

*This opinion is nonprecedential except as provided by  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  
A20-0735**

State of Minnesota,  
Respondent,

vs.

Deandre O'Neil Jackman,  
Appellant.

**Filed April 5, 2021  
Affirmed  
Reyes, Judge**

Hennepin County District Court  
File No. 27-CR-18-24589

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Craig E. Cascarano, Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and Jesson, Judge.

**NONPRECEDENTIAL OPINION**

**REYES, Judge**

In this direct appeal from his judgment of conviction and sentence, appellant argues that the district court abused its discretion by denying (1) his request for an evidentiary hearing and (2) his motion to withdraw his guilty plea. We affirm.

## FACTS

In September 2018, police officers executed a search warrant at the residence of B.E.L., appellant Deandre O'Neil Jackman's girlfriend, where appellant spent time while on work-release from jail. Officers found oxycodone, marijuana, a handgun, and cash during the search. Respondent State of Minnesota charged appellant in an amended complaint with two counts of fifth-degree controlled-substance crime under Minn. Stat. § 152.025 (2018), and one count of third-degree possession of narcotics under Minn. Stat. § 152.023, subd. 2(a)(3) (2018).

The state also charged B.E.L. with similar offenses. B.E.L. pleaded guilty on July 8, 2019.

The district court set appellant's jury trial for July 15, 2019, but on July 10, he sought a continuance due to his claimed involvement in a car accident rendering him physically unable to sit through a jury trial. On October 7, 2019, appellant pleaded guilty to third-degree possession of narcotics. He admitted to the third-degree charge based on possession of oxycodone and possessing a firearm, and agreed to the 36-month mandatory minimum sentence due to the sentencing enhancement under Minn. Stat. § 609.11, subd. 5 (2018), for the presence of a firearm. The state agreed to dismiss the remaining charges in this matter as well as charges in a separate, unrelated case.

After pleading guilty, and against his first attorney's advice, appellant testified at B.E.L.'s sentencing hearing on November 21, 2019. The same district court judge that presided over appellant's plea hearing presided over B.E.L.'s sentencing hearing, and the judge warned appellant that his statements could and would be used against him. *Id.*

Appellant nevertheless testified that he pleaded guilty to all of the same charges as B.E.L. and took “full responsibility for what happened.” The district court sentenced B.E.L. to a stayed 36-month sentence and placed her on probation for three years.

Due to appellant’s claimed involvement in another car accident, his first attorney requested a continuance of his sentencing hearing set for December 11, 2019, which the district court granted over the state’s objection. Appellant failed to appear at the rescheduled hearing on January 13, 2020. Over the state’s objection, the district court again granted a continuance due to appellant’s admission to the hospital the previous night. Appellant again failed to appear for a rescheduled hearing on January 17, 2020. Due to another hospital admission, appellant’s first attorney sought a continuance, to which the state objected. The district court issued a bench warrant, and appellant was taken into custody on March 11, 2020.

Appellant, represented by a second attorney, moved to withdraw his guilty plea on March 20, 2020. He alleged that his first attorney misadvised him and that he would not have pleaded guilty but for that advice. Additionally, appellant’s second attorney stated that, due to COVID-19 restrictions at the Hennepin County Jail, he could not obtain appellant’s affidavit in support of the motion. He therefore requested an evidentiary hearing to allow appellant to testify in lieu of an affidavit.

The district court denied appellant’s request for an evidentiary hearing but allowed a short hearing to have appellant brought from jail to sign an affidavit, which he did. Appellant’s affidavit reiterated the grounds for plea withdrawal consistent with his motion and asserted that he would not have pleaded guilty but for his first attorney’s advice.

In a detailed order, the district court denied appellant's motion to withdraw his guilty plea. The district court sentenced appellant to 36 months in prison and dismissed the other charges consistent with the plea agreement. This appeal follows.

## DECISION

### **I. The district court did not abuse its discretion by denying appellant's request for an evidentiary hearing on his presentence motion to withdraw his plea.**

Appellant argues that the district court abused its discretion by denying his request for an evidentiary hearing and asks us to adopt the postconviction standard for whether a district court should grant an evidentiary hearing on a motion to withdraw a plea prior to sentencing. We are not persuaded.

We review the district court's denial of a pretrial request for an evidentiary hearing for an abuse of discretion. *See State v. Fellegy*, 819 N.W.2d 700, 707-08 (Minn. App. 2012) (reviewing request for evidentiary hearing on pretrial motion to dismiss charges), *review denied* (Minn. Oct. 16, 2012). Here, appellant requested an evidentiary hearing for the sole purpose of having appellant testify in lieu of filing an affidavit, citing difficulty obtaining an affidavit due to COVID-19 restrictions at the jail. The district court denied appellant's request but acknowledged the restriction on exchanging physical paper between attorneys and clients. It therefore held "a short hearing for the express purpose of having the defendant sign his completed affidavit . . . under oath" as an accommodation. The district court's reasonable accommodation made an evidentiary hearing unnecessary. We conclude that the district court did not abuse its discretion by denying appellant's request for an evidentiary hearing.

Appellant asks us to adopt a new rule establishing a right to an evidentiary hearing on a presentence motion to withdraw a guilty plea, but cites no authority or rationale for this new rule. Moreover, the only reason advanced for an evidentiary hearing was to enable appellant to testify regarding the reasons for withdrawal, and the district court accommodated that request. Because we are an error-correcting court, we decline to adopt a new rule in this context. *See State v. Adkins*, 706 N.W.2d 59, 63 (Minn. App. 2005) (declining to adopt a new rule in context of out-of-court identifications).

**II. The district court did not abuse its discretion by denying appellant's presentence motion to withdraw his plea.**

Appellant argues that he is entitled to withdraw his plea because his allegations that his first attorney misadvised him are unrebutted and entitle him to relief. We disagree.

We review the district court's denial of a presentence plea withdrawal for an abuse of discretion, and reverse only in the rare case. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). A district court "abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

"A defendant has no absolute right to withdraw a guilty plea after entering it." *Raleigh*, 778 N.W.2d at 93. Instead, the defendant must meet one of two standards. First, a district court "must allow" a defendant to withdraw a plea at any time if it is necessary to

correct a “manifest injustice.”<sup>1</sup> 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.

Appellant argues that he is entitled to relief under the fair-and-just standard, which is less demanding than the manifest-injustice standard, but does not permit withdrawal for simply any reason. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quotation omitted). In considering whether to allow a defendant to withdraw a plea, the district court must give “due consideration” to (1) “the reasons advanced by the defendant in support of the motion” and (2) “any prejudice the granting of the motion would cause” the state. Minn. R. Crim. P. 15.05, subd. 2. The defendant bears the burden of advancing fair and just reasons for withdrawal, but the state bears the burden of showing prejudice if withdrawal is allowed. *State v. Wukawitz*, 662 N.W.2d 517, 527 (Minn. 2003).

As an initial matter, the district court appears to have implicitly found appellant’s affidavit not credible. Because this determination is based primarily on documentary evidence in the form of affidavits, we need not defer to it. *Cf. State v. Powell*, 357 N.W.2d 146, 149 (Minn. App. 1984) (stating that no deference given to district court’s finding based on documentary evidence), *review denied* (Minn. Jan. 15, 1984). We consider the entire context in which appellant’s plea occurred. *State v. Lopez*, 794 N.W.2d 379, 382 (Minn. App. 2011) (quotation omitted). Here, that context includes that the district court

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<sup>1</sup> We note that the district court also analyzed and denied appellant’s claims under the manifest-injustice standard, but we need not reach that issue because appellant failed to raise it before the district court or on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

presided over all proceedings in appellant's case as well as B.E.L.'s sentencing hearing, at which appellant admitted guilt despite his first attorney's advice not to do so and the district court's warnings. In testifying, appellant demonstrated that he did not unquestioningly follow his first attorney's advice. This undermines his assertion that he relied on his first attorney's advice in pleading guilty, which in turn generally undermines his credibility. We agree with the district court's implicit credibility determination.

Appellant appears to argue that his first attorney misadvised him in four ways. First, he asserts that his first attorney told him that the state "would seek an upward departure in excess of a 36-month mandatory sentence provided by Minn. Stat. § 609.11" if he went to trial, even though no *Blakely* motion<sup>2</sup> had been filed and it seemed unlikely that the state could prevail on such a motion. But the district court correctly noted that it may, for good cause and if it will not unfairly prejudice the defendant, permit the state to file a *Blakely* motion at any time. Minn. R. Crim. P. 7.03. Thus, had appellant not pleaded guilty, the state could have filed a *Blakely* motion. Appellant's first attorney's advice regarding that possibility is not unreasonable. We agree with the district court.

Second, appellant alleges that his first attorney told him that the state did not find his DNA on the firearm, but would nevertheless use DNA evidence against appellant at trial. The state countered that it found a mixture of DNA on the firearm and therefore could not interpret it, but could still use the firearm as evidence against appellant. The district

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<sup>2</sup> *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004) (establishing notice requirements for prosecutor to initiate proceedings seeking aggravated sentence); *see also* Minn. R. Crim. P. 7.03.

court concluded that appellant's first attorney did not improperly advise appellant about the possibility that the state could use the firearm against him at trial. The district court's reasoning here is sound.

Third, appellant alleges that his first attorney told him that he "should plead guilty prior to the co-defendant. If [B.E.L.] subsequently [pleaded] guilty and admitted possession of the firearm, he could and would be able to withdraw his plea of guilty," and therefore be able to use B.E.L.'s testimony at his trial. The district court found this allegation factually incorrect because B.E.L. pleaded guilty first, appellant knew of B.E.L.'s plea, and appellant still pleaded guilty. The district court noted that appellant faced no pressure to plead before B.E.L. Appellant therefore cannot claim reliance on this advice in pleading guilty. Further, the questionable factual basis of this allegation undermines the credibility of appellant's other allegations.

Fourth, and closely related to appellant's third argument, appellant asserts that his first attorney never informed him that he could call B.E.L. to testify on his behalf if she pleaded guilty before he went to trial. As the district court concluded, this advice concerns who appellant could and should call as a witness at trial, which is a matter of trial strategy. *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986) (noting that deciding which witnesses to call and which information to present at trial are strategic matters for trial counsel). In any event, this allegation conflicts with appellant's allegation that his first attorney told him to plead guilty *and call B.E.L. as a witness if she pleads guilty and he later withdraws his own plea*, which would indicate that appellant knew he could call B.E.L. as a witness. Appellant's inconsistent allegations here further undermine his credibility. In sum, the

district court did not abuse its discretion by determining that appellant did not establish fair and just reasons warranting plea withdrawal. We therefore need not address whether the district court abused its discretion by determining that allowing appellant to withdraw his plea would prejudice the state. *Raleigh*, 778 N.W.2d at 98 (affirming denial of motion to withdraw because defendant failed to allege fair and just reasons for withdrawal).

**Affirmed.**