an evidentiary hearing because his attorneys coerced him into pleading guilty, and the postconviction court did not give due regard to his claims in its order and memorandum.

Considering all of the relevant circumstances, the record establishes that appellant's plea was voluntary and valid. *See id.* The only evidence supporting appellant's assertion that his attorneys coerced him into pleading guilty is his self-serving affidavit. *See Davis v. State*, 784 N.W.2d 387, 391 (Minn. 2010) (stating that allegations in a postconviction petition must be more than argumentative assertions without factual support). There is no record evidence supporting appellant's claims against his attorneys or the district court. The plea-hearing transcript and the plea petition confirm that the parties understood and agreed to the terms of the plea agreement. The transcript also fails to indicate that appellant was under undue stress or pressure during the hearing. Appellant also agreed at the plea hearing that he was not coerced by anyone into pleading guilty. We discern no error by the postconviction court by denying appellant's petition to withdraw his guilty plea.

Affirmed.