

*This opinion is nonprecedential except as provided by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
A21-1252**

State of Minnesota,
Respondent,

vs.

Randy Terrell Mayberry,
Appellant.

**Filed August 8, 2022
Affirmed
Frisch, Judge**

Hennepin County District Court
File Nos. 27-CR-20-26660, 27-CR-21-3163

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

FRISCH, Judge

In this direct appeal following appellant's convictions of illegal possession of a firearm and second-degree assault, appellant argues that the district court abused its

discretion by denying his presentence motion to withdraw his guilty pleas and that he is entitled to a new hearing to litigate his plea-withdrawal motion with the assistance of counsel. We affirm.

FACTS

In December 2020, respondent State of Minnesota charged appellant Randy Terrell Mayberry with fifth-degree drug possession, in violation of Minn. Stat. § 152.025, subd. 2(1) (2020), and unlawful possession of a firearm, in violation of Minn. § 624.713, subd. 1(2) (2020).

In February 2021, during Mayberry's conditional release from jail pending trial, he slashed a woman's face with a pocketknife. The state charged Mayberry with second-degree assault, in violation of Minn. Stat. § 609.222, subd. 2 (2020).

During a hearing in May 2021, the state extended Mayberry a global plea offer, the terms of which provided that in exchange for Mayberry's plea of guilty to the charges of felon-in-possession and second-degree assault, the state would agree to a downward durational departure of concurrent 48-month prison terms and dismissal of the drug-possession charge. Mayberry stated that he would accept the offer only if he could be furloughed from jail before sentencing. The state rejected Mayberry's request, and no agreement was reached at that time.

At this same hearing, Mayberry also complained that he received ineffective assistance of counsel because, he alleged, his counsel had not conducted the investigation that he requested, and he believed his counsel was in "cahoots with the prosecutor." The district court cautioned Mayberry about the risks of proceeding without counsel and asked

Mayberry to meet with the managing attorney of the public defender's office to explain the consequences of discharging his current counsel should he choose to do so. Mayberry agreed to meet with the managing attorney.

One week later, the district court held another hearing. Mayberry's counsel informed the district court that Mayberry "confirmed that, he will for this period of time continue to retain [her] as counsel." Counsel explained that she spoke with Mayberry about the state's former plea offer and that "at this point he is willing to take the 48 month resolution on these cases." Mayberry informed the district court that he would accept the plea offer as described by his counsel.

The next day, Mayberry accepted the state's offer and pleaded guilty to being a felon in possession of a firearm and second-degree assault. In an examination spanning twelve transcript pages for the gun charge and five transcript pages for the assault charge, Mayberry's counsel questioned Mayberry about his decision to plead guilty. During that colloquy, Mayberry agreed that he reviewed the plea petitions with his counsel "for a couple hours" and was satisfied that his counsel "represented [his] interests and fully advised [him]." The district court then questioned Mayberry directly, asking whether he understood "those rights that [his] attorney very thoroughly went over with [him]" and whether his decision to plead guilty was a free and voluntary decision. Mayberry answered in the affirmative. Mayberry then admitted to facts supporting both charges. The district court accepted the guilty pleas and scheduled a sentencing hearing.

The managing attorney from the public defender's office appeared with Mayberry at the hearings that followed Mayberry's guilty plea.

One week after Mayberry pleaded guilty, he moved the district court to withdraw his guilty pleas, change venue, and dismiss his case. He also raised claims of ineffective assistance of counsel, prosecutorial misconduct, and judicial bias. The district court deferred ruling on the motions, and the district court judge then recused from the matter given the nature of the allegations.

At the next hearing in July, a different district court judge clarified whether Mayberry sought to discharge his counsel and proceed pro se. Mayberry responded that he intended to proceed pro se on the five motions he filed. The district court continued the hearing until later that day so that Mayberry's counsel could review with Mayberry a petition to proceed pro se. When the hearing resumed, Mayberry's counsel stated that they reviewed the petition with Mayberry and that Mayberry had signed the petition. The district court asked Mayberry whether he had enough time to review the petition to proceed pro se. Mayberry replied that he reviewed the petition with his counsel and wished to proceed pro se. Mayberry's counsel then exited the hearing, and Mayberry proceeded, representing himself.

The district court then listed and addressed each of Mayberry's motions, beginning with his motion to withdraw his guilty pleas. Mayberry explained that he wanted to withdraw his guilty pleas because his counsel did not adequately research or properly investigate his case. He explained that, based on his understanding of the law, the statute to which he pleaded guilty cannot apply to him because it requires a mandatory 60-month sentence, and his sentence under the plea offer was for a shorter period, 48 months. As a result, Mayberry argued that he should be allowed to withdraw his pleas.

The state responded that Mayberry failed to set forth “legitimate legal reasons” for withdrawing a plea under the fair-and-just standard and that his reasons instead reflected a “lack of understanding of what the law actually is.” The state explained that, notwithstanding the mandatory minimum 60-month sentence, another statutory section allows for a downward durational departure in some cases, and Mayberry’s case allowed for such a departure. The state also argued that it would be prejudiced by a plea withdrawal because of the backlog of violent-crime cases and the significant resources the state had already expended in resolving Mayberry’s case.

The district court found that it was not fair and just to allow Mayberry to withdraw his guilty pleas and that plea withdrawal would result in extreme prejudice to the state. The district court then entered judgment and sentenced Mayberry.

Mayberry appeals.

DECISION

I. The district court did not abuse its discretion by denying Mayberry’s motion to withdraw his guilty pleas.

Mayberry argues that the district court abused its discretion by denying his motion to withdraw his guilty pleas under the fair-and-just standard for plea withdrawal pursuant to Minn. R. Crim. P. 15.05, subd. 2. A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). “Under the fair-and-just standard, a court considers the reasons a defendant offers to support withdrawal of a guilty plea and the prejudice to the state should withdrawal be permitted.” *State v. Townsend*, 872 N.W.2d 758, 764 (Minn. App. 2015). “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 any prejudice caused by the withdrawal. *State v. Crump*, 826 N.W.2d 838, 841 (Minn. App. 2013), *rev. denied* (Minn. May 21, 2013). 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). “We review a district court’s decision to deny a withdrawal motion for abuse of discretion, reversing only in the rare case.” *Raleigh*, 778 N.W.2d at 97 (quotation omitted).

Mayberry argues that he received ineffective assistance of counsel because his attorney did not adequately investigate his case or explain the proceedings and consequences of pleading guilty in a way that Mayberry could understand. He contends that these concerns that he raised to the district court several times are fair and just reasons warranting withdrawal of his guilty pleas. The district court found that the reasons Mayberry provided do not “rise to the level of it being fair” and that his guilty pleas were knowing, voluntary, and intelligent. The district court’s findings are supported by the record.

The record contains the following evidence about the information Mayberry had when he pleaded guilty. The state explained its offer. In exchange for Mayberry’s pleas of guilty to the charges of felon-in-possession and second-degree assault, the state explained that it would dismiss the other charges and Mayberry would be sentenced to “a durational departure to a 48-month commit.” The state also noted “that [Mayberry] is not

a mandatory . . . 60-month commit on that case and so that is to the discretion of the court.” The district court asked Mayberry whether he understood the offer. Mayberry responded that he did. The district court asked Mayberry whether he wished to accept that offer. Mayberry responded that he did. The district court then placed Mayberry under oath, and Mayberry provided the following testimony.

Mayberry’s counsel first questioned Mayberry about the contents of his plea petition for the firearm-possession charge. She asked him whether he had the opportunity the previous evening “for a couple hours to go through [his] plea petitions” with counsel. Mayberry confirmed he did. Counsel asked Mayberry whether he was satisfied that he had sufficient time to discuss the case with counsel, whether he was satisfied that counsel represented his interests, and if counsel fully advised him. Mayberry answered in the affirmative. Mayberry also confirmed that his counsel discussed with him possible defenses to the charges, the evidence against him, and that he had a right to a jury trial. This examination spans 12 transcript pages.

Mayberry’s counsel also questioned Mayberry about the contents of the plea petition for the assault charge. Counsel again asked Mayberry if he had sufficient time to discuss the case with counsel, whether he was satisfied with counsel’s representation, and whether counsel fully advised him. Mayberry again answered in the affirmative. Mayberry was also advised about and confirmed his understanding of his decision to waive his pretrial rights. This exchange spans five transcript pages.

During this extensive plea colloquy with questions directed from both counsel and the district court, Mayberry confirmed repeatedly that he was fully advised by counsel, that

counsel understood the case, that Mayberry understood his guilty pleas and the rights that he waived in pleading guilty, and that Mayberry was satisfied that counsel represented his interests. Although Mayberry did raise concerns about his counsel's performance at an earlier hearing, Mayberry testified on May 27 that he was satisfied with counsel's representation. On this record, we see no abuse of discretion in the district court's finding that Mayberry's renewed claim that he was dissatisfied with his attorney was not a fair and just reason warranting plea withdrawal.

II. Mayberry's waiver of counsel is valid.

Mayberry next argues that his waiver of counsel is invalid because the district court did not sufficiently examine him about his decision to proceed pro se or discuss the possibility of appointing substitute counsel.

Both the federal and state constitutions guarantee criminal defendants the right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. A defendant may waive the right to counsel, but the waiver must be knowing, voluntary, and intelligent. *Faretta v. California*, 422 U.S. 806, 807 (1975); *State v. Worthy*, 583 N.W.2d 270, 279 (Minn. 1998). The district court should ensure that a defendant waiving counsel is aware of the “possible punishments, mitigating circumstances, and any other facts relevant to the defendant's understanding of the consequences of the waiver.” *Worthy*, 583 N.W.2d at 276 (quotation omitted). “When a defendant has consulted with an attorney prior to waiver, a trial court could ‘reasonably presume that the benefits of legal assistance and the risks of proceeding without it had been described to defendant in detail by counsel.’” *Id.* (quoting *State v. Jones*, 266 N.W.2d 706, 712 (Minn. 1978)).

“We will only overturn a ‘finding of a valid waiver of a defendant’s right to counsel if that finding is clearly erroneous.’” *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009) (quoting *Worthy*, 583 N.W.2d at 276).

Mayberry argues that his waiver is invalid because the district court did not ask him about his “understanding of the charges, their consequences, or his rights beyond asking if he had enough time to review the pro se petition.” We disagree. The record reflects that two district court judges and Mayberry’s attorneys adequately apprised Mayberry multiple times of his rights and the charges against him.

On May 18, when Mayberry first complained about his attorney, the district court advised him about the risks of self-representation and specifically instructed Mayberry to meet with the managing attorney of the public defender’s office before deciding to fire his attorney. The district court asked Mayberry whether he understood, and Mayberry replied that he did. Then, on July 1, when Mayberry renewed his complaints about his representation and expressed his desire to represent himself, the district court asked Mayberry whether he had enough time to review a petition to proceed pro se with counsel. Mayberry replied that he did. The district court also confirmed that counsel reviewed the petition with Mayberry.

Because Mayberry met with his counsel and confirmed that he reviewed the pro se petition, the district court could reasonably infer that Mayberry’s counsel informed him of the “benefits of legal assistance and the risks of proceeding without it.” *See Worthy*, 583 N.W.2d at 276. Our review of the entire record supports the district court’s conclusion that Mayberry’s waiver was knowing and intelligent. He was informed by the district court

about the risks and consequences of proceeding pro se, and he had the benefit of substitute counsel to review the waiver with him.

Mayberry also argues that the district court should have appointed substitute counsel to assist in his plea-withdrawal motion. Mayberry claims that his case is similar to *State v. Paige*, 765 N.W.2d 134 (Minn. App. 2009). In *Paige*, the defendant pleaded guilty while represented by private counsel. 765 N.W.2d at 136. Acting pro se, Paige requested to withdraw his plea and fire his attorney, alleging that his attorney did not assist him and coerced him into pleading guilty. *Id.* at 136-37. Paige's attorney then moved to withdraw. *Id.* at 137. The district court held a hearing on Paige's request to discharge his attorney and declined to act until Paige had secured new representation. *Id.* Paige did not retain another attorney, was represented by the same attorney at his sentencing/plea-withdrawal hearing, and counsel made no argument for plea withdrawal, instead expressing uncertainty about Paige's plea-withdrawal request given that it was based on counsel's alleged ineffective assistance. *Id.* The district court denied the plea-withdrawal request. *Id.* On appeal, we held that because Paige's attorney did not file a motion, made no argument on Paige's behalf, and expressed uncertainty about his ability to represent Paige in a plea-withdrawal motion based on counsel's alleged ineffective assistance, the district court was on notice of a potential conflict and needed to determine whether an impermissible conflict existed. *Id.* at 141. We remanded to the district court to first address Paige's request to discharge his attorney and then to conduct a plea-withdrawal hearing. *Id.* at 142.

Mayberry likens his case to the circumstances in *Paige* and seeks a remand to district court for a new plea-withdrawal hearing with conflict-free counsel. But this case is unlike

Paige in several salient respects. First, Paige retained a private attorney while Mayberry was represented by the public defender's office. *Id.* at 136. A defendant does not have an unbridled right to a different public defender, and, unlike Paige, Mayberry never requested a new attorney. *See Worthy*, 583 N.W.2d at 278 (explaining that the court will only grant a request for a different public defender under exceptional circumstances). Second, Paige's attorney moved to withdraw from representation and indicated that he was limited in his ability to represent Paige. *Paige*, 765 N.W.2d at 137. By contrast, Mayberry's counsel did not move to withdraw or specify any difficulty representing him and, most notably, Mayberry specifically stated that he was satisfied with counsel's representation.

Finally, in *Paige*, the district court did not consider Paige's requests. *Id.* Here, the district court sufficiently considered all of the reasons set forth by Mayberry in support of his motion to withdraw his pleas along with the objection from the state. The district court balanced these considerations, finding that Mayberry's arguments originated from a misunderstanding of the law, that he was fully apprised of and understood his rights and the terms of the plea offer, and that the state would experience extreme prejudice if Mayberry were allowed to withdraw his pleas. The district court therefore sufficiently considered Mayberry's claims under the fair-and-just standard, and it did not err by denying Mayberry's request to withdraw his guilty pleas without appointing substitute counsel.

Affirmed.