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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1288**

State of Minnesota,
Respondent,

vs.

Lewonda Jones,
Appellant.

**Filed May 6, 2019
Affirmed
Cleary, Chief Judge**

Hennepin County District Court
File No. 27-CR-17-22603

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Hooten, Judge; and Stauber,
Judge.*

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

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellant Lewonda Jones challenges the denial of her presentence motion to withdraw her guilty plea to malicious punishment of a child. On appeal, Jones argues that her plea was involuntary because the state failed to fulfill its promise that she be released from custody on the day that she entered her plea. Because Jones's release was not a term of the plea agreement, we affirm.

FACTS

On September 6, 2017, the Brooklyn Center Police Department received a report that Jones, angry at her seven-year-old daughter for taking her earrings, struck her daughter, resulting in visible injuries to her back, arms, and legs. Respondent State of Minnesota charged Jones with malicious punishment of a child under Minn. Stat. § 609.377, subd. 1 (2016).

Prior to the start of trial, the state offered Jones a plea agreement, which involved a stay of imposition of sentence for two years and no additional jail time in exchange for her guilty plea. Jones rejected the state's offer, and the case proceeded to trial.

During voir dire, the district court instructed Jones to have no contact with any of the jurors. However, an issue arose during a break where multiple jurors heard Jones talking loudly on her cell phone about her case outside the courtroom. The district court excused the jury panel and requested a new panel. After the second jury panel arrived and voir dire resumed, the district court again instructed Jones to have no contact with the jurors and to conduct any cell phone conversations on a different floor. The following day, a

juror approached Jones's attorney and told her that she overheard Jones talking on her phone about the trial in the women's restroom.

The state requested that the district court revoke Jones's conditional release and take her into custody, arguing that Jones committed constructive civil contempt pursuant to Minn. Stat. § 588.01, subd. 3(3) (2018), by violating the district court's orders.¹ The district court granted the state's request, reasoning that Jones violated its orders on two occasions when she spoke on her cell phone in the presence of jurors after being instructed not to do so by the district court. The district court ordered that Jones be taken into custody for the remainder of the proceedings.

Rather than continue with trial, Jones entered a *Norgaard* plea,² stating that she was guilty of the offense and a jury would likely find her guilty beyond a reasonable doubt. In exchange for Jones's guilty plea, the state agreed that her sentence would include a stay of imposition of sentence for two years and no additional jail time, on the conditions that she remain law-abiding and cooperate with the presentence investigation. The district court found that Jones gave a knowing, intelligent, and voluntary waiver of her trial rights, but stated that it would not accept Jones's plea until sentencing. The district court also ordered that Jones be released from custody on conditional release and issued a conditional-release

¹ At the time of trial, Jones was subject to conditions of release, including the condition that she remain law-abiding.

² A *Norgaard* plea is one in which the defendant "claims a loss of memory, through amnesia or intoxication, regarding the circumstances of the offense," but pleads guilty because "the record establishes that the defendant is guilty or likely to be convicted of the crime charged." *State v. Johnson*, 867 N.W.2d 210, 215 (Minn. App. 2015) (quotations omitted), *review denied* (Minn. Sept. 29, 2015).

order that same day. Despite the district court's order, Jones was held until the following morning.

Prior to sentencing, Jones moved to withdraw her guilty plea, arguing that it was fair and just for her to withdraw her plea because she only agreed to enter a guilty plea for the sole purpose of being released from custody on that day. The district court denied Jones's motion, finding that Jones had multiple opportunities to discuss the case with her attorney and the fact that she spent the night in jail after pleading guilty did not render her plea invalid. The district court accepted Jones's guilty plea, convicted her of malicious punishment of a child, and sentenced her in accordance with the terms of the plea agreement. This appeal follows.

DECISION

Jones contends that the district court erred in denying her presentence motion to withdraw her *Norgaard* plea. "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). Plea withdrawal may be permitted under two circumstances. *State v. Raleigh*, 778 N.W.2d 90, 93 (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.

Manifest-Injustice Standard

Under the manifest-injustice standard, Jones argues that her guilty plea was not voluntary because it was induced by the state's unfulfilled promise that she would be

released from custody on the day that she entered her plea.³ “A manifest injustice exists if a guilty plea is not valid.” *Barrow v. State*, 862 N.W.2d 686, 691 (Minn. 2015). “To be valid, a guilty plea must be accurate, voluntary, and intelligent.” *Taylor*, 887 N.W.2d at 823. The voluntariness requirement ensures that a defendant is not pleading guilty due to improper pressure or coercion. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). If a plea is involuntary, the manifest-injustice standard requires its withdrawal. Minn. R. Crim. P. 15.05, subd. 1; *see also State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (examining manifest injustice as a threshold matter although the appellant only raised the fair-and-just standard on appeal).

Plea agreements represent bargained-for understandings between the state and defendants, where each party foregoes rights and assumes risks in exchange for certainty regarding the outcome of criminal proceedings. *State v. Meredyk*, 754 N.W.2d 596, 603 (Minn. App. 2008). Contract law principles are relevant to the interpretation of plea agreements. *State v. Spaeth*, 552 N.W.2d 187, 194 (Minn. 1996). In order to determine whether the parties have honored a plea agreement, we first look to what the parties “reasonably understood to be the terms of the agreement.” *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (quotation omitted). And when a guilty plea rests on a promise or agreement of the state, such promise must be fulfilled. *Id.* If a promise within a plea

³ The state asserts that Jones forfeited the argument that her guilty plea was involuntary under the manifest-injustice standard because she did not present this argument to the district court. But a defendant may challenge her guilty plea on direct appeal from the judgment of conviction. *State v. Miller*, 849 N.W.2d 94, 97 (Minn. App. 2014). Because this is the direct appeal from Jones’s judgment of conviction, the state’s argument is unpersuasive.

agreement is not fulfilled, the defendant cannot be said to have voluntarily entered into the plea agreement. *Id.* Determining the terms of a plea agreement is a factual inquiry, but the interpretation and enforcement of plea agreements are issues of law that we review de novo. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004).

Here, in exchange for Jones's guilty plea to malicious punishment of a child, the plea agreement included

a stay of imposition of sentence, no additional jail time to serve, on the conditions that she remains law abiding and cooperates with the pre-sentence investigation pending sentencing. The agreement contemplates that the defendant will be released from custody today because there will be no additional jail time unless she commits a new crime or won't cooperate with the pre-sentence investigation.

Jones affirmed her understanding of this agreement on the record after consulting with her attorney. A plea petition, signed by Jones, also memorialized the terms of the agreement.

In arguing that the state failed to honor the plea agreement, Jones characterizes the state's language regarding her release from custody as a promise. But in doing so, Jones takes the state's language out of context. Our review of the transcript, as quoted above, reveals that the state "contemplate[d]" that Jones would be released from custody on the day that she entered her plea; the state did not expressly agree that Jones would be released from custody on that day. As the district court found, the terms of this plea agreement mirrored the terms of the state's offer before trial. At trial, the prosecutor stated that it was her understanding that Jones intended to plead guilty pursuant to the state's previous offer, which included a stay of imposition of sentence for two years and no additional jail time. Additionally, the signed plea petition did not include the term that Jones would be released

from custody after entering her plea. And Jones's change in circumstances did not alter the plea agreement because the term that she receive no additional jail time reasonably relates to her sentence for malicious punishment of a child, rather than the contempt charge that resulted from her conduct during voir dire. Moreover, the district court ordered that Jones be released from custody and issued a conditional-release order on the day that she entered her guilty plea. The plea agreement did not contain the express promise that Jones would be released from custody after entering her plea. Considering all the relevant surrounding circumstances, Jones's *Norgaard* plea was voluntary and valid.

Fair-and-Just Standard

Jones presents the same argument under the fair-and-just standard, arguing that the district court abused its discretion by denying her request to withdraw her guilty plea because the state reneged on its promise to release her on the day that she entered her plea. But in the district court, Jones did not claim that the state failed to fulfill a term of the plea agreement; instead, she asserted that she entered her guilty plea "with little thought" so that she would be released from custody, and that she did not consider the legal consequences of entering a guilty plea to malicious punishment of a child. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (noting that an appellate court "generally will not decide issues which were not raised before the district court.>").

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). The fair-and-just standard "requires district courts to give 'due consideration' to two factors: (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 (quoting Minn. R. Crim. P. 15.05, subd. 2). “Even when there is no prejudice to the state, a district court may deny plea withdrawal . . . if the defendant fails to advance valid reasons why withdrawal is fair and just.” *State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013), *review denied* (Minn. Dec. 31, 2013). The decision to withdraw a presentence 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 v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

Here, the district court did not find the reasons advanced by Jones to be persuasive. In denying Jones’s motion to withdraw her guilty plea, the district court noted that Jones met with her attorney on multiple occasions before she entered her plea and went through both the regular plea petition and *Norgaard* addendum with her attorney. The district court determined that the terms contained in Jones’s plea petition were the same terms that the prosecutor stated on the record before jury selection. The district court further noted Jones’s history with the criminal justice system and familiarity with “short periods of incarceration,” reasoning that Jones’s criminal history “further negates any argument that the fact that [Jones was] briefly in custody during jury selection and during the plea because of [her] own actions . . . [her] stay in jail overnight post-plea . . . renders [her] plea invalid.”

After Jones entered her guilty plea, the district court determined that her plea was informed and voluntary after extensive questioning. Jones testified that she had reviewed

her plea petition and *Norgaard* addendum multiple times with her attorney in the days preceding the trial. In response to the district court's question as to whether she wanted more time to discuss the petition with her attorney, Jones answered that she did not. And when Jones appeared to claim innocence while attempting to enter her guilty plea, the district court ordered trial to continue. During a break, Jones and her attorney discussed the plea, and once the proceeding was recalled, Jones stated that she was prepared to enter a guilty plea. The district court also ensured that all of Jones's questions about her plea had been answered. The only question that Jones asked during the course of entering her guilty plea was why the district court held her in constructive civil contempt during voir dire. The record supports the district court's conclusion that Jones was informed of and understood the consequences of her plea.

Because Jones did not satisfy her burden of showing that it was fair and just to allow her to withdraw her plea, the district court was not required to consider whether the state would be prejudiced by the plea withdrawal. *Cubas*, 838 N.W.2d at 224.

Affirmed.