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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1178**

State of Minnesota,
Respondent,

vs.

John Allen Davis,
Appellant.

**Filed May 6, 2019
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-16-18386

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges the denial of his motion to withdraw his presentence guilty plea under the fair-and-just standard. Because we see no abuse of discretion, we affirm.

FACTS

On July 7, 2016, appellant John Allen Davis drove codefendants Mashawn Moore and Marshawn Winston around Minneapolis intending to rob someone who had crossed them in the past. When the search for that victim failed, they located someone else who looked like he might have cash and decided to rob him instead. Davis drove up to the victim and Moore stepped out of the car with a gun. Moore demanded money from the victim and ultimately shot him to death because he moved too slowly. Moore then returned to Davis's vehicle, and all three went to a nearby fast-food restaurant.

Davis was apprehended and indicted for aiding and abetting first-degree felony murder in violation of Minn. Stat. § 609.185, subd. (a)(3) (2014), and aiding and abetting second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2014). Davis's jury trial began on December 4, 2017, but on the afternoon of December 5, Davis's trial counsel requested a continuance due to a personal medical issue. The parties agreed to appear on December 6 to discuss the continuance request. At that hearing, Davis pleaded guilty to aiding and abetting second-degree murder with a sentencing range between 240 and 360 months in exchange for dismissal of the first-degree felony murder charge.

During the plea colloquy, Davis's attorney asked Davis about his medications:

DEFENSE COUNSEL: I know that you have had some issues with your medication. You've been taking medication. You recently went off some medication. Do you feel like you're thinking clearly and logically about your decision today?

DEFENDANT: I do.

The court also inquired into Davis's medication use:

THE COURT: The only question I had of you is I know you are—your attorney talked to you about taking medications. What medications are you taking at this time?

DEFENDANT: I take Wellbutrin and gabapentin.

THE COURT: And are you taking those presently?

DEFENDANT: Not the gabapentin.

THE COURT: So what are you taking right now?

DEFENDANT: Wellbutrin.

THE COURT: And do you feel that not taking the other medication is causing you, at all, not to think clearly at this time?

DEFENDANT: No, ma'am.

THE COURT: Okay. I am, at this time, then, finding that you've given me a knowing, intelligent, and voluntary waiver of your rights to go forward with trial.

After Davis and his attorney provided the factual basis to support his plea, the court accepted Davis's plea and scheduled a sentencing hearing.

Before his sentencing, Davis filed a motion to withdraw his guilty plea. Davis argued that it would be fair and just to allow plea withdrawal under Minn. R. Crim. P. 15.05, subd. 2, because the plea had been entered reluctantly and plea withdrawal would not damage the state's case. Davis also argued that the plea was not valid because it was not made voluntarily and thus plea withdrawal was mandated under Minn. R. Crim. P. 15.05, subd. 1, to avoid a manifest injustice. Davis argued that he had been taken off his gabapentin medication shortly before the jury trial was scheduled to begin, which prevented him from making a "knowing, voluntary, and intelligent decision about his

case.” Davis provided the court with records from the jail which documented his gabapentin medication had been discontinued due to a new policy.¹ In response, the state filed a memorandum, arguing Davis had satisfied neither the manifest-injustice standard nor the fair-and-just standard for plea withdrawal.

Davis supplemented his motion with a neuropsychological evaluation report by psychologist Dr. Cohen. Dr. Cohen diagnosed Davis with mild cognitive disorder. Dr. Cohen noted that because a discontinuation of gabapentin causes “restlessness, disorientation, confusion, agitation, and anxiety,” it was “possible that had [Davis’s] dose of gabapentin been decreased, his logical reasoning abilities . . . could have been further diminished.” Dr. Cohen admitted that he “did not personally witness [Davis’s] state when he agreed to plead guilty to charges.” Dr. Cohen also qualified that he is “not a physician,” and he would “leave it to a physician to opine as to the effects of the decrease in medications that [Davis] underwent.”

In March 2018, the parties appeared for a plea-withdrawal hearing before the district court. Davis did not testify at the plea-withdrawal hearing and the defense did not present any medical testimony. That same day, the district court issued a written order denying Davis’s motion under both the manifest-injustice and fair-and-just standards. The district

¹ The record also contained information that on December 11, 2017, five days after he pleaded guilty, Davis went to HCMC to “request restarting gabapentin for old brachial plexus injury” and that Davis was “pleasant, cooperative [and] in no acute distress.” On December 19, 2017, Davis returned to HCMC because the nerve pain in his arm [was] ‘getting worse.’”

court found that Davis did not advance sufficient reasons for the court to consider allowing him to withdraw his plea of guilty and that plea withdrawal would prejudice the state.

In April 2018, the court sentenced Davis to 345 months in prison with credit for 652 days served.

Davis now appeals.

D E C I S I O N

I. The district court did not abuse its discretion by denying Davis’s plea-withdrawal motion.

Davis argues that the district court abused its discretion when it denied his request to withdraw his presentence guilty plea. Plea withdrawal is permitted under two circumstances. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). First, a district court must allow a defendant to withdraw a guilty plea “[a]t any time” if “withdrawal 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 at any time before sentence if it is fair and just to do so.” *Id.*, subd. 2. However, “[a] defendant has no absolute right to withdraw a guilty plea after entering it.” *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016) (quotation omitted). Underlying this rule is the principle that “giving a defendant an absolute right to withdraw a plea before sentence would undermine the integrity of the plea-taking process.” *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

Davis does not challenge the district court’s decision under the manifest-injustice standard and only raises arguments under the fair-and-just standard. The fair-and-just standard is “a less demanding standard than the manifest-injustice standard, but it does not

permit withdrawal of a guilty plea for simply any reason.” *State v. Townsend*, 872 N.W.2d 758, 764 (Minn. App. 2015) (quotation omitted). In analyzing a motion to withdraw a guilty plea under the fair-and-just standard, a district court considers: (1) the reasons the defendant advances to support withdrawal of the guilty plea; and (2) whether granting the motion prejudices the state. Minn. R. Crim. P. 15.05, subd. 2. The defendant bears the burden of advancing sufficient reasons to support plea withdrawal. *Raleigh*, 778 N.W.2d at 97.

a. Davis’s burden

Davis argues that he advanced substantiated reasons to support plea withdrawal because he offered medical evidence in support of his claim. The fact that Davis was not taking gabapentin on the day of his plea is sufficiently established by the record. However, whether the withdrawal of gabapentin affected Davis’s cognitive ability on December 6 is not substantiated by Davis’s medical evidence. The district court thoroughly analyzed the medical evidence, under the fair-and-just standard,² and found:

In the present case, the Defendant advanced that a decreased dosage of gabapentin, which can negatively affect cognition, is the reason it would be fair and just to allow him to withdraw his plea of guilty. . . . [T]he information provided by Dr. Cohen and the information provided by the Defendant at the Plea Hearing contradict each other. The Defendant was very clear

² We note that Davis argues that the district court failed to apply the fair-and-just standard and, instead, considered only the more demanding manifest-injustice standard in denying his plea-withdrawal motion. In support of this argument, Davis points to the length of the district court’s analysis under the fair-and-just standard in its order. However, in its order the district court stated that Davis sought to withdraw his plea under rule 15.05, subdivisions 1 and 2, and applied the correct standards for Davis’s motion under each respective subdivision. We determine that the district court did not limit its analysis to the manifest-injustice standard.

that the reduced dosage of gabapentin was not affecting his ability to think clearly. Therefore, the Defendant has not advanced sufficient reasons for the Court to consider allowing him to withdraw his plea of guilty. Additionally, the State would be prejudiced by the withdrawal of the guilty plea because it had relied on the plea of guilty to release witnesses from subpoenas, consult with the victim's family regarding the plea of guilty. Additionally, this case is approximately 20 months old and witnesses' memories may have faded since that time.

We agree with the district court's finding that Davis did not present "sufficient evidence to support a claim that the side effects described by Dr. Cohen may have existed for [Davis] on the day of the plea."

Davis also attempts to draw parallels between his case and *Lopez*. In *Lopez* the court determined that fair and just reasons for plea withdrawal were present; Lopez was not represented by counsel, entered the guilty plea without signing a written plea petition, had limited experience with the criminal justice system, and the plea implicated immigration issues. *Id.* at 385-86. None of the factors seen in *Lopez* are present in this case. This court may consider "the entire context in which [the defendant's] plea of guilty occurred, as demonstrated by the record." *State v. Abdisalan*, 661 N.W.2d 691, 695 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003). Here, Davis was represented by counsel, signed a plea petition, and has had significant experience with the criminal justice system. Davis answered his attorney and the district court's questions regarding his medications and stated numerous times that the withdrawal of gabapentin was not affecting his decision to plead guilty.

The decision to withdraw a pre-sentence guilty plea is left to the sound discretion of the district court and will be reversed only in the “rare case” that the district court abused that discretion. *Kim*, 434 N.W.2d at 266; *see also State v. Kaiser*, 469 N.W.2d 316, 320 (Minn. 1991) (quotation omitted) (concluding whether to permit plea withdrawal under the fair-and-just standard is within a district court’s discretion and “will be reversed only in the rare case in which the appellate court can fairly conclude that the [district] court abused its discretion.”). Based upon our review of the record, we determine that this is not one of the “rare” cases described in *Kim*, 434 N.W.2d at 266, and that the district court properly exercised its discretion when it concluded that Davis had not carried his burden under the fair-and-just standard.

b. State’s burden

Davis also argues that the state failed to show prejudice. This argument fails for two reasons. First, the state adequately showed prejudice; the state released trial witnesses from subpoenas, and much time had elapsed between the time of the offense and the plea-withdrawal motion. The date of the offense was July 2016 and Davis pleaded guilty in December 2017. Davis did not request to withdraw his guilty plea until mid-February 2018, approximately 20 months from the crime and three months from the plea. Second, even if there is no prejudice to the state, the court may still deny a plea-withdrawal motion when the defendant fails to advance valid reasons for the plea withdrawal. *See Raleigh*, 778 N.W.2d at 97-98 (holding that the court did not abuse its discretion in denying plea withdrawal when the prejudice to the state was overstated but defendant failed to provide any valid reason why the withdrawal would be fair and just). We have determined that

Davis did not advance substantiated reasons for plea withdrawal. Therefore, even if the state failed to show prejudice, the district court still had discretion to deny Davis's plea-withdrawal motion. *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).

We conclude that the district court did not abuse its discretion in denying Davis's pre-sentence motion to withdraw his guilty plea. The district court properly addressed Davis's reasons for withdrawing his plea and found them insufficient.

Affirmed.