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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0774**

State of Minnesota,
Respondent,

vs.

Calvin Lee Dixon, Jr.,
Appellant.

**Filed April 29, 2019
Affirmed
Bratvold, Judge**

Olmsted County District Court
File No. 55-CR-16-3087

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

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Assistant County Attorney,
Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

BRATVOLD, Judge

In this direct appeal from a final judgment of conviction and sentence for a third-degree controlled-substance crime, appellant argues that the district court erred in denying his presentence motion to withdraw his guilty plea. First, appellant argues that plea withdrawal is necessary to correct a manifest injustice because he did not enter the plea voluntarily and intelligently. Second, appellant argues that it would have been fair and just to permit plea withdrawal before sentencing because he gave good reason to do so and withdrawal would not have prejudiced the state. Appellant raises additional issues in his pro se supplemental brief. We affirm.

FACTS

In April 2016, the state charged appellant Calvin Lee Dixon with third-degree sale of narcotics for allegedly selling cocaine to a confidential informant during a controlled buy in November 2015. The state disclosed audio and video recordings of a conversation between the defendant and the confidential informant, involving the alleged drug sale. In April 2017, an “anonymous woman” provided defense counsel with a notarized handwritten affidavit, which identified the affiant as the confidential informant. Although the affidavit is not in the record, the parties appear to agree that the confidential informant averred that he “lied” to the police about the drug sale.

Dixon filed a motion to dismiss for lack of probable cause, or alternatively, a motion in limine to suppress all of the confidential informant’s testimonial statements from the state’s recorded evidence, arguing that neither party could locate the confidential

informant. The motion was initially heard in April 2017 and then continued until May 2017. Defense counsel argued that, without the recorded conversations, the state had no evidence of a drug sale. The state responded that, under the charging statute, it was only required to prove that Dixon offered to sell drugs, for which it had probable cause based on Dixon's own statements in the recorded conversations, as well as his statements in a text message. The district court denied Dixon's motion to dismiss, reasoning that, even if it redacted the confidential informant's statements from the recorded conversations, the state had sufficient evidence of Dixon's offer to sell drugs.

The district court then inquired about the status of plea negotiations. The state responded that it had filed a motion for upward departure from the guidelines sentence. In exchange for a guilty plea from Dixon, the state offered to withdraw its motion and recommend a bottom-of-the-box sentence of 48 months. Dixon rejected the offer, and the state commented that Dixon was potentially facing a 70-month sentence if the state's motion for an upward departure was granted. Dixon said that this was "new to [him]" and asked for time to confer with his attorney.

After a 30-minute recess, defense counsel told the district court that the case had resolved, explaining that Dixon agreed to plead guilty in exchange for the state's agreement to withdraw its motion for upward departure and to allow Dixon to request "downward departures." The parties also agreed to delay sentencing for more than four months.

Before proceeding with the plea, the district court commented that it had frequently seen Dixon "within the child support world" and that it "would be really smart" for Dixon "to [move to] suspend [his] obligation while [he] serv[es] this sentence." The district court

explained that, if the motion was granted, Dixon's "loved ones . . . won't be receiving letters and other things while [he is] in custody." When defense counsel commented that Dixon could seek a dispositional or durational departure, the district court responded, "Can he?" The state responded that Dixon's offense involved a "mandatory minimum" sentence of at least two years.

Next, the court questioned Dixon under oath. Dixon pleaded guilty and said that he was voluntarily giving up his trial rights. Dixon testified that he offered to sell cocaine to the informant and he understood that an offer to sell cocaine is a crime under Minnesota law. Defense counsel asked Dixon if he understood his offense triggered a "mandatory minimum" sentence because of his "prior controlled substance crime conviction." Dixon responded that he did. The district court asked Dixon if he felt his lawyer "was putting words into [his] mouth," and he responded "no." The district court found the factual basis was accurate, the plea was voluntary and intelligent, and set a sentencing hearing for October.

In September 2017, Dixon filed a motion to withdraw his guilty plea, along with his affidavit in which he attested that defense counsel had incorrectly informed him that he "would not have to go to prison" if his downward dispositional departure motion was granted. Additionally, Dixon averred that he "felt pressure" from the court, had "lost faith" in defense counsel, and felt he had "no choice but to plead guilty." Dixon also attested that "[p]rior to entering [his] guilty plea that day, it was the Court . . . that informed [him] that because [he] had a prior controlled substance conviction, [he] was not eligible to receive from the Court a downward dispositional departure."

At a hearing on Dixon's motion to withdraw, defense counsel explained that Dixon decided to plead guilty, in part, because he "had a girlfriend who was pregnant." Defense counsel argued that Dixon's motion should be granted because he had a "heartfelt belief" that his due-process rights were violated, and it was unfair to proceed with the plea deal. Defense counsel clarified that he did not "believe there was any undue pressure by the court" but Dixon felt a "pressure of the timeframe." Additionally, defense counsel argued that the motion should be granted because he "inaccurately" told Dixon that he could get a downward dispositional departure if he entered a guilty plea. The district court responded that it had listened to the recorded plea hearing and defense counsel addressed the downward dispositional departure on the record with Dixon.

The state opposed Dixon's plea-withdrawal motion because Dixon had not provided a fair and just reason. The state acknowledged that granting the motion would not "grievously prejudice[]" the state.

The district court then played the audio recording of the plea hearing in open court, after which the district court found that Dixon was not coerced or threatened during the plea hearing. The district court also found that Dixon was informed, and acknowledged understanding, that his offense carried a mandatory-minimum sentence before and after he entered his plea. The district court denied Dixon's motion to withdraw, reasoning that the request was motivated by a "change of heart," and that it would not be "fair and just to vacate the plea." The district court then sentenced Dixon to 40 months in prison, which was a downward durational departure. Dixon appeals.

DECISION

Dixon argues that the district court erred in denying his motion to withdraw his plea. First, he argues that his plea “must be withdrawn to correct a manifest injustice because it was not voluntarily and intelligently entered.” Second, he argues that he should have been able to withdraw his plea before sentencing under the fair-and-just standard because he was misled about his eligibility to receive a “downward dispositional departure,” and there would have been no prejudice to the state in granting the withdrawal.

“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). A plea withdrawal may only occur “if one of two standards is met.” *State v. Lopez*, 794 N.W.2d 379, 382 (Minn. App. 2011). First, a district court “must allow” a defendant to withdraw a plea at any time if it is necessary to correct a “manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Second, a district court “may allow” a defendant to withdraw a plea before sentencing “if it is fair and just to do so.” *Id.*, subd. 2. We review Dixon’s arguments under both standards.

I. The district court did not err in denying Dixon’s plea-withdrawal motion under the manifest-injustice standard.

A manifest injustice occurs if a guilty plea is not constitutionally valid, meaning that it is not (1) accurate, (2) voluntary, and (3) intelligent. *Raleigh*, 778 N.W.2d at 94. This court reviews the validity of a plea de novo. *Id.* “A defendant bears the burden of showing his plea was invalid.” *Id.*

First, to be accurate, a plea must “be established on a proper factual basis.” *Id.* Dixon does not challenge the factual basis for his plea.

Second, to be voluntary, the plea cannot be due to “improper pressure or coercion,” which is determined by considering “all relevant circumstances.” *Id.* at 96. Here, the district court heard Dixon’s plea at the plea hearing. At the plea-withdrawal hearing, the district court listened to the recorded proceedings and then found that Dixon’s plea was not coerced or threatened. Defense counsel also conceded that the court did not pressure Dixon, but rather, Dixon felt pressured due to time. We discern no basis for concluding that Dixon’s plea was not voluntary.

Third, to be intelligent, the defendant must “understand[] the charges against him, the rights he is waiving, and the consequences of his plea.” *Id.* A district court “may presume that a defendant who has consulted with counsel is aware of his constitutional rights.” *Berkow v. State*, 573 N.W.2d 91, 95 (Minn. App. 1997), *aff’d*, 583 N.W.2d 562 (Minn. 1998). A district court also “may weigh a defendant’s experience with the criminal justice system when evaluating whether his plea was knowing and intelligent.” *State v. Doughman*, 340 N.W.2d 348, 353 (Minn. App. 1983), *review denied* (Minn. Mar. 15, 1984).

Here, Dixon acknowledges on appeal that the parties discussed the mandatory minimum sentence of two years in court, but argues that he was “induced to plead guilty by the state’s illusory and unfulfillable promise that he could ask for and receive a probationary sentence and by defense counsel’s misadvice regarding the same.” But a transcript of the plea hearing establishes that the plea deal never included a stayed sentence. It is true that, as part of the plea deal, defense counsel stated that Dixon could seek “downward departures.” But Dixon admitted in his affidavit, which was filed in support of

his motion to withdraw his guilty plea, that the district court told him, *before he entered his plea*, that he was not eligible for a downward dispositional departure, which would include a stayed sentence under the supervision of probation.

Dixon appears to claim that he did not know that the mandatory minimum sentence discussed at the plea hearing necessarily meant prison time. Dixon's argument is not persuasive for three reasons. First, as mentioned above, his own affidavit admits that the district court told him that he could not seek a downward dispositional departure. Moreover, the record establishes that Dixon was aware that the guidelines sentence, at the bottom of the box, was 48 months in prison.

Second, Dixon had experience in drug-related criminal proceedings. At the plea-withdrawal hearing, the district court determined that "Dixon has been aware for quite some time that mandatory minimums apply to him" because he had previously been convicted of other drug-related offenses where he was "subject to mandatory . . . minimums." Dixon's prior sentencing experience supports the district court's finding that Dixon knew that the mandatory minimum sentence involved prison time. *See Doughman*, 340 N.W.2d at 353.

Third, the district court found that, at the plea hearing and before he entered a plea, Dixon acknowledged that his offense carried a mandatory minimum prison sentence. Our review of the transcript of the plea hearing supports the district court's finding. As briefly summarized above, after the plea deal was announced and before Dixon entered his plea, the district court stated to Dixon that he should file a motion to suspend his child support obligation while "serving this sentence." The following exchange occurred:

Defense counsel:	[Dixon] could ask for a dispositional departure or a durational departure.
Court:	Can he, with his history? Is there a mandatory minimum?
State counsel:	There is. It's the State's position—
Defense counsel:	Well, yeah, we're back under the old—
Court:	Yes. What's the mandatory minimum though?
State counsel:	Two years.

After this exchange, the court stated that whether the mandatory minimum is “two years or it’s the 48 months, you know that your support obligation needs to be suspended.” Dixon responded: “Yeah, I did it before. I’m familiar with it.” The district court stated that Dixon should suspend his obligation so his loved ones “won’t be receiving letters and other things while [he is] *in custody*.” (Emphasis added.) Dixon responded: “Okay.” After this discussion, Dixon pleaded guilty, testified to the factual basis for his plea, and again acknowledged that his crime carried “a mandatory minimum” sentence, which was triggered by his prior controlled-substance conviction. Based on Dixon’s statements at the plea hearing, we conclude that he entered his plea with the knowledge that his offense carried a mandatory minimum sentence of two years in prison.

Dixon also claims that two cases establish that he has satisfied the manifest-injustice standard. First, in *State v. Loyd*, the supreme court held that the manifest-injustice standard supported appellant’s plea-withdrawal request because the district court imposed the maximum sentence even though the parties’ plea agreement was for a 30-day sentence. 190 N.W.2d 123, 124 (Minn. 1971). The supreme court also determined that defense counsel had misled appellant “to believe he could withdraw his plea of guilty if the

agreement was not approved by the court.” *Id.* In contrast, Dixon did not have a plea agreement with the state for a downward dispositional departure, or a stayed sentence, and instead he had an agreement that the state would ask for a 48-month sentence and he could ask for a downward durational departure. Moreover, at sentencing, Dixon asked for a downward durational departure and the district court granted the motion.

Second, Dixon cites to *State v. Trott* to argue that a defendant should be permitted to withdraw a plea when a “promise is unfulfilled.” 338 N.W.2d 248, 252 (Minn. 1983). *Trott* involved an appellant who claimed that his former attorney promised him a stayed sentence in exchange for a guilty plea. *Id.* at 251. The supreme court affirmed the district court’s denial of the plea-withdrawal motion because, in fact “no such promise had been made.” *Id.* at 252. For similar reasons, we agree with the district court that Dixon did not enter his plea based on an unfulfilled promise. Before he entered his plea, Dixon was informed that he was ineligible for a stayed sentence because his offense carried a mandatory minimum prison sentence.

Because Dixon accurately, voluntarily and intelligently pleaded guilty, his plea-withdrawal motion failed to satisfy the manifest-injustice standard. We conclude that the district court did not err in denying plea withdrawal under the first standard.

II. The district court did not abuse its discretion in denying Dixon’s motion under the fair-and-just standard.

Under the fair-and-just standard, a district court must give “due consideration” to two factors in determining whether to grant a plea withdrawal request: “(1) the reasons a defendant advances to support withdrawal and (2) prejudice granting the motion would

cause the State given reliance on the plea.” *Raleigh*, 778 N.W.2d at 97 (citing Minn. R. Crim. P 15.05, subd. 2). The district court need not find prejudice to deny a plea-withdrawal motion when the defendant fails to provide any “substantiated reasons for withdrawal of his plea.” *Id.* at 98; *see also State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013) (“Even when there is no prejudice to the state, a district court may deny plea withdrawal under rule 15.05, subdivision 2, if the defendant fails to advance valid reasons why withdrawal is fair and just.”), *review denied* (Minn. Dec. 31, 2013). The burden is on the defendant to provide reasons for withdrawal, and the burden is on the state to demonstrate that withdrawal would cause prejudice. *Raleigh*, 778 N.W.2d at 97. A district court’s decision to deny a withdrawal motion is reviewed for abuse of discretion. *Id.*

Dixon first argues that the district court abused its discretion in denying his plea-withdrawal motion because defense counsel informed him that he could seek a “downward dispositional departure.” As discussed above, the district court informed Dixon, before he entered his plea, that he was not eligible for a downward dispositional departure. Moreover, we agree with the district court that Dixon did not advance any other reason to grant his withdrawal motion. The record supports the district court’s finding that Dixon had a “change of heart,” which is not a “substantiated reason[.]” supporting withdrawal of his plea. *Id.* at 98.

Dixon also argues that “there was no good reason for the district court to deny Dixon’s plea withdrawal motion because the state acknowledged that it would not suffer undue prejudice and the court did not find that the state would suffer prejudice.” In this case, the district court was not required to consider prejudice to the state under the

fair-and-just standard because Dixon failed to advance a reason that warranted withdrawing his plea. *See id.* at 98 (prejudice not necessary when there is no substantiated reason for withdrawal). We conclude that the district court did not abuse its discretion in denying Dixon's motion to withdraw his plea under the fair-and-just standard.

III. Dixon's pro se arguments are either waived or forfeited.

Dixon filed a pro se supplemental brief in which he argues that the district court violated his "Fifth Amendment [right] of 'due-process'" and his "Sixth Amendment [right] of a 'fair trial.'" We understand Dixon to make two arguments, which we consider in turn.

First, Dixon challenges the denial of his pretrial motion to dismiss for lack of probable cause and, specifically, the district court's consideration of Dixon's statements in the recorded conversations. To preserve a dispositive pretrial ruling, a defendant must maintain a plea of not guilty, waive his trial rights, and agree to a stipulated-evidence trial. *See* Minn. R. Crim. P. 26.01, subd. 4. But Dixon did not follow this procedure. Instead, Dixon waived his trial rights and voluntarily and intelligently pleaded guilty. *See* Minn. R. Crim. P. 15.01 (setting out required waivers for a guilty plea); *State v. Ford*, 397 N.W.2d 875, 878 (Minn. 1986) ("[A] defendant may not enter a conditional plea of guilty which reserves the right to appeal the denial of a motion to suppress evidence or other pretrial order."). We conclude that Dixon waived the probable-cause challenge.

Second, Dixon appears to argue that the district court should have allowed him to withdraw his plea before sentencing because the confidential informant recanted. Dixon knew about the informant's affidavit when he agreed to the plea deal and well before he admitted, under oath at the plea hearing, that he offered to sell drugs. In fact, Dixon did not

raise the informant's affidavit during the plea-withdrawal hearing. Therefore, because Dixon did not raise the issue in the district court in support of his plea-withdrawal request, the issue is forfeited and we do not consider it further. *See State v. Beaulieu*, 859 N.W.2d 275, 281 (Minn. 2015) (stating that claims to rights are generally forfeited when not raised in district court). In sum, Dixon's arguments in his pro se supplemental brief are either waived or forfeited.

We conclude that Dixon's guilty plea was valid and that the district court did not abuse its discretion in denying Dixon's motion to withdraw his plea.

Affirmed.