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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0724**

State of Minnesota,
Respondent,

vs.

Charles Valiant Kpaan, Jr.,
Appellant.

**Filed April 20, 2026
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CR-24-5023

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

Mary F. Moriarty, Hennepin County Attorney, Nicholas G. Kimball, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Susanne R. Gad, Sarah R. Gad, Gad & Gad Law Offices LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Segal, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this appeal from the final judgment of conviction for unlawful possession of a machine gun conversion kit, appellant argues that he must be permitted to withdraw his guilty plea because it was not knowing, voluntary, or intelligent. He also argues that the state's amendment of the complaint prior to his guilty plea amounts to vindictive prosecution. Because the record shows that appellant's plea was knowingly, voluntarily, and intelligently entered, and because a guilty plea operates as a waiver of all non-jurisdictional defects that arose before the plea, we affirm.

FACTS

In March 2024, respondent State of Minnesota charged appellant Charles Valiant Kpaan Jr. with two counts: (1) unlawful possession of a machine gun, machine gun trigger activator, or a machine gun conversion kit, in violation of Minnesota Statutes section 609.67, subdivision 2(a) (2022); and (2) carrying a pistol in a public place without a permit, in violation of Minnesota Statutes section 624.714, subdivision 1a (2022). The probable-cause statement of the complaint alleged the following facts. Kpaan was the passenger in a vehicle involved in a traffic stop. Officers searched the vehicle and located a handgun with an extended magazine. The handgun also had a switch on it that would make the handgun fire automatically, "meaning multiple shots with a single pull of the trigger." Officers located the gun between the front passenger seat and the door of the vehicle. The complaint further stated that, upon searching Kpaan incident to his arrest, officers located a baggie of parts to a machine gun switch in Kpaan's jeans.

In June 2024, the state charged Kpaan in another court file with possession of a machine gun, second-degree assault, and second-degree riot. The state proposed a global resolution of both the March file (this case) and the June file in which Kpaan would plead guilty to one of the charges in the March file and either second-degree assault or second-degree riot in the June file. In exchange, the state would agree to a 58-month sentence and dismiss all remaining charges. Kpaan rejected the state's proposals for a global settlement, not wanting to plead guilty to any charges in the June file.

A jury trial was scheduled for December 9, 2024, in this case. On December 10, in a motion in limine, Kpaan “move[d] to exclude any evidence or testimony regarding the alleged ‘baggie with switch parts’ purportedly falling out of Mr. Kpaan’s pocket during booking at the Hennepin County Jail.” That same day, the state filed an amended complaint, replacing the single count of unlawful possession of a machine gun, machine gun trigger activator, or machine gun conversion kit under section 609.67, subdivision 2(a), with two counts of that same offense—one for unlawful possession of a machine gun and one for unlawful possession of a machine gun conversion kit. As a result, the amended complaint included three counts. The probable-cause statement remained unchanged.

Kpaan moved to strike the amendment to the complaint, asserting that instead of addressing the attorney’s “legitimate concerns” raised by the motion in limine about the alleged baggie with switch parts, the “[s]tate responded by email stating, ‘If you are saying [that the state needs] to add an additional count for it to be admissible, then consider that done.’” Kpaan maintained that the amendment to add a second count of unlawful possession of a machine gun, machine gun trigger activator, or machine gun conversion kit

under section 609.67, subdivision 2(a), “highlight[ed] a troubling instance of prosecutorial vindictiveness.”

The jury trial was continued until January 27, 2025. On the morning of January 28, before the start of trial, Kpaan’s attorney received a new plea offer from the state. The state offered for Kpaan to plead guilty to one of the two counts of unlawful possession of a machine gun, machine gun trigger activator, or machine gun conversion kit under section 609.67, subdivision 2(a), in exchange for a 68-month guidelines sentence and dismissal of the other two counts in this case. In addition, the state would dismiss the above-mentioned June file.¹ Kpaan met with his attorney at the jail to discuss the offer. The meeting was a no-contact visit because the attorney’s privileges had been revoked due to allegations of improper conduct.

Later that same day, Kpaan agreed to the terms of the most recent plea offer and pleaded guilty to Count II of the amended complaint as contemplated by the agreement. Kpaan waived all his jury-trial rights on the record in a colloquy with his attorney. Kpaan also acknowledged that he met with his attorney a number of times leading up to the hearing. At the end of the plea colloquy, in response to questions from the district court, Kpaan acknowledged that he went over the plea petition line by line with his lawyer. Defense counsel then stated, “They wouldn’t let us have a contact visit, so it’s going to be difficult.” In response to this comment by defense counsel, the district court gave Kpaan

¹ The state also requested that Kpaan admit to a probation violation in a case not related to either the March or June 2024 case files. The 48-month sentence in the probation-violation file would be executed and run concurrently to the 68-month sentence in this case.

time to look at the plea petition again with his attorney. After he did so, he signed the petition. The district court then asked Kpaan if anyone put pressure on him to plead guilty and he responded “No.” Kpaan also stated that his decision to plead guilty was made of his own free will, that he understood “everything that’s going on,” and that he did not need any more time to discuss his plea or the consequences that might flow from his plea with his attorney. Based on his testimony at the plea hearing, the district court found that Kpaan made a knowing, intelligent, and voluntary waiver of his trial rights, and deferred accepting the guilty plea until the sentencing hearing, which was scheduled for the following week.²

At sentencing a week later, Kpaan’s attorney orally moved to vacate the plea agreement and asked for additional time to discuss the state’s latest plea offer with Kpaan. She stated that she was “very concerned that [Kpaan’s plea] was not an informed plea,” because her meeting with him prior to the plea hearing was a no-contact meeting. The attorney also asserted that she and Kpaan “really couldn’t hear each other” when they met due to the nature of the no-contact visit. She also claimed that she did not have an opportunity to go through the plea petition with him “line by line” when they met. And she stated that she was not aware that Kpaan was confused until after the plea hearing. The district court clarified with defense counsel whether she was able to speak with Kpaan in the week between the plea hearing and the sentencing hearing to answer his questions. She responded, “I’ve spoken to him this week about it.”

² As contemplated by the plea agreement, Kpaan also waived his right to a probation-violation hearing and admitted that he violated probation by failing to remain law abiding. The district court imposed the agreed to 48-month guideline sentence.

The district court declined to set another plea hearing as requested by counsel and instead told counsel that it would set the case back on the trial calendar. In response, Kpaan personally indicated multiple times that he wanted to move forward with the plea agreement. Given the concerns of confusion raised by counsel, the district court decided to “do over” the plea hearing, stating “[W]e’re going to rewind this whole thing. We’re just going to do it twice, just to make sure Mr. Kpaan is good to go.” The district court also told Kpaan: “[T]his is all about you. You don’t have to do anything you don’t want to do. . . . I want to make sure that we do this exactly right.”

The district court then gave Kpaan an opportunity to review the plea petition again. Kpaan reviewed the plea petition and decided to proceed with the plea agreement. Kpaan then pleaded guilty to Count II—felony possession of a machine gun trigger activator or conversion kit—for a second time. After he entered his plea, he engaged in a plea colloquy with his counsel. In response to detailed questions by his attorney, he waived all his rights as required by rule 15.01 again. He also signed the plea petition again. And Kpaan acknowledged that he understood the presumptive sentence and his criminal-history score. The district court again found that Kpaan made a knowing, intelligent, and voluntary waiver of his trial rights, accepted Kpaan’s plea, and found him guilty of Count II. The district court imposed the agreed-to 68-month sentence and dismissed the remaining charges.

This appeal follows.

DECISION

Kpaan seeks reversal of his conviction of one count of unlawful possession of a machine gun conversion kit, arguing that his plea is constitutionally invalid. He also requests that this court order that Count II of his complaint be stricken on the basis that the amended complaint is the “product of prosecutorial vindictiveness.” We address each argument in turn.

I. Kpaan’s guilty plea is constitutionally valid.

Kpaan argues the district court erred by not allowing him to vacate his plea. “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 the district court must allow a defendant to withdraw a guilty plea, “[if] withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid.” *Raleigh*, 778 N.W.2d at 94. “To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Id.* (citing *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)).

The validity of a guilty plea is a question of law that we review de novo. *Id.* The burden is on the appellant to show that his plea is invalid. *Id.* Kpaan argues that his guilty plea is not constitutionally valid because the plea was not intelligent or voluntary. He does not challenge the accuracy of the plea. We conclude that Kpaan has not met his burden to show that his plea is constitutionally invalid.

Kpaan's Plea was Intelligent

“The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Id.* at 96. “‘Consequences’ refers to a plea’s direct consequences, namely the maximum sentence and fine.” *Id.* Kpaan argues that his plea was unintelligent because he “was categorically denied confidential access to counsel for weeks at the most critical stage of his case.” He asserts that the lack of access to counsel prevented him from discussing the consequences of the guilty plea, including reviewing two competing offers from the state. After carefully reviewing the record, we do not consider Kpaan’s argument persuasive.

The record demonstrates that Kpaan consulted with his attorney, had an opportunity to ask questions, and understood the rights he was waiving and the consequences of his plea—both when he initially entered his plea and when he re-entered his plea for a second time at the sentencing hearing.

At the initial plea hearing, Kpaan acknowledged that he had met with his attorney multiple times to discuss his rights, waived all his jury-trial rights as required by Minnesota Rule of Criminal Procedure 15.01, and had reviewed the plea petition with his attorney. During the plea hearing, his attorney went over the plea petition in detail with Kpaan and the rights he was waiving. Kpaan did not have any questions about the rights he was giving up and understood that the contemplated sentence was 68 months’ imprisonment. And Kpaan understood the charge against him, specifically noting that he was pleading guilty to Count II of the amended complaint—possession of the machine gun trigger parts or conversion kit—consistent with the plea petition.

Toward the end of the plea colloquy, the district court asked Kpaan if he had gone over the plea petition “line by line” with his attorney. Kpaan acknowledged that he had done so. His attorney then told the district court that she was not permitted to have a “contact visit” with Kpaan on the morning of the plea hearing. But, at the plea hearing, the attorney did not express any specific concerns about the visit, such as a lack of privacy, difficulty hearing, or an inability to answer Kpaan’s questions. And, after defense counsel’s statement about the no-contact visit with Kpaan, the district court asked Kpaan if he wanted to review the plea petition again. Kpaan availed himself of the opportunity. After reviewing the petition again, he signed the petition and stated that he was doing so of his own free will. Neither Kpaan nor his attorney asked for additional time to consider the plea or to withdraw the plea at the initial plea hearing.

On appeal, Kpaan argues that his initial guilty plea was not intelligent because: he had limited time to discuss the plea offer with his attorney prior to the plea hearing, there was “heavy background noise” when they had their no-contact meeting, and he “could not privately address questions.” The record on appeal does not support these assertions. And even assuming the factual record supported these claims, any concerns about the intelligence of the initial plea were resolved at the sentencing hearing when the district court allowed Kpaan to fully reenter his guilty plea.

At the sentencing hearing, Kpaan confirmed multiple times on the record that he did not want a jury trial and wanted to move forward with the plea. The parties also discussed the details of the plea agreement on the record again. The district court then explained:

Okay. So we're going to rewind this whole thing. We're just going to do it twice, just to make sure Mr. Kpaan is good to go.

Because again, Mr. Kpaan, this is all about you. You don't have to do anything you don't want to do. And in fact, I do not want you to do anything that you're not prepared to do or that you do not want to do. I want to make sure that we do this exactly right, by the book, and you know exactly what it is you're getting yourself into. Because there are consequences for this. All right?

Kpaan then reviewed the plea petition one more time and confirmed that he wanted to proceed with the plea agreement. He also waived all of his jury-trial rights as required by rule 15.01 and signed the plea petition again. And, in response to questions by the state, Kpaan acknowledged that he understood the presumptive sentence and his criminal-history score. He also asked questions about how he could have three criminal-history points if he was only convicted of two crimes, and acknowledged that he understood that one point was assigned for being charged with a crime while on probation.

The district court then confirmed an additional time whether Kpaan “need[ed] any more time to speak to [his attorney] *or any other lawyer* about the case,” “need[ed] any more time to talk to friends, family, pastors, anybody about the case,” and if he had “any questions for [the district court] about the rights that [he is] giving up today.” Kpaan responded “No” to all three questions. The district court also asked Kpaan if he

“underst[ood] everything,” to which he responded “Yes.” In short, the record from the sentencing hearing confirms that Kpaan’s plea was intelligent.

We are not persuaded otherwise by his argument that his plea was unintelligent because he “was categorically denied confidential access to counsel for weeks at the most critical stage of his case.” At the sentencing hearing, the district court asked Kpaan’s attorney whether she had spoken to Kpaan about his questions in the week between the plea and sentencing hearings. Defense counsel stated, “I’ve spoken to him this week about it.” And Kpaan acknowledged at the sentencing hearing that “we have met numerous times and discussed this case extensively.”

Ultimately, the record shows that Kpaan understood the charges against him, the rights he was waiving, and the consequences of his guilty plea. We therefore cannot conclude that Kpaan has shown his plea was not intelligent.

Kpaan’s Plea was Voluntary

The record also refutes Kpaan’s argument that his plea was not voluntary. The requirement that a plea be voluntary “ensures a defendant is not pleading guilty due to improper pressure or coercion.” *Id.* A reviewing court considers all relevant circumstances and “examines what the parties reasonably understood to be the terms of the plea agreement.” *Id.* “A guilty plea is involuntary when it rests in any significant degree on an unfulfilled or unfulfillable promise.” *Uselman v. State*, 831 N.W.2d 690, 693 (Minn. App. 2013) (quotation omitted). And the state may not secure a guilty plea “through actual or threatened physical harm or by mental coercion [that] ‘overbear[s] the will of the

defendant.”” *State v. Abdisalan*, 661 N.W.2d 691, 694 (Minn. App. 2003) (quoting *State v. Ecker*, 524 N.W.2d 712, 719 (Minn. 1994)), *rev. denied* (Minn. Aug. 19, 2003).

Kpaan argues that his plea is not voluntary because it was coerced in two ways. First, he contends that the state leveraged improper pressure by extending a new plea offer the morning of trial and imposing an immediate deadline on that offer. He maintains that under these circumstances and without private consultation, he was “forced to decide—plead guilty or face imminent jury selection, entirely cut off from private consultation with his lawyer.” Second, Kpaan argues that the district court pressured him to plead guilty by inserting itself into the plea negotiations. These arguments are unavailing.

Argument Regarding Coercion by the State

The record does not support Kpaan’s argument that his plea was coerced by the state. The record does reflect that the state extended a new plea offer shortly before trial was scheduled to begin, which Kpaan accepted. But the record also demonstrates that the parties had been engaging in plea negotiations for approximately six months. The state initially sought guilty pleas to one count in each of the two cases (this case and the June court file) in exchange for a 58-month sentence. When Kpaan refused, the state offered a guilty plea to one count in this case, to dismiss the other case, and to recommend a 68-month sentence. And during the plea colloquy at the sentencing hearing, Kpaan acknowledged that he and his attorney had “met numerous times and discussed this case extensively.” The district court also asked Kpaan if he had enough time to talk to his attorney “about all” of his cases, asked him twice if he needed more time to speak with his attorney or anyone else, and asked him if he had any questions about the rights he was

giving up. The district court also asked, at both the plea hearing and sentencing hearing, “[D]id anybody make you, force you, or put pressure on you to plead guilty . . . today?” Each time, Kpaan answered “no” and agreed to move forward with the plea. On this record, we cannot conclude that Kpaan’s plea was coerced by the state.

We acknowledge that Kpaan did not have much time to consider the plea because it was made shortly before trial was scheduled to begin, but Kpaan does not present any authority requiring the state to keep a plea offer open for a certain amount of time. Additionally, he does not provide us with any authority to support his argument that his plea was somehow involuntary because he and his attorney had a no-contact meeting to discuss the plea offer that he accepted. The two cases that Kpaan primarily relies on to support his argument are distinguishable. Both cases involve claims of ineffective assistance of counsel under the Sixth Amendment. In *Geders v. United States*, 425 U.S. 80, 91 (1976), the Supreme Court held that “an order preventing petitioner from consulting his counsel ‘about anything’ during a 17-hour overnight recess between his direct- and cross-examination impinged upon his right to the assistance of counsel guaranteed by the Sixth Amendment.” Similarly, in *United States v. Cronin*, 466 U.S. 648, 659-66 (1984), the Supreme Court concluded that the surrounding circumstances, including the amount of time counsel had to prepare for trial, the character of a particular lawyer’s experience, the gravity of the charge, the complexity of the case, and the accessibility of witnesses, did “not demonstrate that counsel failed to function in any meaningful sense as the Government’s adversary.” 466 U.S. at 666.

Here, unlike in *Geders* and *Cronic*, Kpaan does not raise a claim that his Sixth Amendment rights were violated or argue that he received ineffective assistance of trial counsel. Instead, he challenges the validity of his guilty plea. Our review of that claim is focused on whether, when looking at the record made at the time the plea was entered, Kpaan’s plea was voluntary. And, as discussed above, the record does not support Kpaan’s assertion that he was “categorically denied confidential access to counsel for weeks at the most critical stage of his case.” We therefore reject this argument.

Argument Regarding District Court

The record also refutes Kpaan’s argument that his plea was not voluntary because the district court improperly inserted itself into the plea bargaining. A district court “must not participate in plea negotiations.” Minn. R. Crim. P. 15.04, subd. 3(1); *Wheeler v. State*, 909 N.W.2d 558, 564 (Minn. 2018). This principle “is not solely a prohibition on judicial plea offers, promises, or threats. It also prohibits unsolicited judicial comments regarding the propriety of the parties’ competing settlement offers.” *Wheeler*, 909 N.W.2d at 560. Judicial participation includes “generat[ing] and propos[ing] a plea deal not presented by the parties.” *Id.* at 567. However, “a judge does not participate in the plea bargaining negotiation by merely inquiring into the status of the parties’ plea negotiations, sharing general sentencing practices, or disclosing nonbinding plea and sentencing information at the joint request of the parties.” *Id.* at 560. Whether the district court impermissibly intervened in plea negotiations is a question of law that this court reviews de novo. *Id.* at 567.

Kpaan asserts that the district court improperly participated in plea bargaining during the following exchange:

THE COURT: Okay. But you can't say I don't want a trial and I don't want to do anything else, right? If you don't want a trial, then it sounds like you want to plead, right? There aren't any other options at this point.

DEFENDANT: All she was saying was asking for time so she can go over—because there were two offers, just to go over.

THE COURT: Okay. But there's one offer right now, it sounds like. And that's the offer we talked about, and now she's had a week to talk to you about it.

DEFENDANT: But that's why I'm saying, yes, we can move forward. I'm comfortable moving forward.

Later, the district court clarified that there was only one offer for consideration at the time of the sentencing hearing, during the following exchange:

DEFENSE ATTORNEY: Okay. And I would just like to note that there were two offers that were presented to Mr. Kpaan . . . I just wanted to make that clear if it wasn't clear for the record.

THE COURT: Okay. But now we have one offer, right?

DEFENSE ATTORNEY: Yes. The offer that he is pleading to.

Kpaan argues that “[b]y framing the choice that way, the court not only pressured the defendant but also prevented counsel from explaining both offers and their consequences.” But, when talking directly to Kpaan, the district court did not make any comments about the specific terms of the plea. The record demonstrates that the district court was seeking clarification on the status of the plea negotiations and whether Kpaan

understood the offer. We do not discern any attempt by the district court to actively participate in the negotiations. Moreover, Kpaan's attorney did not put the terms of any competing offers on the record and agreed with the district court that there was only one offer.

In sum, the record before us shows that Kpaan's plea was knowing, voluntary, and intelligent. We therefore conclude that Kpaan entered a valid guilty plea and plea withdrawal is not necessary to correct a manifest injustice.³

II. Kpaan waived his vindictive-prosecution claim by pleading guilty.

Kpaan also argues that the additional count in the amended complaint (Count II) must be dismissed because the state's decision to amend the complaint amounts to vindictive prosecution. Alternatively, Kpaan argues that the matter should be remanded for an evidentiary hearing for the state to explain the amendment under oath. Kpaan maintains that the amendment occurred after the scheduled trial date, and asserts it was retaliation for Kpaan exercising a legal right and challenging the state's evidence.

"In limited situations in which action detrimental to the defendant has been taken after the defendant exercises a legal right, a presumption of prosecutorial vindictiveness will arise." *State v. Pettee*, 538 N.W.2d 126, 132 (Minn. 1995) (citing *United States v. Goodwin*, 457 U.S. 368, 372 (1982)). But this presumption "will arise only in those situations where a realistic likelihood of vindictiveness exists." *Id.* "A mere

³ See *State v. Schaefer*, 374 N.W.2d 199, 201 (Minn. App. 1985) ("Post-conviction proceedings are the proper forum for presentation and evaluation of matters not of record supporting withdrawal of a guilty plea.").

opportunity for vindictiveness is insufficient to justify imposing an inflexible prophylactic presumption.” *Id.* Whether the evidence is sufficient to support a claim that actual vindictiveness existed is a question of law that we review de novo. *Id.* at 133 (concluding that appellant “has failed to sustain his burden because the evidence in the present case is not sufficient to support a claim that actual vindictiveness existed”); *see also State v. Beaulieu*, 859 N.W.2d 275, 280 (Minn. 2015) (reviewing whether defendant has been denied due process de novo).

While we review such claims de novo, we need not decide whether the state’s decision to amend the complaint amounted to prosecutorial vindictiveness in this case because Kpaan waived this argument by pleading guilty. “A guilty plea by a counseled defendant has traditionally operated, in Minnesota and in other jurisdictions, as a waiver of all non-jurisdictional defects arising prior to the entry of the plea.” *State v. Ford*, 397 N.W.2d 875, 878 (Minn. 1986). Because the record shows that Kpaan’s plea is valid, we conclude that he waived his prosecutorial-vindictiveness claim by pleading guilty. *See State v. Murphy*, 545 N.W.2d 909, 918 (Minn. 1996) (mentioning that appellant’s prosecutorial-vindictiveness claim raised in a self-represented brief is waived by appellant’s guilty plea).

Affirmed.