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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0134**

State of Minnesota,
Respondent,

vs.

David Joseph Madrigal,
Appellant.

**Filed November 13, 2018
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-17-10692

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of second-degree criminal sexual conduct, arguing that he should have been permitted to withdraw his guilty plea because it was unintelligent and involuntary. We affirm.

FACTS

On May 1, 2017, respondent State of Minnesota charged appellant David Joseph Madrigal with two counts of second-degree criminal sexual conduct. The complaint alleged that Madrigal touched the upper inner thighs of a 12-year-old student and a 10-year-old student at a Hopkins school where he was employed.

On June 14, 2017, Madrigal appeared before the district court, in custody, and pleaded guilty to one count of second-degree criminal sexual conduct pursuant to a plea agreement. The state agreed to dismiss the remaining charge and to recommend a stay of imposition of sentence with 90 days of local jail time. The state also agreed that Madrigal could be conditionally released pending sentencing once he had served the equivalent of 90 days of jail time. At the plea hearing, Madrigal waived his right to trial, submitted a petition to enter a plea of guilty, and provided a factual basis for his plea.

The plea petition included the following statements: “I . . . do not make the claim that the fact I have been held in jail since my arrest and could not post bail caused me to decide to plead guilty in order to get the thing over with rather than waiting for my turn at trial” and “I now make no claim that I am innocent.” The plea petition also stated:

My attorney has told me and I understand that if my plea of guilty is accepted by the judge I have the right to appeal, but that any appeal or other court action I may take claiming error in the proceedings probably would be useless and a waste of my time and the court's.

At the plea hearing, Madrigal answered "[y]es" when the district court asked him whether he had had "enough time to consider this matter" and "consult with [his] attorney." Madrigal's attorney reviewed the plea petition with him and asked him whether he understood that "your signature's telling the judge that you understand what's written on the document." Madrigal responded, "Yes." Madrigal's attorney reviewed the trial rights that Madrigal would give up by pleading guilty. Madrigal stated that he understood and expressly waived his trial rights. Madrigal's attorney noted that the petition asked questions regarding whether Madrigal had previously been treated by a psychiatrist or had been on medication because "today you're making an important decision about your life and the Court wants to be sure that . . . you're in a position to make important decisions." Madrigal did not raise the possibility of plea withdrawal or ask any questions regarding the plea-withdrawal process during the plea hearing.

The district court deferred acceptance of Madrigal's guilty plea pending completion of a presentence investigation report and psychosexual evaluation. On June 26, Madrigal was conditionally released from custody after serving the equivalent of his 90-day jail sentence, consistent with the plea agreement.

Prior to sentencing and represented by a new attorney, Madrigal moved to withdraw his guilty plea, arguing that he did not commit the offense to which he pleaded guilty and that he was pressured by his previous defense counsel into pleading the guilty. The district

court held a hearing on Madrigal's plea-withdrawal motion, at which Madrigal and his previous attorney testified. Madrigal argued that he should be allowed to withdraw his guilty plea because he felt that he had no choice but to plead guilty for the following reasons: (1) his previous attorney would not investigate "potentially exculpatory witnesses or exculpatory evidence," (2) he believed that he "would have a right to withdraw his plea" when he entered it, and (3) he needed to plead guilty to address personal matters that he could not address while in custody.

Madrigal testified as follows in support of his request for plea withdrawal: (1) his previous attorney failed to interview a potentially exculpatory witness, (2) he told his attorney that after his release from jail, he was going to come back to court and claim he was innocent, (3) his attorney failed to thoroughly explain the plea petition, and (4) his attorney told him that pleading guilty under the plea agreement would be in his best interests. Madrigal also testified that he "lied" under oath about being guilty to get out of jail.

Madrigal's previous attorney testified as follows: (1) he told Madrigal that he would interview the potentially exculpatory witness as part of his trial preparation if he thought it was appropriate, (2) he explained to Madrigal that contacting the witness would be difficult because the witness was a child, (3) he explained the benefits and risks of the state's offer to Madrigal and told him that whether to accept it was ultimately his decision, (4) he thoroughly explained the plea petition to Madrigal, and (5) Madrigal never said that he was pleading guilty to get released from custody or that he intended to withdraw his guilty plea.

The district court denied Madrigal's motion to withdraw his guilty plea, reasoning that his "guilty plea was knowing, intelligent, and voluntary" and that "permitting withdrawal would cause prejudice to the state" because "[t]he victims in this case were children and they had a sense of finality upon . . . Madrigal's resolution of the case." The district court stayed imposition of sentence for five years, placed Madrigal on probation, and imposed a ten-year conditional-release term. Madrigal appeals.

DECISION

Madrigal contends that the district court erred by denying his motion to withdraw his guilty plea because his plea was unintelligent and involuntary. "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). However, withdrawal is permitted in two circumstances. *Id.* First, "[a]t any time the court must allow a defendant to withdraw a guilty plea 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. Second, "[i]n its discretion the court may allow the defendant to withdraw a plea at any time before sentence if it is fair and just to do so." *Id.*, subd. 2. Although Madrigal moved the district court for plea withdrawal under both the manifest-injustice and fair-and-just standards, his arguments on appeal are limited to the manifest-injustice standard.

A manifest injustice exists if a guilty plea is invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). To be valid, a guilty plea must be "accurate, voluntary, and intelligent." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). A defendant has the burden of showing that his guilty plea was invalid. *Raleigh*, 778 N.W.2d at 94. Assessing

the validity of a plea presents a question of law that this court reviews de novo. *Id.* However, where “credibility determinations are crucial,” this court gives “deference to the primary observations and trustworthiness assessments made by the district court” in determining the factual circumstances of a defendant’s guilty plea. *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997).

Intelligence Requirement

“The purpose of the requirement that the plea be intelligent is to [ensure] that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). If the record shows that a defendant “had full opportunity to consult with his counsel before entering his plea,” courts may “safely presume” that a defendant was adequately informed of his rights. *State v. Propotnik*, 216 N.W.2d 637, 638 (Minn. 1974); *Hernandez v. State*, 408 N.W.2d 623, 626 (Minn. App. 1987).

Madrigal contends that his “guilty plea was not intelligently entered because he believed that he had the unqualified right to withdraw his guilty plea.” Madrigal argues that he “told defense counsel of his plan to withdraw his guilty plea at a later date, and prove his innocence” and that he “relied upon this belief and was not corrected by his attorney, nor was he warned by the district court that he would not be allowed to withdraw his plea.”

The record does not support Madrigal’s claim that his plea was unintelligent. Madrigal’s attorney testified that Madrigal never mentioned his plan to come back into court, claim innocence, and withdraw his plea. The district court appears to have deemed

the attorney's testimony credible: it found that Madrigal "understood at the time of the entry of his plea that he would not necessarily have the right to withdraw his plea." We defer to that credibility determination. *See Aviles-Alvarez*, 561 N.W.2d at 527.

Moreover, Madrigal's plea petition in no way suggests that plea withdrawal would be allowed. Thus, Madrigal's plea-hearing testimony that he understood the plea petition undercuts his claim that he believed that he had an unqualified right to withdraw his guilty plea. It also refutes any suggestion that he did not understand that a consequence of his guilty plea would be a finding of guilt.

Madrigal's claim that his plea was unintelligent also fails as a matter of law. The intelligence requirement ensures a defendant understands the rights he is giving up. *Raleigh*, 778 N.W.2d at 96; *Trott*, 338 N.W.2d at 251. But a defendant does not have an absolute right to withdraw his guilty plea, *Raleigh*, 778 N.W.2d at 93, and therefore does not give up such a right by pleading guilty. Madrigal does not cite authority suggesting that the intelligence requirement requires the court or defense counsel to dispel misperceptions a defendant may have about rights he does not have, especially when the record does not show that the defendant communicated his misperceptions to the court or counsel. The circumstances would be different if the record established that Madrigal had disclosed his alleged erroneous belief regarding plea withdrawal to the district court or defense counsel and it was ignored, but those are not the circumstances here. In sum, because a defendant does not have an absolute right to withdraw his guilty plea, Madrigal's purported erroneous, undisclosed belief that he had an unqualified right to do so did not make his plea unintelligent.

Voluntariness Requirement

“The voluntariness requirement ensures a defendant is not pleading guilty due to improper pressure or coercion.” *Raleigh*, 778 N.W.2d at 96. “[T]he normal trauma associated with being incarcerated following an arrest is not, by itself, a basis to claim coercion.” *Sykes v. State*, 578 N.W.2d 807, 813 (Minn. App. 1998), *review denied* (Minn. July 16, 1998). Improper pressure or coercion generally comes from an external source, such as a threat or promise made to induce a defendant to plead guilty. *See, e.g., Brady v. United States*, 397 U.S. 742, 750, 90 S. Ct. 1463, 1470 (1970) (“[A]gents of the State may not produce a plea by actual or threatened physical harm or by mental coercion overbearing the will of the defendant.”); *Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016) (noting the fact that a defendant denied that he had been “subjected to threats or promises” was further evidence that his plea was voluntary); *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (“A guilty plea cannot be induced by unfulfilled or unfulfillable promises . . .”). The voluntariness of a plea is determined by considering all of the relevant surrounding circumstances. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994).

Madrigal contends that his “guilty plea was not voluntarily entered because defense counsel delayed the interview of a potentially exculpatory witness and [he] believed he had no other choice than to get out of jail and interview his exculpatory witness himself.” Madrigal does not argue that his previous counsel’s representation “was deficient, but rather that defense counsel’s delay of interviewing a potentially exculpatory witness placed undue pressure on [him] to investigate his case himself, when presented with that opportunity.”

Madrigal's claim that his plea was involuntary fails as a matter of law. Madrigal does not argue that anyone threatened him or induced him to plead guilty. Instead, Madrigal argues that he believed that he had to plead guilty to get out of jail and investigate his case, because he disagreed with his attorney's investigation strategy. Madrigal does not cite authority supporting his contention that a defendant's disagreement with defense counsel's investigation strategy results in improper pressure sufficient to invalidate a guilty plea. Madrigal's belief that a defense witness should be interviewed immediately may have been a legitimate concern to him, but it is not the type of improper external coercion that renders a guilty plea involuntary.

Conclusion

Madrigal has not met his burden to show that his plea was unintelligent or involuntary and therefore invalid. Neither the record nor the law supports his request for plea withdrawal. Moreover, his request for plea withdrawal is inconsistent with public policy favoring the finality of pleas.

[O]nce the plea is accepted and a judgment of conviction is entered upon it, the general policy favoring the finality of judgments applies to some extent, at least, in criminal as well as in civil cases. The tender and acceptance of a plea of guilty is and must be a most solemn commitment. While the state has no reason to imprison a man for a crime which he did not commit, we are not disposed to encourage accused persons to play games with the courts at the expense of already overburdened calendars and the rights of other accused persons awaiting trial by setting aside judgments of conviction based upon pleas made with deliberation and accepted by the court with caution.

Chapman v. State, 162 N.W.2d 698, 700 (Minn. 1968) (footnote and quotation omitted).

Underlying the [fair-and-just plea-withdrawal] rule is the notion that giving a defendant an absolute right to withdraw a plea before sentence would undermine the integrity of the plea-taking process. If a guilty plea can be withdrawn for any reason or without good reason at any time before sentence is imposed, then the process of accepting guilty pleas would simply be a means of continuing the trial to some indefinite date in the future when the defendant might see fit to come in and make a motion to withdraw his plea.

Kim v. State, 434 N.W.2d 263, 266 (Minn. 1989) (quotation and citation omitted).

Madrigal essentially asks to withdraw his guilty plea because he lied under oath when he pleaded guilty and had no intent to be bound by his plea. That is precisely the type of game playing that undermines the integrity of the plea-taking process. We will not allow it.

Affirmed.