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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0642**

State of Minnesota,
Respondent,

vs.

Bounlieng Moon Chaokhio,
Appellant.

**Filed May 13, 2019
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-CR-09-11344

Keith Ellison, 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, Sean Michael McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

JOHNSON, Judge

Bounlieng Moon Chaokhio pleaded guilty to first-degree criminal sexual conduct, admitting that he sexually abused his step-granddaughter during a period of more than three

years. Before sentencing, he moved to withdraw his guilty plea, claiming that his attorney had pressured him to plead guilty and had misinformed him of the consequences of pleading guilty. The district court denied the motion and sentenced him to 144 months of imprisonment, to be followed by a ten-year term of conditional release. We conclude that the district court did not err by denying Chaokhio's motion to withdraw his guilty plea. We also conclude that the district court did not err by ordering a ten-year period of conditional release. Therefore, we affirm.

FACTS

In October 2008, a Hennepin County Child Protection worker was informed by Chaokhio's then-seven-year-old step-granddaughter that Chaokhio had sexually abused her and was continuing to do so. The girl was interviewed at the Midwest Children's Resource Center four days later and stated that several incidents of abuse had occurred at Chaokhio's home when she was five, six, and seven years old. Because Chaokhio was living in Ramsey County, the Hennepin County employee referred the matter to the Ramsey County Sheriff's Department.

In June 2009, the state charged Chaokhio with first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a) (2004). The complaint alleged that the offense occurred "[b]etween the 1st day of January, 2006 and the 6th day of October, 2008."

Law-enforcement officers subsequently learned that Chaokhio had traveled to Laos, where he was using a false identity. He was arrested there and extradited to Minnesota in October 2016.

In November 2016, the state amended the complaint by adding a second count of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a). The state also gave notice of its intent to seek an upward departure at sentencing. The state later amended count 2 to allege second-degree (rather than first-degree) criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(h)(iii) (2004). The second amended complaint alleged that both offenses occurred “on or between March 19, 2005 and October 6, 2008.”

Trial began in late April 2017. On the second day, Chaokhio accepted the state’s offer of a plea agreement. Chaokhio agreed to plead guilty to count 1, and the state agreed to dismiss count 2 and to not seek an upward departure from the sentencing guidelines. At the plea hearing, the district court stated that Chaokhio was “competent . . . to plead guilty,” that he “provided a knowing, intelligent, voluntary waiver of [his] trial rights,” and that there was “a sufficient factual basis for [the] plea.” The district court deferred acceptance of the plea and adjudication of guilt until the sentencing hearing.

At the sentencing hearing in August 2017, Chaokhio appeared with a different attorney, who informed the district court that Chaokhio intended to file a written motion to withdraw his guilty plea. Chaokhio filed such a motion in September 2017. He argued that plea withdrawal was necessary to avoid a manifest injustice and would be fair and just. The state opposed the motion. The district court held an evidentiary hearing on Chaokhio’s motion in October 2017. Chaokhio testified on his own behalf, and his former attorney testified for the state. In November 2017, the district court issued a 12-page order and memorandum denying the motion.

In January 2018, the district court imposed a sentence of 144 months of imprisonment, to be followed by a ten-year term of conditional release. Chaokhio appeals.

D E C I S I O N

I. Motion to Withdraw Guilty Plea

Chaokhio argues that, for three reasons, the district court erred by denying his motion to withdraw his guilty plea.

A.

Chaokhio first contends that he had an absolute right to withdraw his guilty plea before the district court accepted it. The caselaw is clear in stating that a defendant who has pleaded guilty does *not* have an absolute right to withdraw a guilty plea. *See, e.g., State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010); *State v. Tuttle*, 504 N.W.2d 252, 257 (Minn. App. 1993). The rules of criminal procedure allow for the withdrawal of a guilty plea in only two circumstances: to correct a “manifest injustice,” Minn. R. Crim. P. 15.05, subd. 1, or if it would be “fair and just,” Minn. R. Crim. P. 15.05, subd. 2. In *State v. Nicholas*, 924 N.W.2d 286 (Minn. App. 2019), *review denied* (Minn. Apr. 24, 2019), we recently reiterated that the rules of criminal procedure do not give a defendant an absolute right to withdraw a guilty plea before its acceptance by the district court and also determined that no absolute right to withdraw a guilty plea exists outside of the rules of criminal procedure. *Id.* at 291-92. Thus, Chaokhio did not have an absolute right to withdraw his guilty plea.

B.

Chaokhio next contends that the district court erred by reasoning that plea withdrawal is not required to correct a manifest injustice.

Under the manifest-injustice standard, withdrawal of a guilty plea is required if a guilty plea is invalid. *Raleigh*, 778 N.W.2d at 94. To be constitutionally valid, a guilty plea “must be accurate, voluntary, and intelligent.” *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007). As the supreme court has explained,

The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial. The voluntariness requirement insures that the guilty plea is not in response to improper pressures or inducements; and the intelligent requirement insures that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty.

Alanis v. State, 583 N.W.2d 573, 577 (Minn. 1998) (footnotes omitted), *overruled in part on other grounds by Padilla v. Kentucky*, 559 U.S. 356, 374, 130 S. Ct. 1473, 1486 (2010), *as recognized by Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). If a guilty plea does not satisfy any of these three requirements, it is invalid. *See State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). Thus, if a defendant’s guilty plea was not accurate, not voluntary, or not intelligent, a district court must permit the defendant to withdraw his guilty plea to correct a manifest injustice. *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007).

1.

Chaokhio contends that his plea was not voluntarily entered because his attorney, coerced him into pleading guilty by telling him that he would be subject to a 30-year sentence without telling him about the procedures for an upward departure.

During the plea hearing, the district court informed Chaokhio that his sentence presumably would be between 144 and 172 months but that his attorney could ask for a

shorter sentence. When asked if anyone was forcing him to plead guilty, Chaokhio answered, “Well, I was afraid if I go to trial and I lose I might end up with 30 years, whether that’s true or not, I don’t know.” The district court inquired further, and Chaokhio stated, “No one forced me. I was just afraid that I might lose at trial.” Chaokhio’s attorney inquired as to whether Chaokhio understood the meaning of the sentencing-guidelines grid, which they had reviewed together, and Chaokhio said that he understood it.

Five months later, at the evidentiary hearing on his motion to withdraw, Chaokhio testified that his former attorney had told him that he would lose at trial. Chaokhio also testified that his former attorney had told him that if he were to lose at trial, he would have to go to prison for 30 years, but that if he pleaded guilty, he would get “90, 60, or 30” months. Chaokhio testified that his former attorney did tell him about the presumptive sentence. Chaokhio testified that he felt that his former attorney wanted him to go to jail and that he pleaded guilty because he “didn’t really understand the system here in America” and did not want to die in prison.

Chaokhio’s former attorney testified at the evidentiary hearing that he informed Chaokhio that the trial would be “a challenge” given the state’s evidence and the district court’s rulings on pre-trial motions. He testified that he informed Chaokhio of the state’s intention to seek an aggravated sentence and the possible consequences of that motion. He testified that he did not force Chaokhio to plead guilty, did not threaten him, and did not tell him to lie under oath.

In its order denying the motion to withdraw, the district court stated, “The only statements in the record that support [Chaokhio’s] contention that he was coerced into a

plea by trial counsel are his own testimony at the withdrawal hearing and the arguments of his new counsel.” The district court further stated, “The record does not support a conclusion that [Chaokhio’s] will was overborne by pressure from his trial counsel.”

We review the district court’s findings for clear error. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994). Chaokhio’s plea colloquy and his former attorney’s testimony at the evidentiary hearing support the district court’s finding that Chaokhio was not coerced into pleading guilty. The absence of any advice about the procedures required for an upward departure does not make the attorney’s advice coercive. The district court did not clearly err by determining that Chaokhio’s plea was entered voluntarily.

2.

Chaokhio also contends that his plea was not intelligently entered because his former attorney advised him that he could move for a downward durational departure based on remorse.

At the plea hearing, Chaokhio stated that he had reviewed the plea petition with his attorney and an interpreter and that his attorney had answered his questions. His attorney reviewed the plea petition with Chaokhio on the record. The district court informed Chaokhio that he could request a shorter sentence than the presumptive guidelines sentence but that the district court would not decide that issue until the sentencing hearing. Chaokhio stated that he understood and wished to go forward with the plea. Chaokhio stated that his attorney had told him that “he was going to help me see my sentence reduced because of my age.” Chaokhio’s attorney stated that they would be gathering evidence to “ask the

judge for a lower amount of time” but confirmed that Chaokhio was aware of the presumptive sentencing range.

At the evidentiary hearing on his motion to withdraw, Chaokhio testified that his former attorney had told him that he would write a letter to Chaokhio’s wife and Chaokhio would write a letter to the judge and apologize “and then I would get a good deal.” Chaokhio’s former attorney testified that he “provided counsel that generally if you can accept responsibility there are matters that can be presented in both extenuation and mitigation that . . . may result in less of a sentence.” He also testified that he and Chaokhio discussed the possibility of a motion for a downward durational departure but that he told Chaokhio that he should assume that the sentence would be within the presumptive range.

In its order denying the motion to withdraw, the district court found that Chaokhio was aware that, although he was free to seek a departure from the presumptive sentence, there was no specific sentencing agreement in place and that his sentence would ultimately be determined by the district court and, “knowing all of those facts, he wished to plead guilty.” The district court also found that Chaokhio’s contention that he was promised a downward durational departure was “negated by the plea petition that [Chaokhio] signed, by trial counsel’s testimony at the motion hearing, and by [Chaokhio’s] own statements at the plea colloquy.”

The record indicates that Chaokhio’s plea was entered intelligently. Chaokhio stated that he understood the charges against him, his rights under the law, the terms of the plea agreement, and the consequences of pleading guilty. He told the district court that he had had a full opportunity to consult with his attorney through an interpreter, and his

attorney reviewed the petition with him again on the record. Chaokhio also indicated that he understood that he likely would receive the presumptive sentence. Chaokhio later testified that he believed that he could receive a lower sentence based on his age or an apology to the judge. Although remorse usually is offered in support of a request for a downward dispositional departure, *see State v. Back*, 341 N.W.2d 273, 275 (Minn. 1983), it also may be offered to support a request for a downward durational departure, *see State v. Solberg*, 882 N.W.2d 618, 625-26 (Minn. 2016). The district court did not clearly err by determining that Chaokhio entered his plea intelligently.

Thus, the district court did not err by denying Chaokhio's motion to withdraw his guilty plea under the manifest-injustice standard.

C.

Chaokhio further contends that the district court erred by reasoning that plea withdrawal is not required under the fair-and-just standard.

"The fair-and-just standard is less demanding than the manifest-injustice standard." *State v. Lopez*, 794 N.W.2d 379, 382 (Minn. App. 2011). But the fair-and-just standard does not allow a defendant to withdraw a plea "for simply any reason." *Theis*, 742 N.W.2d at 646 (quotation omitted). The fair-and-just standard requires district courts to give "due consideration" to two factors: (1) "the reasons advanced by the defendant in support of the motion" and (2) "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; *Raleigh*, 778 N.W.2d at 97. "A defendant bears the burden of advancing reasons to support withdrawal." *Raleigh*, 778 N.W.2d at 97. The state "bears the burden of

showing prejudice caused by withdrawal.” *Id.* The district court’s application of the fair-and-just standard “is left to the sound discretion of the [district] court,” and its decision “will be reversed only in the rare case in which the appellate court can fairly conclude that the trial court abused its discretion.” *State v. Kaiser*, 469 N.W.2d 316, 320 (Minn. 1991) (quotation omitted).

The district court determined that Chaokhio “failed to advance any reason why withdrawal would be fair and just.” The district court found that Chaokhio was aware of the consequences of pleading guilty, that he was given extended recesses with his attorney and an interpreter, that he said that he had had adequate time to consult with counsel and consider his options, and that he stated that he understood the trial rights he was waiving and was not forced to plead guilty. The district court also found Chaokhio’s arguments regarding a lack of prejudice to the state to be “unpersuasive.” The district court stated that it had been almost a decade since the offense was reported to law enforcement and that “the long delay in bringing Defendant to trial has been almost entirely caused by Defendant’s actions in fleeing to Laos and living under a different identity.” The district court also noted that when Chaokhio made his motion to withdraw his plea, “the State had already informed its witnesses that a guilty plea had been entered and they would not be required to testify at trial.”

Chaokhio contends that it would have been fair and just for the district court to allow him to withdraw his plea because of his confusion during the proceedings, his “cognitive issues,” his “reliance on an interpreter,” and his former attorney’s “minimal contact with him and affirmative misadvice.” We believe that the district court did not abuse its

discretion by not granting the motion for these reasons. Chaokhio further contends that the state did not make a sufficient showing that it would be prejudiced by withdrawal of the plea. The district court's reasoning that the state would suffer prejudice because the victim and other witnesses had been dismissed is supported by the record and the caselaw. *See, e.g., Kim v. State*, 434 N.W.2d 263, 267 (Minn. 1989).

Thus, the district court did not err by denying Chaokhio's motion to withdraw his guilty plea under the fair-and-just standard.

II. Conditional Release

Chaokhio also argues that the district court erred by imposing a ten-year term of conditional release.

If a defendant is found guilty of first-degree criminal sexual conduct in violation of section 609.342, the district court "shall provide that, after the offender has completed the sentence imposed, the commissioner [of corrections] shall place the offender on conditional release for ten years." Minn. Stat. § 609.3455, subd. 6 (2005). The statute authorizing the automatic imposition of a ten-year term of conditional release was enacted in 2005 and became effective on August 1, 2005. *See* 2005 Minn. Laws ch. 136, art. 2, § 21, at 929-33. For violations of section 609.342 committed before August 1, 2005, a district court is required to impose a conditional-release term of only five years. *See* Minn. Stat. § 609.109, subd. 7 (2004).

Chaokhio contends that the state did not establish that he committed first-degree criminal sexual conduct after August 1, 2005, in light of the allegation in the second amended complaint that he committed the alleged crimes "on or between March 19, 2005

and October 6, 2008.” He contends that the imposition of a ten-year term of conditional release violates his right to a jury trial on the ground that the facts necessary for a ten-year term must be proved beyond a reasonable doubt or admitted by the defendant. *See Blakely v. Washington*, 542 U.S. 296, 301-04, 124 S. Ct. 2531, 2536-37 (2004); *State v. DeRosier*, 719 N.W.2d 900, 903 (Minn. 2006).

In response, the state cites *Rickert v. State*, 795 N.W.2d 236 (Minn. 2011), the facts of which are quite similar to the facts of this case. In *Rickert*, the state alleged that the defendant engaged in first-degree criminal sexual conduct “[o]n or about 2003 through 2006.” *Id.* at 238. Rickert pleaded guilty. *Id.* The district court imposed a ten-year term of conditional release. *Id.* Rickert made the same argument that Chaokhio makes now. *Id.* at 238, 242. The supreme court rejected the argument, reasoning that a guilty plea “in effect judicially admit[s] the allegations contained in the complaint” and that “by his guilty plea, Rickert judicially admitted that” he committed the offense “in 2006.” *Id.* at 242-43 (quotation omitted). Accordingly, the supreme court concluded that no additional fact-finding was required and that there was no violation of Rickert’s *Blakely* rights. *Id.* at 243.

The relevant facts of this case are only slightly different from those of *Rickert* in that the words used in the two complaints are slightly different, but the difference is not meaningful. The state alleged that Chaokhio committed his offense “on or between March 19, 2005 and October 6, 2008.” We acknowledge that the phrase “on or between March 19, 2005 and October 6, 2008” is somewhat awkward and not perfectly clear. But no more so than the phrase “[o]n or about 2003 through 2006,” which was the language used in the complaint in *Rickert*. *Id.* at 238. The supreme court concluded in *Rickert* that the defendant

admitted to committing the alleged crime after August 1, 2005. *Id.* at 242-43. For the same reasons, we conclude that Chaokhio admitted to committing his crime after August 1, 2005.

Thus, the district court did not err by imposing a ten-year term of conditional release.

Affirmed.