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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0642**

State of Minnesota,
Respondent,

vs.

Victor Ciriaco-Martinez,
Appellant.

**Filed March 16, 2020
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CR-18-2595

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, Amy Lawler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Bjorkman, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

In this direct appeal from judgments of conviction for criminal sexual conduct and aggravated robbery, appellant challenges the denial of his plea-withdrawal motion. He

contends that, in considering his oral motion made prior to sentencing, the district court erred by applying a manifest-injustice standard rather than a fair-and-just standard. Because the district court did not err in applying the manifest-injustice standard, and under that standard and the fair-and-just-standard, which was not considered by the district court, appellant is not entitled to a withdrawal of his guilty plea, we affirm.

FACTS

In 2018, the state charged appellant Victor Ciriaco-Martinez in connection with a 2012 rape and robbery of a woman at knifepoint. The amended complaint listed three counts: (1) first-degree criminal sexual conduct with a dangerous weapon, in violation of Minn. Stat. § 609.342, subd. 1(d) (2010); (2) first-degree criminal sexual conduct causing injury and involving force or coercion, in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2010); and (3) aggravated first-degree robbery, in violation of Minn. Stat. § 609.245, subd. 1 (2010). The charges arose after DNA evidence implicated appellant. Specifically, in 2017, appellant was charged with sexually assaulting a child, and evidence collected in that case led to the discovery that he was involved in the 2012 crime.

In November 2018, appellant appeared with counsel and entered a “straight plea” to all three counts. He waived his trial rights and submitted a signed plea petition. He also admitted to the existence of two aggravating sentencing factors: he engaged in multiple forms of penetration, and he treated the victim with particular cruelty. He submitted a signed aggravated-sentence petition waiving his trial rights in regard to those factors.

In establishing a factual basis, appellant admitted that in January 2012 he picked up a woman while driving in Hennepin County. He agreed he drove the vehicle off the road

and “used a folding knife to threaten her or force her to have sex,” which involved both vaginal and anal penetration. The woman “suffered some injury to her private parts.” Appellant initially denied taking money from the woman, but ultimately admitted to taking money and acknowledged using the knife to accomplish that crime. He admitted that the woman did not consent to the intercourse or the taking of her property.

Appellant admitted to the crimes primarily via answers to leading questions posed by his attorney. When further questioned by the prosecutor, appellant denied forcing the woman to have sex and claimed that he “paid her” and that “[s]he was a prostitute.” The district court then interjected and stated to appellant that force or coercion was a required element and that appellant’s use of the knife could satisfy that element. In response, appellant stated, “Well, basically, if you want me to say yes to everything, I guess, I’ll say yes.” Appellant stated, “I’m not going to say . . . I forced her when I paid.” The district court accepted his guilty pleas after he made further admissions regarding his use of the knife in connection with the sexual assault.

In January 2019, appellant appeared with his attorney for sentencing. Following statements by the prosecutor, the victim who was initially reluctant to speak, and appellant’s attorney, appellant was given an opportunity to speak and he told the court that he wanted to withdraw his plea. He stated that he “barely got [his] paperwork a month-and-a-half ago,” and “[t]here’s been, like, three stories that happened.”

Appellant denied raping the woman, denied holding her at knifepoint, and denied admitting that he held her at knifepoint. The district court considered appellant’s statements during his sentencing allocution to be a request for a guilty-plea withdrawal.

The district court found that appellant's plea was knowing, voluntary, and intelligent and concluded there was no manifest injustice to warrant plea withdrawal. This appeal followed.

DECISION

We will reverse a district court's determination on whether to allow plea withdrawal only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). "It is well established that one who has entered a plea of guilty to a criminal complaint does not have the absolute right to withdraw it." *State v. Knight*, 192 N.W.2d 829, 832 (Minn. 1971). Guilty pleas may be withdrawn only if one of two standards are met: (1) at any time, a plea withdrawal must be permitted to prevent a manifest injustice; and (2) before sentencing, a plea may be withdrawn when it is fair and just to do so. See Minn. R. Crim. P. 15.05, subds. 1, 2.

Appellant argues that the district court erred by applying a manifest-injustice standard. This argument, at least in part, misapprehends the law as it relates to consideration of a plea-withdrawal motion. Though appellant's plea-withdrawal request was made prior to sentencing, the district court's application of the manifest-injustice standard was not erroneous. See *State v. Raleigh*, 778 N.W.2d 90, 93-94 (Minn. 2010) (analyzing presentencing motion under the manifest-injustice standard). A manifest-injustice standard may be applied "[a]t any time." Minn. R. Crim. P. 15.05, subd. 1. Appellant is correct, however, that consideration of this presentence guilty-plea withdrawal must also assess the fair-and-just standard. See *Raleigh*, 778 N.W.2d at 97.

It is important to first highlight the circumstances upon which the district court was asked to consider appellant's plea-withdrawal request. Appellant made his plea-withdrawal request orally during his allocution, without the assistance (nor, perhaps, the knowledge) of counsel, and he failed to set forth specific legal or factual grounds for the requested relief. *See* Minn. R. Crim. P. 32 (stating that a "motion must state the grounds on which it is made and must set forth the relief or order sought"). When the district court discussed whether a manifest injustice was present, appellant made no objection to the application of that standard and neither counsel nor appellant asked the court to also consider the fair-and-just standard or seek a continuance so that the district court might benefit from a complete record prior to ruling upon the request.

Given these circumstances, and applying both standards, we conclude that appellant is not entitled to relief.

Manifest-Injustice Standard

Appellant is not entitled to plea withdrawal under the manifest-injustice standard. A manifest injustice occurs if a plea is not valid. *Raleigh*, 778 N.W.2d at 94. To be valid, "a guilty plea must be accurate, voluntary, and intelligent." *Id.* The defendant bears the burden of proving that the plea was invalid. *Id.* "Assessing the validity of a plea presents a question of law that [appellate courts] review de novo." *See id.*

On appeal, appellant's sole challenge to his guilty plea is that it is not accurate because the factual basis he provided did not support the elements of the crimes to which he pleaded guilty. "The accuracy requirement protects a defendant from pleading guilty to a more serious offense than that for which he could be convicted if he insisted on his right

to trial.” *Id.* “To be accurate, a plea must be established on a proper factual basis.” *Id.* “The district court typically satisfies the factual basis requirement by asking the defendant to express in his own words what happened.” *Id.* A district court should be wary of establishing a factual basis through only leading questions. *Id.* “Still, a defendant may not withdraw his plea simply because the court failed to elicit proper responses if the record contains sufficient evidence to support the conviction.” *Id.*

Pursuant to count one, the state was required to prove that appellant engaged in sexual penetration while armed with a dangerous weapon and that he used that weapon to cause the victim to submit. Minn. Stat. § 609.342, subd. 1(d). Pursuant to count two, the state was required to prove that appellant engaged in sexual penetration, that he caused injury to the victim, and that he used “force or coercion”¹ to accomplish the act. *Id.*, subd. 1(e)(i). Pursuant to count three the state was required to prove that appellant

¹ The terms “force” and “coercion” are defined by statute. Force means: the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

Minn. Stat. § 609.341, subd. 3 (2010). Coercion means: the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant’s will. Proof of coercion does not require proof of a specific act or threat.

Id., subd. 14 (2010).

committed a robbery while armed with a dangerous weapon. Minn. Stat. § 609.245, subd. 1. A robbery occurs if a person,

having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person's resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property.

Minn. Stat. § 609.24 (2010).

During his plea colloquy, appellant admitted using a knife to threaten or force his victim to have sexual intercourse, which involved penetration, and he admitted using the knife to steal money from the victim. He admitted that the sexual penetration and “force that was used” caused injury to the victim. He admitted that the victim did not consent to sexual intercourse or the taking of her property. These admissions satisfy the elements of the crimes.² See *Raleigh*, 778 N.W.2d at 94-96 (indicating that a defendant's affirmative response at plea hearing to attorney's leading question satisfied a premeditation element). He also submitted a signed plea petition to the district court indicating that he wished to plead guilty to all three offenses and that he made “no claim” that he was “innocent.”

Appellant argues that he disavowed guilt during his plea hearing. The record does not support appellant's claim. Though appellant initially denied taking money from the victim, following an off record discussion with his attorney he ultimately admitted to that offense, stating, “Yes, I did.” He did not dispute the victim's allegation that money was taken, and he acknowledged using a knife to force the victim to acquiesce to the taking of

² We address only those elements for which appellant alleges a factual basis is missing.

her property. Following his answers to his attorney's questions at which he admitted to all elements of the crimes, appellant was questioned by the prosecutor on the specifics of the sexual assault. Appellant denied pulling the victim out of the vehicle by her hair and clothing, he denied "forc[ing] her over and press[ing] her down on the passenger seat," and he claimed that he paid the victim and that she "was a prostitute." However, he subsequently acknowledged that he was armed with a knife, which caused the victim to submit. The following exchange occurred:

THE COURT: So, we talked earlier about a knife being used, right?

APPELLANT: Right.

THE COURT: So, you opened up a knife while you were having sex with her or before you did?

APPELLANT: That's what the story—yes, this is.

THE COURT: Do you agree that that would be coercion for her to have sex with you, because of the knife she was afraid she'd get hurt?

APPELLANT: Yes.

THE COURT: The injury wasn't from the knife. The injury was from your penis, but still the knife would make her scared that she was going to get hurt, right?

APPELLANT: Yes.

Appellant's admissions satisfy the elements of the crimes. Though he subsequently claimed, after first admitting to all the crime's elements, that he paid the victim for sex and denied physically forcing her to comply, he acknowledged using a dangerous weapon to cause the victim to submit to sexual penetration, and he acknowledged that the circumstances coerced the victim to submit. Appellant's guilty pleas were accurate. Therefore, the record supports the district court's conclusion that a plea withdrawal is not necessary to correct a manifest injustice.

Fair-and-Just Standard

Appellant is also not entitled to relief under the fair-and-just standard. We review a district court's decision to deny appellant's plea-withdrawal motion, under the fair-and-just standard, for abuse of discretion, and we rarely reverse such decisions. *Raleigh*, 778 N.W.2d at 97. Under the fair-and-just standard, a district court must give due consideration to two factors: "(1) the reasons a defendant advances to support withdrawal and (2) prejudice granting the motion would cause the [s]tate given reliance on the plea." *Id.* We consider, "the entire context in which [the defendant's] plea of guilty occurred, as demonstrated by the record, to determine whether the district court abused its discretion." *State v. Abdisalan*, 661 N.W.2d 691, 695 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003).

Although the fair-and-just standard "is less demanding than the manifest injustice standard, it does not allow a defendant to withdraw a guilty plea for simply any reason." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quotation omitted). The decision to allow a defendant to withdraw a guilty plea "is left to the sound discretion of the trial court, and it will be reversed only in the rare case in which the appellate court can fairly conclude that the trial court abused its discretion." *Kim v. State*, 434 N.W.2d at 263, 266 (Minn. 1989).

Based on his arguments before the district court, appellant provided two reasons for his plea withdrawal. First, he said that he had received his "paperwork a month-and-a-half ago," and he described perceived shortcomings in the evidence against him. Second, he claimed his innocence, stating that he "didn't rape" the victim.

The district court did not abuse its discretion by denying appellant's plea-withdrawal request premised on his receipt of "paperwork" and perceived shortcomings in the evidence. Appellant, who was represented by counsel, failed to explain what paperwork he received or how he was deprived of a fair understanding of the charges and evidence against him at the time of his guilty plea. The record, which includes appellant's oral waivers, a plea petition, and an aggravated-sentencing-petition waiver, all belie his claim. Appellant's claim, instead, suggests a change of heart about his plea. This is insufficient to satisfy the fair-and-just standard. *State v. Lopez*, 794 N.W.2d 379, 382 (Minn. App. 2011); *see also State v. Tuttle*, 504 N.W.2d 252, 256-57 (Minn. App. 1993) (finding no merits in claim that plea withdrawal should be permitted based upon "a mistaken apprehension of the strength of the state's case").

Likewise, the district court did not abuse its discretion by denying appellant's plea-withdrawal request based upon his claim of innocence. Generally, a claim of innocence after a guilty plea is insufficient to satisfy the fair-and-just standard. *State v. Williams*, 373 N.W.2d 851, 853 (Minn. App. 1985). As previously discussed, although appellant disavowed engaging in some conduct during his plea, he admitted to facts supporting the elements of the charged crimes. During the sentencing hearing, appellant claimed that he did not sexually assault the victim and did not possess a knife, but he failed to explain why he previously admitted those facts and disclaimed his innocence. He claimed during his plea-withdrawal request that he had never admitted to possessing a knife, but the record clearly contradicts that claim. Appellant's claim of innocence does not support plea withdrawal. *See id.*

Regarding prejudice, the second area of inquiry under the fair-and-just standard, during the plea hearing the district court did not provide the state an opportunity to establish prejudice, and accordingly the state did not claim any prejudice. On appeal, the state asserts prejudice in the form of further trauma to the victim. The state also argues that it will “face greater resistance in securing the victim’s attendance for trial.” The record supports the state’s assertion, especially considering the fact that this offense occurred in 2012. The district court did not abuse its discretion by denying appellant’s plea-withdrawal motion pursuant to the fair-and-just standard.

Affirmed.