

*This opinion is nonprecedential except as provided by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
A22-0622**

State of Minnesota,
Respondent,

vs.

Shevirio Kavirion Childs-Young,
Appellant.

**Filed March 20, 2023
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-21-14898

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

Mary F. Moriarty, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

On appeal from his conviction for being an ineligible person in possession of a firearm, appellant contends the district court abused its discretion by denying his

presentencing motion to withdraw his guilty plea under the fair-and-just standard and by failing to rule on his motion for a downward durational departure at sentencing. We affirm.

FACTS

In August 2021, law enforcement received a tip that two individuals inside a T-Mobile store were carrying large firearms. Officers went to the store. They located appellant Shevirio Kavirion Childs-Young and fifteen-year-old S.D.J. and patted them down for weapons. Officers felt a firearm on the body of Childs-Young and, in a search incident to arrest, found a handgun with a large-capacity magazine in appellant's right pant leg. At the time, Childs-Young was prohibited from possessing firearms based on a third-degree assault adjudication from 2020. Respondent State of Minnesota charged appellant with being an ineligible person in possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2020).

After his initial appearance, Childs-Young was released from custody on electronic home monitoring. The district court also ordered that he remain law abiding, attend all court appearances, and refrain from possessing a firearm or ammunition. A probation officer supervised Childs-Young's release.

In September, the district court held a plea hearing. Childs-Young's guilty plea was a "straight plea" to the charged offense, rather than a negotiated plea agreement. According to Childs-Young's plea petition, in exchange for his guilty plea, the state would consider (1) dismissing another ineligible person in possession of a firearm case against him in Hennepin County Juvenile Court, and (2) discharging him from probation on another juvenile case. Further, the plea petition stated that the state would argue for a 60-month

sentence and the defense would argue for sentencing departures. In establishing the factual basis for Childs-Young's guilty plea, defense counsel only asked leading questions that Childs-Young answered in the affirmative. The district court ordered a presentence investigation (PSI) and scheduled a sentencing hearing.

After the plea hearing but before sentencing, Childs-Young violated his release conditions, leading the state to charge him for new crimes. First, Childs-Young failed to comply with electronic home monitoring, so the district court revoked his conditional release and issued a warrant for his arrest. Childs-Young was not apprehended on the warrant and failed to appear at his sentencing hearing. When officers arrested Childs-Young on November 30, he possessed a firearm while driving a car. The state charged Childs-Young again with being an ineligible person in possession of a firearm. About a month later, Childs-Young failed to return to custody after being granted a three-hour furlough to attend a funeral. On January 10, Childs-Young appeared via Zoom and the district court ordered him to return to custody and informed him of an active warrant for his arrest. Childs-Young ignored the district court's order. Days later, police officers discovered Childs-Young in his car. Childs-Young evaded police while driving his car with his seven-month-old daughter inside. Before being caught and arrested, Childs-Young ran into an officer's squad car, causing over \$1,000 in damages.

In February 2022, the district court held a sentencing hearing. The state argued Childs-Young should receive the mandatory 60-month sentence for his offense and that there was no basis to depart based on Childs-Young's post-plea criminal conduct. Childs-Young moved the district court to allow him to withdraw his guilty plea pursuant to Minn.

R. Crim. P. 15.05, subd. 2. He argued that given the added cases against him “having this plea accepted and the conviction entered is prejudicial.” The district court denied Childs-Young’s motion. In the alternative, Childs-Young moved the district court for a downward dispositional departure based on his difficult past, history of trauma, history of depression, and difficult home life. Childs-Young noted he needed therapy and treatment so he could care for his two young children. Additionally, Childs-Young moved for a downward durational departure, arguing that the circumstances were less onerous than the typical ineligible possession case because Childs-Young was not involved in any suspected criminal activity when he was found in possession of the weapon.

The district court pointed out that Childs-Young shared in his PSI that his childhood was stable. The district court also noted that Childs-Young did not appear remorseful, did not follow through on court-ordered community supervision, acquired new criminal charges, and fled after the district court granted him a furlough. The district court denied Childs-Young’s motions, found him guilty and sentenced him to 60 months in prison.

This appeal follows.

DECISION

I. The district court did not abuse its discretion when it denied Childs-Young’s motion to withdraw his guilty plea.

A defendant has no absolute right to withdraw a guilty plea after entering it. *Dikken v. State*, 896 N.W.2d 873, 876 (Minn. 2017). But a district court may allow withdrawal before sentencing where it is “fair and just” to do so. Minn. R. Crim. P. 15.05, subd. 2.

The fair-and-just standard is “less demanding . . . than the manifest-injustice standard¹, but it does not permit withdrawal of a guilty plea for simply any reason.” *State v. Townsend*, 872 N.W.2d 758, 764 (Minn. App. 2015) (quotation omitted).

District courts must give due consideration to two factors in determining whether withdrawal would be fair and just: “(1) the reasons a defendant advances to support withdrawal and (2) prejudice granting the motion would cause the [s]tate given reliance on the plea.” *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). The burden is on the defendant to provide reasons for withdrawal, and the burden is on the state to show that withdrawal would cause prejudice. *Id.* This court reviews a district court’s decision to deny a presentence motion to withdraw a guilty plea under the fair-and-just standard for an abuse of discretion, reversing only in the “rare case.” *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989); *see also Raleigh*, 778 N.W.2d at 97.

Childs-Young argues it was fair and just to allow him to withdraw his plea because his current criminal charge prejudiced his ability to defend his newer criminal charges. Childs-Young further asserts that the new charges rendered his prior plea illusory because what had been contemplated by the plea, a stay, would be realistically off of the table.² We

¹ District courts must allow a defendant to withdraw a guilty plea whenever “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1.

² Childs-Young also argues for the first time on appeal that it would have been fair and just for the district court to allow him to withdraw his plea because (1) the factual basis for the offense was established only by defense counsel’s leading questions; and (2) Childs-Young lacked maturity and may not have understood the consequences of pleading guilty. But Childs-Young did not raise these arguments under the fair-and-just standard before the district court. And he does not now argue they constitute a manifest injustice. Thus, we do not reach the issues here. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that generally, an appellate court will address only the issues that the record shows were

disagree that these reasons support fair-and-just withdrawal. Around two months after Childs-Young's guilty plea, he allegedly possessed a firearm and was charged with unlawful possession by the state in a separate court file. A conviction here may present some hardship for Childs-Young in defending against his subsequent unlawful possession case, but any hardship is rightfully attributed to Childs-Young's own post-plea criminal conduct rather than to the plea itself. Further, Childs-Young's guilty plea was a "straight plea" and did not involve a negotiated agreement to dismiss additional cases or to guarantee a stayed sentence. The record shows that the state would contemplate dismissing and resolving active cases involving appellant that existed before the plea hearing, not later cases arising from his post-plea conduct. And the plea left sentencing to the district court's discretion. On these facts, it is hard to conclude Childs-Young's plea was illusory.

Childs-Young further asserts the state failed to establish it would have been unduly prejudiced by him withdrawing his guilty plea. But the district court need not find prejudice to deny a plea-withdrawal motion when the defendant provides no "substantiated reasons for withdrawal of his plea." *Raleigh*, 778 N.W.2d at 98; *see also State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013) ("Even when there is no prejudice to the state, a district court may deny plea withdrawal under rule 15.05, subdivision 2, if the defendant fails to advance valid reasons why withdrawal is fair and just."), *rev. denied* (Minn. Dec. 31, 2013).

presented to and considered by the district court in making its decision); *see also State v. Abdisalan*, 661 N.W.2d 691, 694 (Minn. App. 2003), *rev. denied* (Minn. Aug. 19, 2003) (declining to consider appellant's plea withdrawal issues not presented to and considered by the district court).

This is not a “rare case” requiring reversal. *Kim*, 434 N.W.2d at 266. Because Childs-Young failed to advance substantiated reasons for withdrawal of his plea under the fair-and-just standard, the district court did not abuse its discretion in denying his motion. *See Raleigh*, 778 N.W.2d at 98.

II. The district court did not abuse its discretion when it imposed a presumptive guidelines sentence and did not articulate reasons for refusing to grant a durational departure.

“We afford the trial court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). A district court must impose a sentence within the guidelines “unless there exist identifiable, substantial, and compelling circumstances that distinguish a case and overcome the presumption in favor of the guidelines sentence.” *Id.* at 308. We affirm when the district court “carefully evaluated all the testimony and information presented” before imposing a presumptive sentence. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013). But if the district court does not depart, it “is not required to explain its reasons for imposing a presumptive sentence.” *Id.* We “will not generally review a district court’s exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range.” *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *rev. denied* (Minn. July 20, 2010).

Childs-Young contends the district court failed to rule on his request for a downward durational departure and the case must be remanded for resentencing. At his sentencing hearing, Childs-Young moved for both dispositional and durational departures. Childs-

Young argued that his difficult past, including trauma, depression, and need for therapy were factors that supported a dispositional departure. The record reveals the district court reviewed Childs-Young's PSI report. The district court noted that Childs-Young had told the PSI writer that he had a stable childhood. The district court also observed that Childs-Young's lack of remorse and his post-plea criminal conduct made it "apparent . . . that he does not deserve a dispositional departure."

In support of a durational departure, Childs-Young argued the circumstances of his offense were less onerous than the typical prohibited person in possession of a firearm case because he was not involved in any suspected criminal activity at the time of possession. The district court articulated no rationale for denying Childs-Young's durational departure motion as it did his dispositional departure motion. Instead, the district court denied both departure motions and imposed the presumptive sentence of 60 months in prison for Childs-Young's offense. *See* Minn. Stat. § 609.11, subd. 5(b) (2020) (requiring any defendant convicted of ineligible possession of a firearm under Minn. Stat. § 624.713, subd. 1(2), to be committed to the commissioner of corrections for not less than five years); *State v. Fleming*, 869 N.W.2d 319, 323 n.1 (Minn. App. 2015) (stating a statutorily mandated sentence is the presumptive sentence), *aff'd*, 883 N.W.2d 790 (Minn. 2016). The district court did not fail to rule on Childs-Young's durational departure motion. And "[a]lthough the [district] court is required to give reasons for departure, an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence," as it did here. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985); *see also Johnson*, 831 N.W.2d at 925. Because the district court "evaluated all the

testimony and information presented” in considering arguments from the state and Childs-Young along with the PSI, we discern no abuse of discretion. *Johnson*, 831 N.W.2d at 925.

Affirmed.