

*This opinion is nonprecedential except as provided by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
A21-0671**

State of Minnesota,
Respondent,

vs.

Brian John Leonida,
Appellant.

**Filed February 7, 2022
Affirmed
Bryan, Judge**

Dakota County District Court
File No. 19HA-CR-20-313

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

Kathryn M. Keena, Acting Dakota County Attorney, Anna Light, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max Brady Kittel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant challenges the district court's decision to deny his presentence motion to withdraw his guilty plea. Because appellant did not establish fair and just reasons for withdrawal and because district courts may consider the interests of the victim when

determining whether withdrawal prejudices the state, we conclude that the district court did not err when it denied appellant's motion to withdraw a guilty plea. We affirm.

FACTS

On February 4, 2020, respondent State of Minnesota charged appellant Brian John Leonida with a felony violation of an order for protection (OFP) for sending electronic communications to the protected party discussing topics outside the permitted scope of communication. After two weeks in custody, Leonida moved for a bail reduction, explaining he needed to get out of jail to care for his children. The district court denied this motion.

On February 26, 2020, Leonida pleaded guilty to the sole count of violating an OFP. At the plea hearing, Leonida's attorney asked him whether he was "[m]aking the claim that the fact [he's] been held in jail since [his] arrest and could not post bail caused [him] to decide to plead guilty in order to get this thing over with rather than waiting for [his] turn at trial?" Leonida indicated that he was not pleading guilty just to get out of jail. Leonida also signed a written plea petition. In that document, Leonida marked the box next to the following statement: "I do not make the claim that the fact that I have been held in jail since my arrest and could not post bail caused me to decide to plead guilty in order to get the thing over with rather than waiting for my turn at trial." Leonida affirmed that he was freely and voluntarily pleading guilty without making a claim that he was innocent. Leonida's counsel noted for the record that Leonida had been advised to proceed to trial, but Leonida testified that he chose to plead guilty instead because he was in fact guilty of the offense. During the state's inquiry, the state explained that "in order to plead guilty to

this specific charge, it has to be shown that you knew you were violating the order at the time you did it.” Leonida stated that he had in fact violated the OFP by sending communications to the protected party. In addition, Leonida affirmed that he knew a jury trial was scheduled, but he agreed to waive his right to trial. Leonida also agreed that he understood each of the other rights that he was waiving by pleading guilty. Leonida’s counsel also explained to him that if he changed his mind, the district court and the appellate court would not allow him to withdraw his plea. The district court accepted Leonida’s guilty plea, adjudicated him guilty, ordered a presentence investigation (PSI), and continued the matter for sentencing. A victim impact statement was submitted prior to sentencing.

At the sentencing hearing, Leonida orally moved to withdraw his guilty plea, arguing that he only pleaded guilty to get out of jail. Leonida explained the basis for his motion: “I told everybody I was guilty so I could get out of jail. I’m appealing this. The State of Minnesota has already been aware of it But they said I couldn’t appeal this before I got sentenced on this.” The district court clarified that Leonida was seeking to withdraw his guilty plea because he did not enter it intelligently and voluntarily. Leonida explained: “I entered it voluntarily, but I wanted to get out of jail. . . . I couldn’t financially afford to bail out, and I had a child at home that I had to take care of and a 73-year-old father watching this child. So I needed to get out of jail.” Leonida’s counsel explained that the motion to withdraw the guilty plea was “based upon the fact that [Leonida] said he did not make that—he did not want to admit to the facts as they were alleged in the

complaint, and he pleaded guilty solely to get out of jail.” The district court continued the matter for a hearing regarding the motion to withdraw.

Leonida and the state filed memoranda prior to the hearing. Leonida asserted that “he had not had adequate time to consult with his attorney, that he [pleaded] guilty only to get out of jail and that he was not guilty of anything other than being a loving father.” Leonida argued that a withdrawal would be appropriate under the fair-and-just standard and to avoid a manifest injustice. In its motion, the state argued only that there was no manifest injustice because Leonida’s plea was accurate, voluntary, and intelligent.

At the hearing, the state argued it would be prejudiced if the district court were to grant the motion because one year had passed since the offense and, referencing the victim impact statement, the state argued that reopening the case would negatively affect the victim. Leonida testified at the hearing and stated that he pleaded guilty to get out of jail, the motion filed by his attorney was incomplete because he also believed in his innocence, and he had children he needed to take care of. On cross-examination, Leonida further explained that he had a lot going on in his life and was under a lot of mental stress, reiterating that he pleaded guilty to get out of jail.

The district court denied Leonida’s motion, finding that Leonida testified during the plea hearing that he did not decide to plead guilty in order to get out of jail. The district court also quoted Leonida’s testimony at the plea hearing in which Leonida agreed his counsel advised him to go to trial, but he disregarded this advice because he was, in fact, guilty of the offense and that he freely and voluntarily chose to plead guilty. The district court quoted from the written plea petition as well, noting that Leonida denied pleading

guilty in order to get out of jail. The district court then contrasted these statements with the stated reason Leonida provided for withdrawing his guilty plea:

“[Leonida] claimed that he pled guilty on February 26, 2020, only to get out of jail. He is now claiming this despite stating under oath at the time of the plea that he was not pleading guilty just to get out of jail [Leonida] said he was innocent despite telling the court at the plea hearing that he was pleading guilty because he was in fact guilty.”

The district court concluded that that “[f]or the past year the victim had the peace of mind that this matter was resolved. To now take that away from her, especially when considering the reasons given by [Leonida] for withdrawing his plea, would be prejudicial to the state and the victim.” The district court further concluded that “it would not be fair and just to allow [Leonida] to withdraw his plea” and that “[Leonida] has not met his burden of proof that it would be a manifest injustice if he were not allowed to withdraw his plea.” The district court denied the motion to withdraw and, on March 30, 2021, sentenced Leonida to a term of imprisonment of 15 months. The district court stayed the execution of the prison term for a period of three years subject to conditions of probation. Leonida appeals.

DECISION

Leonida asserts that the district court erred in two primary respects. First, Leonida contests the district court’s determination that he failed to state fair and just reasons for withdrawing his guilty plea. Because the district court did not abuse its discretion when it credited Leonida’s statements during the plea colloquy over his contradictory statement in support of the motion to withdraw, we affirm this portion of the district court’s decision. Second, Leonida argues that the district court erred as a matter of law when it considered

the victim's interests in determining whether withdrawal would prejudice the state. Because binding precedent permits consideration of the victim's interest as a component of prejudice to the state, we affirm this portion of the district court's decision as well.

Although a person has no absolute right to withdraw a guilty plea, *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010), district courts may permit a person to withdraw a guilty plea in two circumstances. First, if "withdrawal is necessary to correct a manifest injustice," the district court must grant a withdrawal request at any time, including when the request "is made after sentencing." Minn. R. Crim. P. 15.05, subd. 1. Second, a district court may grant a withdrawal request before sentencing "if it is fair and just to do so." *Id.*, subd. 2. Only the second standard is properly before this court.¹ Under this standard, the district court must consider the person's stated reasons for withdrawal and whether withdrawal would cause prejudice to the state. *Raleigh*, 778 N.W.2d at 97. The defendant bears the burden of proving, by a preponderance of the evidence, that the facts warrant withdrawal of the guilty plea. *James v. State*, 674 N.W.2d 216, 218 (Minn. App. 2004), *rev'd on other grounds*, 699 N.W.2d 723 (Minn. 2005). The state bears the burden of showing prejudice caused by the withdrawal. *State v. Crump*, 826 N.W.2d 838, 841 (Minn. App. 2013), *rev. denied* (Minn. May 21, 2013).

¹ To the extent that portions of Leonida's brief characterize the district court order as only considering whether withdrawal was necessary to correct a manifest injustice, we do not agree. While the state argued this standard to the district court, the district court considered and applied both standards. Because Leonida makes no specific argument to this court regarding manifest injustice, we need only review the portion of the district court's order applying the "fair and just" standard.

This court reviews a district court's decision to deny a presentence motion to withdraw a guilty plea for an abuse of discretion, reversing only in the rare case. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989); *State v. Jones*, 921 N.W.2d 774, 782 (Minn. App. 2018), *rev. denied* (Minn. Feb. 27, 2019); *Crump*, 826 N.W.2d at 841. We defer to the district court's credibility determinations. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *rev. denied* (Minn. July 15, 2003).

In support of his motion to withdraw, Leonida stated that he only pleaded guilty because he wanted to get out of jail in order to take care of his children. This statement contradicts the statements that Leonida made at the time of his plea. Contrary to the stated reason in support of withdrawal, Leonida stated that he was not pleading guilty "in order to get this thing over with rather than waiting for [his] turn at trial" In addition, in the written plea petition that Leonida signed, he made the following statement: "I do not make the claim that the fact that I have been held in jail since my arrest and could not post bail caused me to decide to plead guilty in order to get the thing over with rather than waiting for my turn at trial." Leonida also affirmed that he was freely and voluntarily pleading guilty, he was not claiming innocence, he was in fact guilty of the offense, and he understood that if he changed his mind, the district court and the appellate court would not likely withdraw his plea.

We discern no abuse of discretion in the district court's weighing of Leonida's conflicting statements or in the district court's decision to credit the statements Leonida made during the plea colloquy. *See Jones*, 921 N.W.2d at 782 (affirming district court's denial of a defendant's presentence motion to withdraw his guilty plea where the

defendant's stated reasons in support of the motion contradicted statements made by the defendant at the plea hearing); *see also State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (affirming district court's denial of a defendant's postsentence motion to withdraw his guilty plea where the defendant's stated reasons in support of the motion contradicted statements made by the defendant at the plea hearing); *State v. Lopez*, 379 N.W.2d 633, 637 (Minn. App. 1986) (same), *rev. denied* (Minn. Feb. 14, 1986).

Leonida also argues that the district court erred as a matter of law when it considered the victim's interests as part of its analysis of prejudice.² Again we are not persuaded. The Minnesota Supreme Court has determined that district courts are justified in considering the interests of the victim when analyzing the prejudice that the state would face if the district court granted a presentence motion to withdraw a guilty plea. *Kim*, 434 N.W.2d at 267; *see also State v. Theis*, 742 N.W.2d 643, 650-51 (Minn. 2007) (noting that the holding in *Kim* permits "consideration of the alleged victim's interests as prejudice to the State"). Leonida's argument is contrary to this established caselaw.

Affirmed.

² We note that Leonida does not dispute the determination that withdrawal of the guilty plea would be contrary to the interests of the victim in this case. Instead, Leonida raises a legal challenge, arguing that an alleged victim's interests are necessarily distinct from any impact to the state.