

*This opinion is nonprecedential except as provided by  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  
A20-1613**

Tony Ray Walker, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed September 20, 2021  
Affirmed  
Reyes, Judge**

Hennepin County District Court  
File No. 27-CR-17-21798

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Hooten, Judge; and Florey, Judge.

**NONPRECEDENTIAL OPINION**

**REYES, Judge**

On appeal from denial of his plea-withdrawal motion, appellant argues that the district court erred by applying the manifest-injustice standard instead of the fair-and-just standard. But because the district court nevertheless addressed both standards, appellant

then argues that it abused its discretion by determining that he failed to show fair-and-just reasons for withdrawal and that the state would be prejudiced by withdrawal. He alternatively argues that the district court erred by concluding that he voluntarily and intelligently pleaded guilty and therefore did not satisfy the manifest-injustice standard. We affirm.

## **FACTS**

On September 1, 2017, respondent State of Minnesota charged appellant Tony Ray Walker with third-degree criminal sexual conduct for forcibly sexually penetrating his then-16-year-old daughter (the victim). At first, a public defender represented appellant, but he later retained a different attorney (second attorney). With the assistance of the second attorney, appellant pleaded guilty to the charge on August 27, 2018. At the plea hearing, appellant testified that he understood the petition, waived his trial rights, took pain medication before the hearing but it did not affect his judgment, and was satisfied with his second attorney's performance. He admitted the relevant facts of the crime and reviewed and signed a written plea petition.

However, at a court-ordered psychosexual evaluation on October 31, 2018, appellant denied touching or having sex with the victim. He claimed that he pleaded guilty because his second attorney scared him by telling him that he would have to register as a sex offender and serve 15 years in prison if he went to trial. He also stated that he took ibuprofen and Percocet prior to pleading guilty. In the presentence investigation (PSI), appellant again denied any sexual contact with the victim.

At a sentencing hearing on November 5, 2018, appellant's second attorney, having reviewed appellant's statements in the psychosexual evaluation and PSI, defended the guilty plea despite appellant's apparent inclination to challenge it. Appellant then stated that his second attorney made him feel that he had no other option than to plead guilty, never discussed the evidence with him, and failed to adequately prepare for trial. The district court acknowledged appellant's frustration but nevertheless accepted his guilty plea and sentenced him to 48 months in prison followed by a ten-year conditional-release period.

On appeal to this court, appellant argued that he received ineffective assistance of counsel at the sentencing hearing. *State v. Walker*, No. A19-0202, 2020 WL 610465, at \*1-2 (Minn. App. Feb. 10, 2020). We concluded that appellant received ineffective assistance of counsel because, by defending the guilty plea and his own performance, the second attorney "actively represented a conflicting personal interest" that affected his performance at the sentencing hearing. *Id.* at \*3-4. We remanded the matter to the district court to allow appellant to move to withdraw his plea while represented by conflict-free counsel, but we did not reverse appellant's conviction. *Id.*

With assistance from different counsel, appellant moved to withdraw his guilty plea and requested an evidentiary hearing on the motion. He argued that the district court should apply the fair-and-just standard. The district court<sup>1</sup> held an evidentiary hearing on September 18, 2020, at which both appellant and the second attorney testified. The district

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<sup>1</sup> Different district court judges presided over the sentencing hearing and post-remand proceedings.

court concluded that the manifest-injustice standard applies and that appellant voluntarily and intelligently pleaded guilty. It applied the fair-and-just standard in the alternative, determining that appellant failed to advance fair-and-just reasons for withdrawal and that granting withdrawal would prejudice the state. It therefore denied appellant's motion to withdraw his guilty plea. This appeal follows.

### **DECISION**

A defendant has no absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But the defendant may be able to withdraw a plea in two circumstances. First, a district court must allow a defendant to withdraw a guilty plea at any time "if withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Second, a district court may, in its discretion, allow a defendant to withdraw a guilty plea before sentencing "if it is fair and just to do so." *Id.*, subd. 2.

As an initial matter, appellant argues that the district court applied the wrong standard. He argues that the fair-and-just standard applies because (1) he tried to raise the withdrawal issue before sentencing but his second attorney prevented him from doing so, (2) his second attorney, the prosecutor, and the district court knew of his desire to withdraw his guilty plea, and (3) he should not be deprived of the more favorable fair-and-just standard of review because of his second attorney's ineffective assistance at the sentencing hearing. However, we need not address whether the district court erred by concluding the manifest-injustice standard applies because it considered appellant's arguments under both standards, and appellant's arguments fail under either standard.

**I. The district court did not abuse its discretion by determining that appellant failed to demonstrate fair-and-just reasons to withdraw his guilty plea and that granting plea withdrawal would prejudice the state.**

Appellant argues that it is fair and just to allow him to withdraw his guilty plea because (1) his second attorney coerced him into making the plea and his pain medications impaired his ability to understand the proceedings and (2) the state would be prejudiced only minimally by withdrawal because appellant did not cause the delay and the victim is available to testify. We are not persuaded.

Under the fair-and-just standard, the district court must consider “(1) the reasons [the] defendant advances to support withdrawal and (2) [the] prejudice granting the motion would cause the [s]tate.” *Raleigh*, 778 N.W.2d at 97. The defendant bears the burden to provide substantiated reasons for withdrawal, and the state bears the burden to show prejudice. *Id.* Although the fair-and-just standard is less burdensome than the manifest-injustice standard, a defendant may not withdraw his plea for simply any reason. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). Allowing a defendant to do so would “undermine the integrity of the plea-taking process.” *Id.*

We review the district court’s denial of a plea-withdrawal motion for an abuse of discretion, *Raleigh*, 778 N.W.2d at 97, and reverse only in rare cases. *Kim*, 434 N.W.2d at 266. We do not disturb the district court’s credibility determinations unless clearly erroneous, which is a “high threshold.” *Bobo v. State*, 860 N.W.2d 681, 684-85 (Minn. 2015); *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003) (stating that weight and believability of witnesses is issue for district court to which we defer), *review denied*

(Minn. July 15, 2003). The district court may credit the defendant's plea-hearing testimony even if his later testimony contradicts it. *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983).

**A. Fair-and-just reasons**

Appellant's claim that his second attorney coerced him is contradicted by that attorney's testimony and appellant's own plea-hearing testimony and written plea petition. The district court found appellant's second attorney's testimony credible, and our review of the record supports this credibility determination. For example, his second attorney consistently testified that he did not tell appellant that he would go to prison for 15 years or be taken into custody immediately if he did not plead guilty. The attorney also testified that he advises clients frankly about their chances of acquittal. We have further reviewed appellant's arguments about particular statements by the attorney by which he seeks to discredit the attorney and conclude that they are without merit.

The only evidence appellant puts forth in support of his argument is his own testimony at the evidentiary hearing and statements to the psychosexual and presentence evaluators. But the district court found appellant's testimony to be inconsistent, self-serving, and not credible. Our careful review of the record shows that it supports this credibility determination as well. For example, appellant testified at the evidentiary hearing that his second attorney failed to give him the evidence relevant to the case or explain the DNA evidence to him. But he later acknowledged receiving the DNA evidence and discussing that evidence with his attorney. Further, he acknowledged receiving some of the evidence from his first attorney, the public defender. As another example, appellant testified that he did not understand that he could have proceeded to trial on the day that he

pleaded guilty. But the record shows that his second attorney explained his trial rights at the plea hearing, that appellant understood those rights, and that he chose to waive them.

Appellant's claim that his pain medications impaired his ability to understand the proceedings is also contradicted by his plea-hearing testimony and written petition, in which he stated that he was thinking clearly and that his medications did not affect him. *See Trott*, 338 N.W.2d at 252. Further, the second attorney credibly testified that he did not observe appellant to have difficulty understanding the proceedings due to his pain medication. Appellant's second argument therefore also fails.

In sum, the district court's determination that appellant failed to substantiate reasons for withdrawal rested largely on its credibility determinations. It is in the best position to determine credibility, and we discern no reason to disturb its credibility determinations here. *Miller*, 659 N.W.2d and 279.

## **B. Prejudice**

Although the district court may deny a plea-withdrawal motion if the defendant failed to advance substantiated reasons for withdrawal even if there is no prejudice to the state, *Raleigh*, 778 N.W.2d at 98, we nevertheless address appellant's argument that the state would be prejudiced only minimally by withdrawal. We disagree with this argument.

When determining prejudice to the state, the "mere passage of time" does not support a finding of prejudice unless the defendant deliberately and inexcusably delayed the proceedings. *State v. Lopez*, 794 N.W.2d 379, 385 (Minn. App. 2011). In addition to delay, the district court may consider the interests of the victim, among other factors. *Kim*, 434 N.W.2d at 264, 267.

Here, the district court determined that allowing appellant to withdraw his guilty plea would prejudice the state. The crime occurred three years ago, and the district court convicted appellant two years ago. We acknowledge that appellant did not deliberately delay the proceedings. However, reopening this case would force the victim, who was a teenager at the time of the crime, to retell painful events that she has spent the past three years overcoming. *Kim*, 434 N.W.2d at 264 (noting adverse effects on victim's emotional state, marriage, and economic wellbeing in determining prejudice to state). The district court did not abuse its discretion by determining that allowing appellant to withdraw his guilty plea would prejudice the state. We therefore conclude that the district court did not abuse its discretion by determining that appellant failed to establish fair-and-just reasons to withdraw his plea.

**II. The district court did not err by concluding that appellant voluntarily and intelligently pleaded guilty under the manifest-injustice standard.**

Appellant asserts that he neither (1) voluntarily pleaded guilty, because he felt forced and scared into pleading guilty by his second attorney's advice nor (2) intelligently pleaded guilty because his pain medications impaired his ability to understand the plea proceedings. We disagree.

A manifest injustice occurs if a defendant's guilty plea is not valid. *Raleigh*, 788 N.W.2d at 94. A guilty plea is not valid if it is not accurate, voluntary, and intelligent. *Id.* The defendant bears the burden to demonstrate that a guilty plea is not valid. *Id.* Whether a guilty plea is valid is a question of law that we review de novo. *Id.*

As discussed above, appellant failed to substantiate under the fair-and-just standard his claims that his second attorney coerced him into pleading guilty and that his pain medication impaired his ability to understand the plea proceedings. Those arguments mirror appellant's arguments here under the higher manifest-injustice standard. We therefore conclude that the district court did not err by concluding that appellant voluntarily and intelligently pleaded guilty.

**Affirmed.**