

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0470**

State of Minnesota,
Respondent,

vs.

Willie III Wair,
Appellant.

**Filed March 22, 2021
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CR-19-8091

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Florey, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

Appellant Willie III Wair challenges his conviction of and sentence for second-degree criminal sexual conduct, arguing that (1) the district court erred by refusing to permit him to withdraw his guilty plea; (2) he was denied his right to a fair trial by

ineffective assistance of counsel; and (3) the district court erred by sentencing him in absentia after he struck his counsel, knocking him to the ground. We affirm.

FACTS

Appellant William Wair III¹ was charged with one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 2(a) (2012), and one count of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(h)(iii) (2012). As part of a negotiated agreement, appellant pleaded guilty to second-degree criminal sexual conduct. At the plea hearing, the district court found that appellant had made a knowing, voluntary, and intelligent waiver of his right to trial and ordered a presentence investigative report and a psychosexual evaluation.

Prior to sentencing, appellant sent the district court a letter asking to withdraw his guilty plea. Appellant claimed his plea was involuntary because he was under “threat, duress, or coercion” because his attorney wanted to increase his fee if the matter went to trial. At the beginning of the sentencing hearing, the district court confirmed with appellant that defense counsel was still representing him. The district court agreed to hear appellant’s plea-withdrawal motion. Defense counsel deferred to appellant to make his argument. Appellant informed the district court that he was under the influence of a mind-altering prescription medication that affected his judgment and asked the district court to permit withdrawal of his plea. The district court denied appellant’s request as untimely and

¹ Appellant’s actual name is “William Wair III” but the title of the district court action, and, accordingly, the appellate caption, is Willie III Wair.

prejudicial to the state. Appellant interrupted the court, declared he was not guilty, and then assaulted his attorney. The district court summarized what happened as follows:

THE COURT: Okay. . . . continuing with the sentencing in this case when I inquired of the defendant if he would like to go through the presentence investigation process and the psychosexual process, he turned and knocked – and punched his attorney . . . on the right side of his face, knocking him down to the floor. The two deputies immediately restrained [appellant] and took him to the ground and handcuffed him. He was immediately, um, taken from this courtroom.

The district court granted the state’s motion to sentence appellant in absentia pursuant to Minn. R. Crim. P. 26.03, subd. 1(2), and proceeded to sentence appellant to the negotiated 94-month sentence. This appeal followed.

DECISION

I. Plea withdrawal

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). Guilty pleas may be withdrawn only if one of two standards are met: (1) at any time, a plea withdrawal must be permitted if “necessary to correct a manifest injustice” or (2) a plea may be withdrawn before sentencing when “it is fair and just to do so.” Minn. R. Crim. P. 15.05, subds. 1, 2. Appellant argues that he is entitled to withdraw his guilty plea under both the manifest-injustice and fair-and-just standards.

A. Manifest injustice

A manifest injustice exists when a plea is not constitutionally valid, because it is not accurate, voluntary, and intelligent. *Raleigh*, 778 N.W.2d at 94. Appellant bears the

burden of showing his plea was invalid. *Id.* The constitutional validity of a guilty plea is a question of law that this court reviews de novo. *Id.* Appellant argues that withdrawal is necessary to correct a manifest injustice because his plea was neither intelligently nor voluntarily made.

Appellant claims his plea was unintelligent because he was under the influence of Seroquel, an antipsychotic medication, and was not “thinking clearly.” A plea is intelligent if the defendant “understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Id.* at 96. The record establishes that appellant’s plea was intelligent. In his plea petition, appellant indicated that he understood the charges against him and had sufficient time to discuss his case with counsel. At the plea hearing, he testified to having a “clear mind” and sufficient time to review the petition and rights he was waiving with his attorney. *See State v. Lopez*, 379 N.W.2d 633, 638 (Minn. App. 1986) (noting that a presumption arises that the defendant has been adequately informed of the charges and consequences of the plea when the record shows he discussed the plea with his attorney).

Appellant also asserts his plea was involuntary, claiming it was induced by improper pressures and coercion stemming from his antipsychotic medication, general mental health, and a billing dispute with his attorney. A plea is voluntary if it is secured without improper pressure or coercion. *Raleigh*, 778 N.W.2d at 96. There is nothing in the record to indicate that appellant’s plea was anything but voluntary. In both his sworn testimony and his plea petition, appellant confirmed that he was pleading guilty on a voluntary basis and that no threats or promises were made to induce his plea. *See State v. Ecker*, 524 N.W.2d 712, 719

(Minn. 1994) (observing that a record showing a voluntary guilty plea may preclude a claim that the plea was involuntary). He agreed that he was satisfied with his attorney, who had fully represented his interests. Further, in arguing for reduced bail, appellant's attorney stated that "[Seroquel] has significantly improved [appellant's] mental health." Thus, appellant's assertion that his antipsychotic medication affected his ability to think clearly is not only contradicted by the record, but also by his own previous argument to the district court.

Because the record establishes that his guilty plea was intelligent and voluntary, appellant has failed to demonstrate a manifest injustice.

B. Fair and just

A defendant is entitled to withdraw his guilty plea prior to sentencing if it would be "fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2. Under the less-burdensome fair-and-just standard, the defendant bears the burden of providing reasons supporting withdrawal, while the state bears the burden of showing it would be prejudiced by withdrawal. *Raleigh*, 778 N.W.2d at 97. This court reviews a district court's decision to deny a motion to withdraw before sentencing for an abuse of discretion, giving deference to the district court's credibility determinations. *State v. Aviles-Alvarez*, 561 N.W.2d 523, 525 (Minn. App. 1997). Appellant argues that the district court abused its discretion by refusing to permit withdrawal of his guilty plea because he provided reasons supporting the withdrawal, the motion was timely, and withdrawal would not prejudice the state.

Appellant advances the same arguments for withdrawal under the fair-and-just standard—that he was coerced into pleading guilty because his attorney was not prepared

to go to trial without additional funds and that he was “not thinking clearly” because of his medication. Appellant failed to make any claim about the Seroquel until after he talked to the psychosexual evaluator and then claimed it affected his judgment without providing any factual support for his allegations. These delayed and unsubstantiated claims do not negate the sworn statements appellant made while pleading guilty. *See Andersen v. State*, 830 N.W.2d 1, 11 (Minn. 2013) (“Solemn declarations in open court carry a strong presumption of verity and subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal.”).

“The tender of a guilty plea, once accepted by a court, is and must be a most solemn commitment.” *State v. Wukawitz*, 662 N.W.2d 517, 526 (Minn. 2003). Appellant carries the burden of advancing reasons for withdrawal, other than merely a change of heart. Appellant has not met that burden. The district court did not abuse its discretion by denying appellant’s motion to withdraw.

II. Ineffective assistance of counsel

A defendant has the right to reasonably effective assistance of counsel under the Sixth Amendment to the United States Constitution. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). Ineffective-assistance-of-counsel claims involve mixed questions of law and fact that this court reviews de novo. *Id.* Appellant claims that his counsel was ineffective at his sentencing hearing because of the attorney’s personal conflict of interest, thus entitling appellant to a new plea-withdrawal hearing.

Minnesota courts apply a modified two-prong test for cases involving an allegation of ineffective assistance of counsel due to a conflict of interest, depending on whether and

to what extent the defendant brought the alleged conflict to the district court's attention. *State v. Paige*, 765 N.W.2d 134, 140 (Minn. App. 2009); see *Cooper v. State*, 565 N.W.2d 27, 32 (Minn. App. 1997), *review denied* (Minn. Aug. 1997). Where the court is aware of a probable risk of conflict and fails to take adequate steps to determine whether an impermissible conflict exists, "the defendant's conviction must be reversed without inquiry into prejudice resulting from the alleged conflict." *Id.* (citing *Holloway v. Arkansas*, 434 U.S. 475 (1978)). But if a defendant does not object at trial, he must demonstrate that an actual conflict existed that adversely affected counsel's performance. *Paige*, 765 N.W.2d at 140.

Appellant asserts that the district court had notice of a probable conflict based on his pro se letter and his attorney's failure to argue the plea-withdrawal motion. However, rather than clearly telling the district court that a significant conflict of interest existed, appellant's letter merely requested the district court permit him to withdraw his guilty plea. Further, at the beginning of his sentencing hearing, appellant confirmed that he was still represented by his defense attorney. Therefore, the district court did not have notice of a probable risk of conflict.

A conflict of interest exists if "there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer." Minn. R. Prof. Conduct 1.7. Appellant asserts that a conflict of interest exists because defense counsel increased his fee and stated he would not prepare for trial without additional funds.

Appellant fails to cite binding authority to support his assertion that these allegations amount to a conflict of interest. While appellant's attorney did not file a motion to withdraw the plea prior to the hearing, he requested that appellant be permitted to move for plea withdrawal at the sentencing hearing and then deferred to appellant to make his argument. Because appellant's attorney did not actively argue against appellant's interest in withdrawing his guilty plea and because a fee dispute is not an actual conflict of interest, no conflict exists here.

In *Butala v. State*, 664 N.W.2d 333, 337 (Minn. 2003), the Minnesota Supreme Court acknowledged that when a defendant seeks to withdraw his guilty plea on grounds that involve counsel's representation, the better practice is to appoint substitute counsel. However, in that case, the court ultimately affirmed the district court's denial of plea withdrawal because the district court gave the defendant's motion serious consideration. *Id.* Here, as in *Butala*, appellant was permitted to fully argue his motion to the district court. The district court confirmed that it reviewed appellant's letter. Then, even though appellant did not follow the proper procedure to move to withdraw his plea, the district court still allowed him to make his argument. Based on its review of appellant's petition and argument, the district court denied appellant's motion. The district court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea.

III. Sentencing in absentia

Generally, the Confrontation Clause of the Sixth Amendment guarantees a criminal defendant the right to be present at all stages of his or her trial. U.S. Const. amend. VI; *State v. Gillam*, 629 N.W.2d 440, 450-51 (Minn. 2001). Likewise, the Minnesota Rules of

Criminal Procedure state that a criminal defendant “must be present for every stage of trial,” including sentencing. *See* Minn. R. Crim. P. 26.03, subd. 1(1)(h).

After appellant struck his attorney, the district court concluded that he “voluntarily terminated his counsel’s representation” and granted the state’s motion to sentence appellant in absentia pursuant to Minn. R. Crim. P. 26.03. Appellant argues that the district court’s ruling was erroneous because it is unlawful in Minnesota to sentence a person to prison in absentia, regardless of a defendant’s wrongful conduct. This is a question of law that we review de novo. *See State v. Kuhlmann*, 806 N.W.2d 844, 848-49 (Minn. 2011) (stating that denial of jury trial rights raises a constitutional question that is reviewed de novo).

The Minnesota Supreme Court first addressed the question of whether a defendant is required to be present for sentencing in a felony case in *State ex rel. Shetsky v. Utecht*, 36 N.W.2d 126 (Minn. 1949). The court determined that a criminal defendant may waive the right to be present for trial “up to and including the rendition of the verdict,” but “the imposition of a sentence of imprisonment, even in his voluntary absence, [is] illegal and a lack of due process.” *Id.* at 131. Consistent with *Utecht*’s holding, the Minnesota Rules of Criminal Procedure require a felony defendant to be present at the original sentencing hearing. Minn. R. Crim. P. 27.03, subd. 2(A); 26.03, subd. 1(3) (in felony matters “[t]he court may excuse the defendant from attendance at any proceeding *except* at . . . sentencing.”). Thus, in Minnesota, while the rules explicitly allow a defendant to waive his presence at trial through absence without justification or unruly behavior, no such

express exceptions currently exist for the waiver of his presence at his original sentencing hearing.

The state compares this case to *State v. Lehman*, 749 N.W.2d 76, 79 (Minn. App. 2008). In *Lehman*, the defendant “attacked and beat his attorney in open court . . . after the district court denied his requests to discharge his public defender and declare a mistrial.” *Id.* at 79. In affirming the forfeiture of the defendant’s right to court-appointed counsel, this court stated:

No court can carry on its business in an atmosphere of violence, fear, and intimidation. . . . Violence in the courtroom cannot be tolerated and when that violence is a part of a manipulation of the right to appointed counsel it is appropriate to deprive the defendant of that right. We are aware that forfeiting a defendant’s right to court-appointed counsel is an extreme sanction. But the outrageous and manipulative conduct of appellant in this instance justified the district court’s decision. Moreover, the district court’s action is the most effective means of deterring repetition of such conduct by appellant and others similarly situated.

Id. at 82.

Here, after appellant physically assaulted his attorney, the district court immediately excluded him from the courtroom and proceeded to sentencing. The state argues that determining appellant’s violent and disruptive attack on his attorney does not amount to forfeiture or waiver of his right to be present at sentencing only rewards his repugnant behavior, and that the principles expressed in *Lehman* should also apply here.

The rule in Minnesota, although a minority view, requires a defendant to be present at sentencing and, by its explicit language, does not permit waiver. But because appellant was sentenced to the agreed-upon 94-month sentence, we determine that any error was

harmless beyond a reasonable doubt. *See id.* at 85 (stating that even if a defendant is wrongfully denied the right to be present at a critical stage of a trial, the error can nevertheless be harmless beyond a reasonable doubt if it surely did not affect the outcome of the hearing).

Affirmed.