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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0471**

State of Minnesota,
Respondent,

vs.

John James Jackson, Jr.,
Appellant.

**Filed December 26, 2017
Affirmed
Rodenberg, Judge**

Ramsey County District Court
File No. 62-CR-15-9334

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 Lauermann, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Rodenberg, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant challenges the district court's denial of his presentence plea-withdrawal
motion, arguing that the district court erred by failing to evaluate the motion under the fair-

and-just standard. Alternatively, appellant argues that his guilty plea was invalid because the district court impermissibly involved itself in plea negotiations. We affirm.

FACTS

Appellant was charged with second-degree assault in violation of Minn. Stat. § 609.222, subd. 2 (2014), and third-degree assault in violation of Minn. Stat. § 609.223, subd. 1 (2014), with a sentencing enhancement for an offense committed using a dangerous weapon other than a firearm, pursuant to Minn. Stat. § 609.11, subd. 4 (2014). At the time, appellant was on federal parole for a bank-robbery conviction.

At a pretrial hearing, after he initially indicated a desire to plead not guilty, appellant and his attorney had extended discussions during multiple recesses concerning a plea offer made by the state. Appellant eventually pleaded guilty to third-degree assault, without the sentencing enhancement concerning the use of a dangerous weapon. Appellant was informed on the record that his guilty plea would likely result in additional consequences for violating his federal parole, but he was not informed that his plea would require that he register as a predatory offender.

Following his guilty plea, appellant learned that he would have to serve an additional 41 months on his federal sentence because of the third-degree-assault conviction. Appellant moved to withdraw his guilty plea, arguing that he did not “fully appreciate or understand his plea agreement,” because he was not aware of the predatory-offender-registration requirement it would trigger; that “[h]e felt rushed and pressured in making his decision, because it was a last-minute resolution made during the pretrial motions hearing immediately before trial”; that “[h]e did not understand the seriousness of

charges in that the plea would add additional consequences to the remaining prison time he had on his federal sentence”; and that he continued to assert his innocence. The district court stayed the proceedings on appellant’s motion until the Minnesota Supreme Court decided *Taylor v. State*, 887 N.W.2d 821 (Minn. 2016) (holding that “a defense attorney’s failure to advise a defendant about predatory-offender-registration requirements before the defendant enters a guilty plea does not violate a defendant’s rights to the effective assistance of counsel . . . and, thus, [the defendant] is not entitled to withdraw his guilty plea”).

At the subsequent plea-withdrawal hearing after *Taylor* was decided, the district court found that (1) appellant was not aware that he was required to register as a predatory offender at the time he pleaded guilty but that, under *Taylor*, this was not a sufficient reason to allow plea withdrawal; (2) it had given appellant ample time to discuss the plea agreement with his attorney and that the district court was “particularly patient” under the circumstances and had given appellant “whatever time [he] needed”; (3) appellant was “fully aware of [his] federal charge and of the potential consequences” when he pleaded guilty; and (4) that appellant “gave a sufficient factual basis under oath to establish the elements of the crime.” The district court denied appellant’s plea-withdrawal motion and sentenced appellant to 24 months in prison, with credit for time served.

This appeal followed.

DECISION

We first consider whether the district court erred when it denied appellant's plea-withdrawal motion. Appellant argues that the district court improperly failed to apply the fair-and-just standard applicable to plea-withdrawal motions before sentencing.

"We review a district court's decision to deny a withdrawal motion for abuse of discretion, reversing only in the 'rare case.'" *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010) (quoting *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989)). District courts have discretion to permit a guilty plea to be withdrawn before sentencing "if it is fair and just to do so[,]" giving "due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea." Minn. R. Crim. P. 15.05, subd. 2. The burden of advancing reasons to support plea withdrawal is on the defendant, while the burden of showing prejudice caused by a withdrawal is on the state. *Raleigh*, 778 N.W.2d at 97. Even in cases where the state fails to demonstrate prejudice, a district court may still deny a plea-withdrawal motion if the defendant fails to "advance substantiated reasons for withdrawal of his plea" under the fair-and-just standard. *Id.* at 98.

Here, the district court did not explicitly identify the fair-and-just standard as being the basis for denial of appellant's motion. But it is evident from a review of the record that the district court applied the proper standard after careful consideration of appellant's arguments. The parties presented the motion to the district court using the fair-and-just standard. Appellant stated that he wanted the motion to be considered using that standard,

and the state argued that it would be prejudiced by plea withdrawal. The district court considered and rejected on the record each of appellant's reasons for plea withdrawal. Although the district court did not evaluate prejudice to the state on the record, prejudice to the state is not necessary to deny a plea-withdrawal motion if "substantiated reasons for withdrawal" are not shown. *Id.*

The record indicates that the district court gave appellant adequate time and opportunity to consult with his attorney before he pleaded guilty. We agree with the district court's characterization of its having been "particularly patient." Appellant stated on the record that he was aware that his guilty plea would likely result in additional federal consequences. Appellant's lack of knowledge regarding predatory-offender registration requirements is not a sufficient reason to permit the withdrawal of a guilty plea. *Taylor*, 887 N.W.2d at 826. Appellant's plea included an adequate factual basis, consisting of his admission to intentionally pushing a 60-year-old female, causing her substantial bodily harm. The district court acted within its discretion when it denied appellant's motion to withdraw his guilty plea.

We next consider whether the district court impermissibly interjected itself into the plea negotiations, rendering appellant's guilty plea invalid. A guilty plea is per se invalid when a judge is impermissibly involved in a plea negotiation. *State v. Anyanwu*, 681 N.W.2d 411, 414 (Minn. App. 2004). Whether a guilty plea is valid is a question of law subject to de novo review. *Raleigh*, 778 N.W.2d at 94.

At the plea-withdrawal hearing, the district court commendably took pains to ensure that appellant understood the state's plea offer. The district court explained to appellant

that, while it was not part of his plea agreement with the state, appellant's sentence would be concurrent with his preexisting federal sentence. Appellant argues that this was an impermissible promise by the district court of a particular sentence. A reading of the trial transcript, however, indicates that the district court's purpose in making this statement was informational. The state was not seeking a consecutive sentence. Unlike previous decisions where we have found a district court to have impermissibly intervened in plea discussions, the district court here was promising nothing inconsistent with the state's plea offer. *See State v. Moe*, 479 N.W.2d 427, 428-29 (Minn. App. 1992), *review denied* (Feb. 10, 1992) (determining that a district court impermissibly participated in plea negotiations where it granted a downward departure over the objections of prosecution). Rather, the district court was informing appellant that, under the state's plea offer, appellant's sentence would be concurrent because there was no apparent reason for it to be otherwise. *See State v. Wakefield*, 263 N.W.2d 76, 77 (Minn. 1978) (holding that a state sentence imposed after a federal sentence "must be presumed to run concurrently with the Federal sentence when there has been no specific determination by the trial court"). The district court's provision of accurate factual information to appellant did not amount to it impermissibly participating in plea negotiations.

Appellant's pro se supplemental brief reiterates several of the same arguments and appears to argue that he did not receive effective assistance of counsel at the time he pleaded guilty. After careful review of the record, we see no merit in appellant's pro se challenges.

Affirmed.