STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0732

George Dudley, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed January 30, 2023
Affirmed
Larson, Judge

Ramsey County District Court
File No. 62-CR-18-8527

Cathryn Middlebrook, Chief Appellate Public Defender, Sean Michael McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Bratvold, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant George Dudley argues the postconviction court erred when it denied his petition to withdraw his guilty plea on the basis that the guilty plea was the product of the district court improperly forcing appellant to be represented by counsel. We affirm.

FACTS

In November 2018, respondent State of Minnesota charged appellant with one count of first-degree criminal sexual conduct (use of force or coercion) pursuant to Minn. Stat. § 609.342, subd. 1(e)(i) (2018), and one count of first-degree assault (great bodily harm) pursuant to Minn. Stat. § 609.221, subd. 1 (2018).

In April 2019, appellant appeared before the district court for a pretrial hearing. After appearances were noted for the record, the district court judge stated, "[Appellant], I've been informed that you wish to fire [your attorney]?" Appellant affirmed that he wanted to discharge his attorney. The district court judge then inquired about appellant's request to represent himself. The district court asked appellant specific questions[1] to gauge whether he understood the consequences of discharging his attorney. Throughout this colloquy, appellant continually stated that he wanted to discharge his attorney and that he wanted to proceed pro se.

The state then asked to place the current plea offer on the record before the district court made its decision on appellant's request to discharge his attorney. This began a lengthy discussion between the state and defense counsel. The state and defense counsel discussed the state's then-current offer of 220 months in prison, as well as the state's intention to add one count of attempted murder if appellant did not plead guilty. In

[1] Amongst other questions, the district court asked whether appellant understood that (1) he was facing "very serious charges" with "very serious consequences"; (2) he would "be held to the same standard as an attorney"; (3) he would not get to "hand-pick another public defender"; and (4) stand-by counsel may be assigned but they will not try the case for him. Appellant answered affirmatively to all these inquiries.

response to this discussion, appellant said he felt "attacked." The district court responded that the purpose of the discussion was not to attack him, but to inform appellant of the potential consequences of his choice to represent himself. When asked if he understood, appellant said he understood "[e]verything but the consequences." The district court and appellant then had the following exchange:

> THE COURT: Are there any questions surrounding the state's offer as we've all discussed this morning? It's important to this Court that you fully understand the state's offer, sir, before I move on. Do you understand the state's offer at this time? Yes or no?
> APPELLANT: No.
> THE COURT: Okay. And can you see how challenging a trial might be if --
> APPELLANT: I have a learning disability so everything is a challenge for me.
> THE COURT: All right. All the more reason I am not going to discharge [defense counsel] at this time. Okay. So you will have to work with [defense counsel]. He is by far one of the most experienced attorneys in the state. He has expressed an abundance of willingness and patience and competence to assist you. So the Court is not going to discharge [defense counsel] at this time. Whatever you have to say to the Court going forward, you should relay that to your attorney, and [h]e'll communicate back to the Court on your behalf. Do you understand that, sir?
> APPELLANT: Yes, Your Honor.

The district court later explained:

> [Appellant], this Court has not discharged the services of the public defender, okay. So [defense counsel] will continue to remain as your attorney. I am encouraging you to work closely with him. There is a lot at stake. There is a lot of legal jargon and procedural legal procedure you would not understand. You also told this Court that you have some learning disabilities. For all those reasons this Court has concerns, *grave concerns*, on your ability to represent yourself.

(Emphasis added.)

Shortly after the district court denied appellant's request to represent himself, defense counsel requested a competency evaluation under Minn. R. Crim. P. 20.01.[2] Defense counsel stated he was "very concerned" and that he was "not sure [appellant was] competent." When asked about the request, the state deferred to the district court and defense counsel. But the state commented that appellant "ha[d] said some things [at the pretrial hearing] that call into question whether he has an understanding." The district court ordered a rule 20.01 and a rule 20.02[3] evaluation.

In May 2019, appellant appeared with counsel for his rule 20 hearing. At the request of both parties, the district court adopted the psychological evaluator's findings and conclusion. The psychological evaluator found appellant competent to proceed despite some concerns around appellant's memory and learning disability.

In July 2019, appellant appeared with counsel before the district court to enter a guilty plea. Appellant entered a *Norgaard* plea[4] to first-degree assault for an agreed-upon

---

[2] Rule 20.01 indicates that "[i]f [a] prosecutor, defense counsel, or the court, at any time, doubts the defendant's competency" then they "must" raise the issue of competency. Minn. R. Crim. P. 20.01, subd. 3. If the district court "determines that reason exists to doubt the defendant's competency," the court must suspend the criminal proceedings until the defendant is evaluated by a court-appointed examiner and the district court finds the defendant competent. Minn. R. Crim. P. 20.01, subds. 3-6.

[3] Rule 20.02 allows the court to order a mental evaluation to assess the defense of mental illness or cognitive impairment.

[4] The district court may accept a guilty "*Norgaard* plea" when a defendant claims a loss of memory, through amnesia or intoxication, but the record establishes that the evidence against the defendant is sufficient to persuade the defendant and their defense counsel that the defendant is guilty or likely to be convicted of the crime charged. *State v. Ecker*, 524 N.W.2d 712, 716-17 (Minn. 1994) (citing *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871 (1961)).

sentence of 180 months in prison.[5] During the plea hearing, appellant affirmed he had enough time to talk with defense counsel about the case, that defense counsel answered all his questions, and that he was satisfied with defense counsel's representation. Appellant also indicated no one had coerced or forced him to plead guilty. In September 2019, the district court sentenced appellant to 180 months in prison in accordance with the plea agreement.

In September 2021, appellant, through counsel, filed a petition for postconviction relief. Appellant argued he was "entitled to withdraw his [guilty] plea because it was the product of the [district] court improperly forcing [him] to be represented by [counsel]." In March 2022, the postconviction court denied appellant's petition for postconviction relief.

This appeal follows.

DECISION

Appellant challenges the postconviction court's decision to deny his postconviction petition to withdraw his guilty plea. We review a postconviction court's decision to deny postconviction relief for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). "We [will] not reverse the postconviction court unless the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Brown v. State*, 863 N.W.2d 781, 786 (Minn. 2015) (quotation omitted).

---

[5] The sentencing guidelines provided a presumptive range of 125 to 175 months in prison for appellant pleading guilty to first-degree assault. Minn. Sent'g Guidelines 4.A (2018). However, the parties agreed to an upward durational departure and appellant signed a waiver of his right to a jury trial on the facts supporting an aggravated sentence.

Appellant argues he is "entitled to withdraw his [guilty] plea because it was the product of the [district] court improperly forcing [him] to be represented by [counsel]." But a "valid guilty plea waives all non-jurisdictional defects arising prior to the entry of the plea."[6] *Dikken v. State*, 896 N.W.2d 873, 878 (Minn. 2017) (quotation omitted); *see also Tollett v. Henderson*, 411 U.S. 258, 267 (1973) ("[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant [pleads guilty] . . . he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."). And we have concluded in at least one nonprecedential decision that a pretrial denial of the right to self-representation is a non-jurisdictional defect. *State v. Maddox*, No. A14-1453, 2015 WL 1961147, at *5-6 (Minn. App. May 4, 2015).[7] Thus, we interpret appellant's argument as a challenge to the validity of his guilty plea on the ground that it was involuntary because of improper pressure or inducement.

"A defendant has no absolute right to withdraw a guilty plea after entering it." *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a postconviction court must allow a

---

[6] Respondent failed to argue to the postconviction court that appellant's guilty plea waived his constitutional challenge to the denial of his request to discharge defense counsel. However, both parties addressed this issue in their appellate briefing. In our discretion, we may consider an issue raised for the first time on appeal when the interests of justice require its consideration and addressing the issue is not an unfair surprise to a party. *State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989). We choose to exercise this discretion here.

[7] We cite *Maddox* for its persuasive value, Minn. R. Civ. App. P. 136.01, subd. 1(c), and note that it is consistent with the majority of federal circuit courts that have reached this issue, *see, e.g.*, *United States v. Dewberry*, 936 F.3d 803, 806-07 (8th Cir. 2019); *United States v. Moussaoui*, 591 F.3d 263, 279 (4th Cir. 2010); *Gomez v. Berge*, 434 F.3d 940, 942-43 (7th Cir. 2006); *United States v. Montgomery*, 529 F.2d 1404, 1406-07 (10th Cir. 1976).

defendant to withdraw a guilty plea if it is constitutionally invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Determining the validity of a guilty plea presents a question of law subject to de novo review. *Raleigh*, 778 N.W.2d at 94. A defendant bears the burden of showing his guilty plea was invalid. *Weitzel v. State*, 883 N.W.2d 553, 556 (Minn. 2016).

"To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Raleigh*, 778 N.W.2d at 94 (citing *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)). Whether a guilty plea is voluntary is determined by considering all relevant circumstances. *Id.* at 96. To determine whether a guilty plea is voluntary, we examine what the parties reasonably understood to be the terms of the plea agreement. *Id.* "The voluntariness requirement helps [e]nsure that the defendant does not plead guilty because of any improper pressures or inducements." *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989).

Here, there is nothing in the record indicating appellant's guilty plea stemmed from "improper pressures or inducements." *Id.* After the district court denied appellant's request to discharge defense counsel, appellant did not reraise the issue and never indicated he felt "forced" to be represented by counsel. At appellant's plea hearing, appellant affirmed he was satisfied with his defense counsel's representation, he affirmed he understood the terms of the plea agreement, and he indicated no one had coerced or forced him to plead guilty. Appellant has not presented evidence either in his postconviction petition or on appeal that he felt coerced into entering a guilty plea. Thus, appellant has

not satisfied his burden to show his guilty plea was involuntary, or that his plea was invalid. *See Raleigh*, 778 N.W.2d at 94, 96.

Because we conclude that appellant's guilty plea was valid, appellant's challenge to the denial of his request to discharge defense counsel has been waived.[8] *Dikken*, 896 N.W.2d at 878. Therefore, the postconviction court did not abuse its discretion when it denied appellant's postconviction petition requesting to withdraw his guilty plea.

Affirmed.

---

[8] Even if the issue was not waived, the record supports the postconviction court's decision. While a defendant has a right to self-representation, *State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990), that right is not absolute, *State v. Blom*, 682 N.W.2d 578, 613 (Minn. 2004). "When a criminal defendant asks to represent himself, the court must determine . . . whether the defendant knowingly and intelligently waives his right to counsel." *Richards*, 456 N.W.2d at 263; *see also State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997) (holding that if a district court "has reason to doubt [a] defendant's competence" it must also find the defendant is competent to stand trial before determining whether the defendant's waiver of counsel is knowing and voluntary). Here, appellant explicitly said twice that he did not understand the consequences of the state's plea offer. Appellant also expressed that representing himself may be challenging for him given his personal characteristics, including a learning disability. Additionally, although defense counsel did not expressly request a competency evaluation until after the district court denied appellant's request, the district court had reason to doubt appellant's competency.