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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0221**

State of Minnesota,
Respondent,

vs.

Erik Wilford Domier,
Appellant.

**Filed January 7, 2019
Affirmed
Hooten, Judge**

Otter Tail County District Court
File No. 56-CR-16-2070

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Considered and decided by Rodenberg, Presiding Judge; Hooten, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges his conviction of felony domestic assault, arguing that some of his prior out-of-state convictions should not have been counted as qualified domestic violence-related offenses. He also argues that the district court abused its discretion by not allowing him to withdraw his guilty plea. We affirm.

FACTS

In early July of 2016, appellant was driving in his truck with his girlfriend, A.M.C., and their child. A.M.C. decided that she no longer wanted to be in the truck with appellant, and a struggle ensued. Appellant eventually pulled over; A.M.C. got out of the truck and started to walk or run away from the vehicle. Appellant “chased after her to bring her back,” and A.M.C. fell. Appellant grabbed A.M.C. by her hair, pulling her up and scraping her legs on the gravel road.

After he was arrested a few days later, appellant was charged with felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2016). Subdivision four enhances a misdemeanor domestic assault under subdivision one into a felony when a defendant has two or more previous qualified domestic violence-related offense (QDVO) convictions. Minn. Stat. § 609.2242, subds. 1, 4 (2016). Early the next March, appellant pleaded guilty to this charge. Before sentencing but after discovering that the two prior North Dakota convictions that enhanced the current domestic assault to a felony likely arose from the same behavioral incident, appellant filed a motion asking the district court, alternatively, to reduce his criminal history score, permit him to withdraw his guilty plea, or dismiss the

complaint. The district court granted the motion to reduce appellant's criminal history score, denied the other two motions, and stayed the sentence pending appeal. This appeal follows.

DECISION

I. Minn. Stat. § 609.02, subd. 16 does not contain an implicit requirement that “qualified domestic violence-related offenses” from other states must each arise out of a separate behavioral incident, such that appellant could not have legally been convicted of felony domestic assault.

Whether a particular conviction constitutes a QDVO presents a question of statutory interpretation. *State v. Moen*, 752 N.W.2d 532, 534 (Minn. App. 2008). “Statutory interpretation presents a question of law, which we review de novo.” *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). Unless the statute is ambiguous, we apply the plain meaning of the statutory language. *Moen*, 752 N.W.2d at 534. “When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.” Minn. Stat. § 645.16 (2018). Ambiguity exists if the statute “is subject to more than one reasonable interpretation.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation omitted).

Similar

Appellant's main claim is that his two North Dakota convictions should have been counted as a single conviction because they arose from the same behavioral incident, and therefore he did not have two QDVOs that would enhance the assault of his girlfriend to a felony. His argument is premised on the fact that in Minnesota when multiple convictions

arise from the same behavioral incident a defendant can only be sentenced for the most serious offense. Minn. Stat. § 609.035, subd. 1 (2018). North Dakota law contains no such prohibition. *See, e.g., State v. Desjarlais*, 744 N.W.2d 529, 531 (N.D. 2008). Appellant contends that because the statute defining a QDVO contains an implicit requirement that an out-of-state conviction must be “similar” to qualifying Minnesota convictions, such out-of-state convictions must necessarily arise from separate behavioral incidents as well.

To be clear, appellant was convicted under Minn. Stat. § 609.2242 (2016). Subdivision one describes a simple assault against a family member, a misdemeanor, an element that is not contested here. *Id.*, subd. 1. Subdivision four enhances the penalty for this offense when a defendant has two or more “qualified domestic violence-related offense convictions.” *Id.*, subd. 4. Minn. Stat. § 609.02, subd. 16, defines “qualified domestic violence-related offense” by reference to specific Minnesota statutes, “and similar laws of other states.” *Id.* Neither Minn. Stat. § 609.2242 nor Minn. Stat. § 609.02, subd. 16, directs the district court to inquire into the factual basis for the previous convictions. Nor does Minn. Stat. § 609.2242, subd. 4, contain a requirement that prior convictions used to enhance a current offense arise from separate behavioral incidents.

Appellant argues that the word “similar” in the statute defining QDVO “indicates the legislature’s intent to treat out-of-state convictions in the same manner as offenses committed in Minnesota,” and therefore that out-of-state convictions can only be treated as QDVOs if they arose from separate behavioral incidents. But during the pendency of this appeal, this court released its opinion in *State v. Defatte*; that case is dispositive of appellant’s claim. ___N.W.2d___ (Minn. App. Nov. 19, 2018).

In *Defatte*, this court held that multiple Minnesota convictions arising from the same behavioral incident are considered distinct QDVOs, even when appellant was only actually sentenced for one of these convictions. 2018 WL 6034972, at *3–5. Even assuming appellant’s argument is correct, that the word “similar” requires Minnesota courts to treat out-of-state-convictions as though they occurred in Minnesota, under *Defatte* each separate conviction would still count as a QDVO under Minnesota law.

Further, the plain language of the statute also confirms that there is no such requirement. None of the relevant statutes contains any requirement in their plain language that courts consider convictions from other jurisdictions as though they had been committed in Minnesota. See Minn. Stat. §§ 609.02, .2242. And appellant has provided no authority or analysis that would expand the definition of “similar” beyond its common meaning to include his proposed additional requirement. See Minn. Stat. § 645.08 (1) (2018) (“[W]ords and phrases are construed according to rules of grammar and according to their common and approved usage.”).¹

As part of this argument, appellant asserts that if the offenses occurred in Minnesota, under Minn. Stat. § 609.035, subd. 1, appellant would only have been sentenced for one offense. While appellant is correct on this point, it is irrelevant. Under *Defatte*, while appellant would have only been sentenced for one of the offenses if they had occurred in Minnesota, both of them would still have been considered QDVOs for the purpose of

¹ Furthermore, this court has already held that section 609.02, subdivision 16, defining the term “qualified domestic violence-related offense,” is not ambiguous. *Moen*, 752 N.W.2d at 535.

enhancing his current charge if the court entered a judgment of conviction. 2018 WL 6034972, at *3–4.²

We therefore hold that appellant has failed to establish that he is entitled to relief under both *State v. Defatte*, 2018 WL 6034972, at *3–4, and the plain language of Minn. Stat. §§ 609.02, .2242.

Equal protection

Appellant also argues that not treating out-of-state convictions as though they had been adjudicated in Minnesota violates the equal protection clauses of the United States and Minnesota Constitutions. The district court did not rule on this argument because appellant did not raise the issue to the district court.

The constitutionality of a statute presents a question of law that we review de novo. *State v. Fitch*, 884 N.W.2d 367, 373 (Minn. 2016). The party challenging the constitutionality of a statute must demonstrate beyond a reasonable doubt that the statute is unconstitutional. *Id.* Statutes are presumed to be constitutional and our “power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary.” *In re Welfare of B.A.H.*, 845 N.W.2d 158, 162 (Minn. 2014).

² Furthermore, Minn. Stat. § 609.035 explicitly governs criminal convictions *in Minnesota*. Appellant cites numerous cases where Minnesota courts appropriately applied Minn. Stat. § 609.035 to cases involving Minnesota defendants. *See State v. Kebaso*, 713 N.W.2d 317, 322 (Minn. 2006); *State v. Bookwalter*, 541 N.W.2d 290, 293 (Minn. 1995); *State v. Notch*, 446 N.W.2d 383, 385–86 (Minn. 1989); *State v. Norregaard*, 384 N.W.2d 449, 449 (Minn. 1986); *State v. Morris*, 160 N.W.2d 715, 718 (Minn. 1968); *State v. Johnson*, 141 N.W.2d 517, 521–22 (Minn. 1966). These cases are all irrelevant. None of these cases involve out-of-state defendants, nor do they involve application of previous out-of-state convictions to enhance current Minnesota charges.

Appellate courts generally will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). And even constitutional claims can be forfeited by not raising them to the district court. *See In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981) (declining to address a constitutional issue raised for the first time on appeal from a termination of parental rights).

Appellant did not raise his current constitutional claim before the district court. We therefore hold that appellant forfeited his equal-protection argument. *Id.*³

II. The district court did not abuse its discretion in denying appellant’s motion to withdraw his guilty plea.

The validity of a guilty plea is a question of law, which we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). At any time, either before or after sentencing, courts allow defendants to withdraw a guilty plea if they establish that “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid,” but a “defendant bears the burden of showing his plea was invalid.” *Raleigh*, 778 N.W.2d at 94. “To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Id.* (citing *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983)).

³ And even if appellant had raised this claim before the district court, under *State v. Defatte*, 2018 WL 6034972, at *3–4, the district court treated appellant’s North Dakota convictions the same way it would have treated those convictions had they occurred in Minnesota. Therefore appellant cannot show that “similarly situated persons have been treated differently,” *Paquin v. Mack*, 788 N.W.2d 899, 906 (Minn. 2010), and this showing is a threshold requirement to make out an equal-protection claim, *State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011). Thus, appellant’s claim would also fail on its merits.

Before sentencing, district courts may allow defendants who pleaded guilty to withdraw their plea if it is “fair and just to do so.” Minn. R. Crim. P. 15.05, subd. 2. This standard requires district courts to give “due consideration to the reasons advanced by the defendant . . . and any prejudice the granting of the motion would cause the prosecution.” *Id.* We review a district court’s denial of such a motion for an abuse of discretion, and will only reverse such a denial in a “rare case.” *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

Appellant argues both standards apply to our review of his request to withdraw his guilty plea. Respondent argues that both standards cannot apply concurrently, but does not provide any argument or explanation as to why this is so.

Respondent is incorrect. The rules plainly allow for a mandatory plea withdrawal “[a]t any time” if the defendant can establish a “manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. This plainly covers the time both before and after sentencing. The rule also allows for a discretionary plea withdrawal before sentencing if it is “fair and just.” *Id.* at subd. 2. This subdivision exclusively applies to the time before sentencing. Therefore, both subdivisions apply to the time before sentencing. *See also, Raleigh*, 778 N.W.2d at 97 (analyzing separately arguments that an appellant should have been allowed to withdraw his guilty plea before sentencing under each standard).

Here, appellant moved to withdraw his guilty plea before he was sentenced. The plain language of the rule allows for a challenge under either subdivision if made before sentencing. Respondent has failed to cite to any legal authority holding an appellant could

only make a claim under one subdivision of rule 15.05 if he or she moved to withdraw a guilty plea before sentencing.

Manifest-injustice standard

The heart of appellant's arguments under the manifest-injustice standard simply reframe his earlier claims. Appellant makes three distinct arguments that we will address.

First, appellant argues that the plea was inaccurate because the factual basis for his prior convictions was inadequate. Appellant objects to the leading yes and no questioning to determine the factual basis for appellant's plea. But appellant fails to submit any legal authority that renders the factual basis for his plea (his testimony, comparison of the statutes, and consideration of the charging documents in the previous North Dakota convictions) actually "inaccurate." And furthermore, contrary to appellant's representation, the transcript reveals that the factual basis for appellant's plea was primarily established through appellant's own words. There is no legal basis to grant appellant relief under this analysis, and so this argument fails.

Appellant next argues that the record before the court was "insufficient as a matter of law to establish that [the prior convictions] were QDVOs under Minnesota law." But this is simply a reassertion of the argument that the district court was obliged to inquire into the factual basis for appellant's prior convictions at all. As discussed above, the statute only requires that the convictions exist and are "similar" to Minnesota equivalents; it does not permit district courts to require additional steps before accepting the convictions as QDVOs. *See Moen*, 752 N.W.2d at 536 (comparing North Dakota statutes with Minnesota equivalents to determine if the prior convictions were QDVOs without inquiring into the

factual basis for the prior convictions).⁴ Because we conclude that the relevant statutes do not require or allow district courts to inquire into the factual basis for prior convictions, appellant’s argument fails.

Appellant’s third argument also fails as a matter of law. Appellant argues that the state did not prove by a preponderance of the evidence that the multiple convictions on the same date are not the result of a “single course of conduct,” such that he could have been sentenced for each of them had they occurred in Minnesota. But as above, there is no requirement for the state to prove that the convictions did not result from the same course of conduct. See Minn. Stat. § 609.02, subd. 16. And this court has already ruled that even in Minnesota—when a defendant is convicted of multiple crimes but only sentenced for one under Minn. Stat. § 609.035—multiple convictions will be counted as multiple QDVOs. *Defatte*, 2018 WL 6034972, at *5. Thus, this claim also fails.

Appellant’s fourth and final claim—that his plea was not intelligently made—is derivative of the immediately preceding argument. Appellant claims his plea was not intelligently made because “the plea was inaccurate.” But if the plea was inaccurate, denying a withdrawal is already a manifest injustice without considering if it was intelligent. If the plea was accurate, then, by appellant’s own logic, it was also intelligent. This claim cannot be analyzed separately from the above argument that the plea was inaccurate, and also fails.

We therefore hold that there was no manifest injustice requiring plea withdrawal.

⁴ And appellant does not argue that the statutes that he was convicted under in North Dakota are not “similar” to Minnesota equivalents that are QDVOs.

Fair-and-just standard

Appellant also argues that the district court abused its discretion in not allowing him to withdraw his guilty plea because “the change in criminal history and facts considered in negotiating the plea agreement changed substantially.” While appellant’s argument is unclear, the only grounds appellant argues that could require reversal under our standard of review would be that the district court did not give “due consideration” to appellant’s argument. See Minn. R. Crim. P. 15.05, subd. 2. Appellant argues, “[t]he Court did not consider or recognize the impact a lower criminal history score and less serious criminal history has on plea negotiations and sentences.” Appellant is correct that the court did not consider this specific argument, but that is because appellant did not make this argument to the district court. It is axiomatic that the district court cannot abuse its discretion in failing to consider an argument that an appellant did not make. Therefore this argument also fails.

Appellant also argues that the record shows, “[a]ppellant intended to seek a different sentence if he was correct that the offenses arose out of a single behavioral incident.” Of course, that is what appellant intended. If there was only one qualifying QDVO, the district court could not have convicted and sentenced appellant for the crime to which he pleaded. It is unclear how appellant’s intent—regarding what he would have done if the district court had done something it did not do—created a situation that requires this court to hold that the district court abused its discretion. But given that appellant has failed to support the argument with any legal authority, we simply hold that appellant failed to meet his burden of establishing that he is entitled to relief. See *State v. Lopez*, 794 N.W.2d 379, 382

(Minn. App. 2011) (“The defendant has the burden to prove that a fair-and-just reason exists to withdraw his plea.”).

Because none of appellant’s arguments warrant relief, we hold that the district court did not abuse its discretion when it denied appellant’s motion to withdraw his guilty plea under the “fair and just” standard.

Affirmed.