

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0689**

State of Minnesota,
Respondent,

vs.

Glenn David Johnson,
Appellant.

**Filed March 18, 2019
Affirmed
Connolly, Judge**

Anoka County District Court
File No. 02-CR-17-1751

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

David Sjoberg, Sjoberg Law Office, P.A., Ham Lake, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant, convicted of fourth-degree criminal sexual conduct, challenges the district court's denial of his presentence motion to withdraw his guilty plea, arguing that it

would have been fair and just to permit his plea withdrawal. Because appellant's reasons for permitting withdrawal lack merit and because allowing withdrawal would have prejudiced the state, we affirm the district court.

FACTS

In 1998, appellant Glenn Johnson, then 33, pleaded guilty to fourth-degree criminal sexual conduct resulting from his 1997 assault of his 14-year-old niece who was sleeping at his house. For the next 14 years, appellant worked for a food service routing delivery trucks; his position was then eliminated, and in 2013 he began working as a school bus driver.

In March 2017, appellant was charged with one count of second-degree criminal sexual conduct and one count of fourth-degree criminal sexual conduct, resulting from his assault of his daughter's 15-year-old girlfriend, who was sleeping at their house. Appellant pleaded not guilty at the omnibus hearing.

The state moved to introduce *Spreigl* evidence of appellant's 1997 offense, and the victim of that offense agreed to testify at appellant's trial. Appellant moved to exclude her evidence of the prior offense. Following a hearing, and shortly before the trial was to begin, his motion was denied. Appellant then pleaded guilty to fourth-degree criminal sexual conduct under a plea agreement that provided a stay of execution of his prison sentence, probation, a 60-day jail cap, a ten-year conditional release period, predatory-offender registration, no contact with the victim, and dismissal of the second-degree criminal-sexual-conduct charge. The district court deferred its acceptance of appellant's guilty plea to allow time for a presentence investigation and a psychosexual evaluation.

In March 2018, five months after pleading guilty, appellant, represented by different counsel, moved to withdraw his guilty plea. His motion was denied. He argues that the district court abused its discretion in denying his motion.

DECISION

When a motion to withdraw a guilty plea is made prior to sentencing, the district court has discretion to permit withdrawal under the fair-and-just standard and we reverse only in the rare case. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). The parties agree that there is no absolute right to withdraw a guilty plea. *See State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007).

In reply to appellant's counsel's argument for withdrawal of his guilty plea, the district court stated:

[T]hese criminal sexual conduct cases are hard cases from start to finish and they are very hard on people involved including [appellant], including the other folks involved.

I don't know what more . . . could have been done [at the plea hearing.] We followed a good Rule 15 procedure, used a plea petition, he had the benefit of experienced Counsel, took it right up to the very day of trial, I understood the *Spreigl* issue [i.e., testimony of the victim of appellant's 1997 offense] to be the dispositive issue in the negotiations.

I'm not sure what . . . more could have been done there.

. . . .

I don't see anything deficient in the process that was followed, so I'm going to deny that motion [to withdraw the guilty plea].

In determining whether it is fair and just to withdraw a plea, a court must consider the reasons the defendant gives to support withdrawal and the prejudice granting withdrawal would cause to the state. *Raleigh*, 778 N.W. 2d at 97.

1. Appellant's Reasons

Appellant argues that three circumstances make it fair and just for him to withdraw his plea. The first is that “subsequent to his guilty plea, [he] asserted his innocence.” But the transcript indicates that appellant consistently asserted his guilt at his plea hearing. He told the district court that, at the age of 52, he had sexual contact with a girl of 15 “[b]y touching her breasts and putting my arm around her buttocks and then around her waistline in the front.” He answered affirmatively when asked if this had been “pretty alarming to her” then or afterwards, if this had happened in his house, if he was in charge of the house, and if he was in a position of authority because he was the parent of his daughter and supposed to be looking after her and the victim, her friend. When the prosecutor asked appellant, “[W]hen you had contact with her breasts, you agree that was with a sexual intent, right? That wasn’t an accident or a mistake, correct?” He replied, “That’s correct.” Appellant also admitted the offense during his presentence investigation and psychosexual evaluation. He provides no explanation for why it would be fair and just to disregard what he said at the plea hearing and subsequent events and consider only what he now says in support of his motion to withdraw. Moreover, innocence proclaimed after entering a plea is not a significant reason to withdraw a plea. *State v. Williams*, 373 N.W.2d 851, 853 (Minn. App. 1985). The district court did not abuse its discretion by denying appellant’s motion to withdraw based on appellant’s change of mind as to his own guilt or innocence.

Appellant next argues that his plea was not knowing and intelligent because of his cognitive limitations. But neither appellant’s employment history, which includes running his own part-time business since 1989, working 14 years routing delivery trucks as the

distribution manager for a food service, and working as a school bus driver for three-and-a-half years, nor the hearing transcript supports his claim of cognitive inability to understand what was happening at a plea hearing. The transcript indicates that appellant told the district court that he understood the charge and pleaded guilty to it. Appellant answered in the affirmative when the district court asked “[Y]ou’re making an informed decision today, right?” and “[W]e’re not going to have a trial; understand that part?”. When the district court asked appellant if his medication interfered with his ability to think or helped him think clearly, he answered, “It helps me calm down and think clearly. . . .” Appellant answered “Yeah” when the district court asked if it made sense that the court “wouldn’t let someone plead guilty who then says, ‘I’m innocent. I didn’t do it.’” and if it was right that the judge needed “to be convinced people are actually guilty of these serious offenses before he let them go through probation.” None of these answers demonstrates an inability to understand the questions put to him.

Appellant finally argues his plea was involuntary because his attorney “forcefully explained” that appellant should plead guilty when his motion to exclude the *Spreigl* evidence was denied. But the record reflects that the victim of appellant’s 1997 assault was ready to testify in his 2017 trial as to the harm she suffered because appellant did essentially the same thing to her as he did to the 2017 victim. Appellant’s attorney had a basis for forcefully explaining that the admission of her evidence was likely to be very damaging to appellant. Moreover, appellant told his attorney at the plea hearing that he agreed they had gone through the plea petition and that he understood he was giving up his right to have a trial, to contest the evidence, to question witnesses, and to testify or remain

silent. He replied affirmatively when his attorney asked if he agreed that he entered the plea freely and voluntarily, that no one had threatened him, that no one had promised him anything other than what had been discussed in court, and that he was pleading guilty because he was, in fact, guilty.

The only evidence appellant offers in opposition to the transcript is his own affidavit, prepared five months after the plea hearing to support his motion to withdraw. The district court did not abuse its discretion by declining to rely on this affidavit as a basis for permitting withdrawal of the guilty plea. Appellant's reasons for seeking withdrawal are not sufficient, separately or collectively, to establish a fair and just reason.

2. Prejudice to the State

During the hearing on appellant's motion to withdraw his plea, the district court addressed the victims and others involved, saying, "You people have been through a lot and it concerns me . . . reopening the case an[d] putting these folks [i.e., the victims] right back where they were." The incident occurred in March 2017; the witnesses were prepared for a trial to begin on October 16, 2017. But on that date, appellant pleaded guilty, and the victim and witnesses were told there would be no trial. Not until March 12, 2018, five months after being told there would be no trial and almost a full year after the incident, did appellant petition for withdrawal of his guilty plea. "[T]he timeliness of a petition to withdraw a guilty plea is a relevant consideration in determining whether that relief should be granted." *James v. State*, 699 N.W.2d 723, 728 (Minn. 2005). Requiring a teenage victim and witnesses who had been prepared for trial, then told there would be no trial

because the case was over, to once again prepare for trial would have prejudiced the ability of victim and witnesses to testify effectively and would have prejudiced the state's case.

Appellant concedes that the victim and the witnesses might be prejudiced by the withdrawal of his guilty plea, but argues that there is no evidence that the state would therefore be prejudiced. *But see Kim v. State*, 434 N.W.2d 263, 267 (Minn. 1989) (noting that district court "was not unjustified in considering the interests of the victim"). In deciding a motion to withdraw a guilty plea, the district court must balance the defendant's reasons for seeking withdrawal against any resulting prejudice to the state. *Raleigh*, 778 N.W.2d at 97. That prejudice may be inferred from the disruption the withdrawal of appellant's guilty plea would cause in the lives of the victims and witnesses on whom the state's case depends.

Because appellant's reasons for granting his motion to withdraw lacked merit and because a plea withdrawal would have prejudiced the state, the district court did not abuse its discretion in denying appellant's motion.

Affirmed.