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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0470**

State of Minnesota,
Respondent,

vs.

David Carl Thompson,
Appellant.

**Filed January 8, 2018
Affirmed
Ross, Judge**

Ramsey County District Court
File No. 62-CR-16-4114

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

The St. Paul Police Department received a report that appellant David Thompson
pulled a knife on a man in a park and threatened to stab him. Thompson pleaded guilty to

making terroristic threats but later moved to withdraw his plea during his sentencing. The district court denied his motion, and he appeals. Because the district court acted within its discretion by finding that it would not be fair and just to allow Thompson to withdraw his plea, and because allowing him to withdraw his plea was unnecessary to correct any manifest injustice, we affirm.

D E C I S I O N

David Thompson was allegedly causing problems in Mears Park in June 2016. First he approached a wedding party and told the groom that he wanted to have sex with the bride and that they could share her. Later he pulled a knife on a man while commenting about selling the man his guitar, threatening, “I will slice you from a--hole to elbow and slice your throat.” The state charged Thompson with second-degree assault and making terroristic threats. Thompson pleaded guilty to making terroristic threats and was conditionally released from jail. During his sentencing hearing, Thompson moved to withdraw his plea. The district court held a plea-withdrawal hearing and denied the motion.

On appeal, Thompson argues that the district court abused its discretion by refusing to allow him to withdraw his guilty plea. A district court has discretion to allow a defendant to withdraw a plea before sentencing if it is “fair and just” to do so. Minn. R. Crim. P. 15.05, subd. 2 (2016). In applying the fair-and-just assessment, the district court must consider the defendant’s reasons as to why he should be allowed to withdraw his plea and balance those reasons against any prejudice the state would suffer because it relied on the defendant’s guilty plea. *Id.* We will not reverse a district court’s decision to deny a defendant’s plea-withdrawal motion unless the decision constitutes an abuse of discretion.

State v. Raleigh, 778 N.W.2d 90, 97 (Minn. 2010). Thompson fails to demonstrate that the district court abused its discretion.

Thompson's reasons for withdrawing his guilty plea were not compelling, and the district court did not believe they were sincere. He told the district court that he had been under duress when he entered the plea agreement, claiming that he feared that his home would be burglarized while he sat in jail, which he implied would somehow leave him homeless. Thompson suggested that he needed to leave jail to secure his home because he had been unable to ask his landlord to secure the home for him and because he lacked his landlord's contact information in jail. He offered this during a rambling, profanity-spiced dissertation covering many extraneous details, like how he had ended up in the park with his guitar: "I was so stressed out I grabbed my guitar and stuff, I grabbed me a bottle, had a little bit of weed. I'm going over to Mears Park to get away from this environment. I'm jamming, you know what I mean? I'm just jamming having a good time." And he narrated his encounter with the wedding party: "Yeah, I flirted, you know, with the bride. She's gorgeous, she's beautiful. Yeah, I want to kiss the bride. I wasn't charged with that." Thompson also claimed his innocence and expressed disappointment that his attorney had not obtained surveillance-camera video footage of the incident.

The district court is entitled to make credibility assessments in plea-withdrawal hearings. *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App 1997), *review denied* (Minn. June 11, 1997). The district court considered Thompson's stated reasons carefully. It reviewed the guilty-plea transcript and stated that nothing in it suggested that Thompson was under duress when he made the plea. His attorney disclosed also that he too had read

the transcript, and he said, “So at this point I did advise Mr. Thompson if he wishes to proceed further with me I don’t see legally where I can make an argument for a withdrawal of his plea other than the fact that he now wants to withdraw it.” Thompson did not make a compelling argument that he sincerely was under duress when he entered his guilty plea. Even if we thought he had, we are in no position on appeal to second-guess the district court’s credibility assessment.

The district court also found that accepting Thompson’s plea would prejudice the state because of the amount of time that had passed since the incident. Because the district court considered Thompson’s statements at the initial plea hearing, was in a position to assess the credibility of Thompson’s statements, and considered the potential prejudice to the state, we hold that it did not abuse its discretion.

Thompson also argues that he should be allowed to withdraw his plea because he pleaded guilty involuntarily and therefore invalidly. The validity of a plea is a question of law that we review de novo. *Raleigh*, 778 N.W.2d at 94. The district court must allow a defendant to withdraw his guilty plea if allowing it is necessary to correct a “manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists when a plea is not constitutionally valid, meaning that it is not accurate, voluntary, or intelligent. *Raleigh*, 778 N.W.2d at 94. Given that the district court rejected as incredible Thompson’s vague suggestion that he felt pressured to plead guilty, the alleged pressure also cannot establish that the district court was required to grant the plea-withdrawal motion to avoid a manifest injustice. And the kind of pressure Thompson claimed was not the kind of *improper* pressure necessary to support a claim of involuntariness. *See id.* at 96.

Thompson next maintains that he should have been allowed to withdraw his plea because it was involuntary on the ground that it was based on ineffective assistance of counsel. A plea can be involuntary if a defendant is represented by an attorney whose advice is not within the “range of competence demanded of attorneys in criminal cases.” *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). We analyze claims of ineffective assistance of counsel using the two-step test announced in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). The first considers whether the attorney’s performance fell below an objective standard of reasonableness. *Id.* at 687–88. The second considers whether the defendant was prejudiced by the attorney’s deficient performance. *Id.* at 687. Thompson’s claim fails on the second step of the test. He bases his involuntary-plea claim on the assertion that his attorney deficiently failed to obtain police reports and surveillance footage and that he would not have pleaded guilty if his attorney had obtained them. But Thompson has failed to identify any evidence (or even to argue) that a surveillance camera was in a position to cover the area where the encounter occurred, that any footage of the encounter ever existed, or that the footage would have given Thompson a reason to challenge the witnesses’ accounts of his pulling his knife and making the threatening comment. And the transcripts reveal that Thompson appears to have complained that his attorney failed to read police reports of an entirely separate incident in which Thompson claimed to have been accosted by young children. To the extent he intended to complain that his attorney failed to review the police reports about his threat with the knife, the transcript shows that his attorney in fact received the police reports and discussed them with Thompson. None of the reports in either incident are in the record, and Thompson

does not say how they bore on his plea decision. In sum, even if we thought the attorney's failure to obtain the police reports and the supposed video footage demonstrated constitutionally-deficient representation, we would not reverse because Thompson has not shown that this alleged deficiency affected his decision to plead guilty.

Thompson argues last that his plea was unintelligent, making it invalid under *Raleigh*. 778 N.W.2d at 94. We review the validity of a plea de novo. *Id.* For a plea to be intelligent a defendant must understand “the charges against him, the rights he is waiving, and the consequences of his plea.” *Id.* at 96. “Consequences” refers to “a plea’s direct consequences, namely the maximum sentence and fine.” *Id.* Nowhere in his argument does Thompson assert that he did not understand the charges he faced, the rights he was giving up, or the possible sentence that awaited him. And if he had asserted any of this, the plea transcript would undermine that assertion. We hold that Thompson’s plea was not unintelligent.

Each of Thompson’s challenges to the district court’s plea-withdrawal decision fails.

Affirmed.