

*This opinion is nonprecedential except as provided by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
A25-0765**

State of Minnesota,
Respondent,

vs.

Branson Dean Moen,
Appellant.

**Filed February 17, 2026
Reversed and remanded
Johnson, Judge**

Big Stone County District Court
File No. 06-CR-23-48

Keith Ellison, Attorney General, Lisa Lodin, Assistant Attorney General, St. Paul, Minnesota; and

Rebecca Trapp, Big Stone County Attorney, Ortonville, Minnesota (for respondent)

Andrew C. Wilson, Wilson & Clas, Minneapolis, Minnesota (for appellant)

Considered and decided by Ede, Presiding Judge; Ross, Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Branson Dean Moen pleaded guilty to one count of second-degree criminal sexual conduct. Before sentencing, he moved to withdraw his guilty plea on the ground that withdrawal would be fair and just. The district court denied the motion. Consistent with the state's concession, we conclude that the district court erred by not giving due

consideration to the reasons advanced by Moen in support of his motion. Therefore, we reverse and remand for reconsideration.

FACTS

In 2023, the state charged Moen with three counts of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a) (2012), and two counts of second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(a) (2012). In an amended complaint, the state alleged that Moen engaged in criminal sexual conduct toward a younger cousin numerous times between 2014 and 2018, when the cousin was between 7 and 10 years old and Moen was between 19 and 22 years old.

In June 2024, shortly before trial, Moen and the state entered into a plea agreement. Moen agreed to plead guilty to one count of second-degree criminal sexual conduct, and the state agreed to dismiss the remaining charges and to recommend a 36-month stayed prison sentence. At the plea hearing, Moen admitted that, in 2014, when his cousin was approximately seven years old, he intentionally engaged in sexual contact with her genital area.

Before sentencing, Moen moved to withdraw his guilty plea pursuant to rule 15.05, subdivision 2, of the rules of criminal procedure. At a hearing on the motion, Moen argued that it would be fair and just for the district court to allow him to withdraw his guilty plea on the grounds that he had no prior criminal history and was not in a clear state of mind at the time of the plea. Moen also argued that withdrawal would not cause prejudice to the state on the grounds that all trial witnesses were available and that no evidence had been lost. In response, the state argued that Moen had not submitted any evidence concerning

his mental or emotional state at the time of the plea hearing and that the state would be prejudiced by the withdrawal of the plea.

At the conclusion of the hearing, the district court requested supplemental briefing and asked Moen to submit evidence relating to his mental state at the time of the plea hearing. Moen submitted an affidavit explaining the stress, fear, and pressure he felt during the plea hearing and stating that he did not fully understand what he was doing.

In March 2025, the district court filed a seven-page order denying Moen's motion. The district court imposed a sentence of 36 months of imprisonment but stayed execution of the sentence and placed Moen on probation. Moen appeals.

DECISION

Moen argues that the district court erred by denying his motion to withdraw his guilty plea. His argument has two parts. First, he argues that the district court erred by not giving due consideration to his asserted reasons why plea withdrawal would be fair and just. Second, he argues that the district court erred by referring to the victim when considering whether the state would be prejudiced by plea withdrawal. Moen requests reversal and a remand to the district court.

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). Rather, a defendant is entitled to withdraw a guilty plea in only two circumstances. First, a district court must allow a defendant to withdraw a guilty plea at any time if “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Second, a district court may allow a defendant

to “withdraw a plea at any time before sentence if it is fair and just to do so.” *Id.*, subd. 2. In this appeal, Moen invokes only the fair-and-just standard of rule 15.05, subdivision 2.

In ruling on a motion under the fair-and-just standard, a district court “must give due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant’s plea.” *Id.*, subd. 2. The defendant has the burden of proving that a fair-and-just reason for withdrawal exists. *Raleigh*, 778 N.W.2d at 97. If the defendant has satisfied that burden, the state has the burden of proving that granting the motion would cause prejudice to the prosecution. *Id.* “The ultimate decision of whether to allow withdrawal under the fair and just standard is left to the sound discretion of the trial court” *Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003) (quotation omitted). Accordingly, this court applies an abuse-of-discretion standard of review to a district court’s denial of a motion to withdraw a guilty plea under the fair-and-just standard. *Raleigh*, 778 N.W.2d at 97.

In this case, the district court’s order recites the law applicable to the fair-and-just standard. The district court then applied the law to the facts of this case as follows: “Here, there is already prejudice to the state from the defendant’s choice to withdraw his plea deal. The state and the victim were prepared to proceed to trial and because of the defendant’s pleas thought his learned counsel [sic], she will have to go backwards in her recovery journey.”

A.

We begin our analysis by considering the first part of Moen’s argument, that the district court did not give due consideration to his asserted reasons why withdrawal would be fair and just.

To reiterate, the applicable rule provides that a district court “*must* give due consideration to” two issues: (1) “the reasons advanced by the defendant in support of the motion” and (2) “any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant’s plea.” Minn. R. Crim. P. 15.05, subd. 2 (emphasis added).

In its informal brief, the state concedes that the district court erred by not including in its order any analysis of Moen’s asserted reasons for plea withdrawal. We agree. The district court’s order omits any mention of Moen’s asserted reasons why plea withdrawal would be fair and just. Without any analysis of Moen’s asserted reasons, this court is unable to determine whether the district court’s denial of the motion is within its discretion. *See Raleigh*, 778 N.W.2d at 97.

Thus, the district court erred by not “giv[ing] due consideration to the reasons advanced by the defendant in support of the motion.” *See* Minn. R. Crim. P. 15.05, subd. 2. Therefore, we reverse the district court’s decision and remand for reconsideration of Moen’s asserted reasons why withdrawal would be fair and just.

B.

We continue by considering the second part of Moen's argument, that the district court erroneously relied on the impact on the victim when considering whether the state would be prejudiced by plea withdrawal.

The state may be prejudiced by the withdrawal of a guilty plea if it has taken actions in reliance on the plea that impair its preparedness for trial. *See State v. Danh*, 516 N.W.2d 539, 541, 544 (Minn. 1994) (reasoning that state was prejudiced by having released numerous witnesses from subpoena). But the state cannot establish prejudice based on the mere passage of time, unless the defendant caused a delay that was deliberate and inexcusable. *State v. Lopez*, 794 N.W.2d 379, 385 (Minn. App. 2011). "[W]hether the state will be unduly prejudiced depends on the facts of each case." *State v. Wukawitz*, 662 N.W.2d 517, 527 (Minn. 2003).

Contrary to Moen's argument, the supreme court has recognized that prejudice to the prosecution may exist if the alleged victim experiences inconvenience, distress, or other forms of harm. In *Kim v. State*, 434 N.W.2d 263 (Minn. 1989), a criminal-sexual-conduct case, the supreme court affirmed the denial of a plea-withdrawal motion and, in discussing the prejudice requirement of the fair-and-just standard, stated that the district court "was not unjustified in considering the interests of the victim." *Id.* at 264, 267. In another criminal-sexual-conduct case, the supreme court cited *Kim* and, in discussing the prejudice requirement of the fair-and-just standard, stated, "We are also cognizant of the highly sensitive nature of the alleged crimes and that the youth of the alleged victim make her testimony difficult." *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). Since *Kim* and

Theis, this court has issued at least three nonprecedential opinions in criminal-sexual-conduct cases that consider the victim’s interests as a factor relevant to whether plea withdrawal would cause prejudice to the prosecution. *See State v. Leonida*, No. A21-0671, 2022 WL 351172, at *4 (Minn. App. Feb. 7, 2022), *rev. denied* (Minn. Apr. 19, 2022); *Walker v. State*, No. A20-1613, 2021 WL 4259026, at *3 (Minn. App. Sept. 20, 2021), *rev. denied* (Minn. Nov. 24, 2021); *State v. Rickmyer*, No. C2-91-1579, 1992 WL 77532, at *1 (Minn. App. Apr. 21, 1992), *rev. denied* (Minn. June 10, 1992); *see also* Minn. R. Civ. App. P. 136.01, subd. 1(c) (providing that nonprecedential opinions of court of appeals “are not binding authority” but may be persuasive authority).

Thus, the district court did not err by considering the victim’s interests when determining whether plea withdrawal would cause prejudice to the prosecution.

C.

We conclude by clarifying the nature of further proceedings on remand.

The state concedes that, in light of the district court’s error in not “showing it gave due consideration to the reasons advanced by appellant, . . . remand is . . . necessary.” In addition, the state contends that, “[o]n remand, the record should be reopened to allow the state to submit evidentiary support for its claim of prejudice that would result from withdrawal of appellant’s guilty plea.”

A reopening of the record to allow the state to introduce additional evidence concerning prejudice is not logically related to the error identified above and to this court’s reasons for remanding the matter to the district court. We have granted appellate relief on Moen’s argument that the district court erred by not giving due consideration to his asserted

reasons why withdrawal would be fair and just. *See supra* part A. The appropriate remedy for that error is reversal and remand to the district court for reconsideration of Moen's asserted reasons. We have not granted appellate relief on Moen's argument that the district court erred in its prejudice analysis. *See supra* part B. Accordingly, there is no need for a remedy related to the issue of prejudice.

The state contends further that the district court requested additional evidence from Moen but "did not give the State the same opportunity to submit evidence in support of its prejudice argument." The state does not contend that it requested such an opportunity. We see no such request in the record. The state cannot raise the issue for the first time on appeal. *See State v. Roby*, 463 N.W.2d 506, 508 (Minn. 1990); *State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989). In addition, a respondent may not obtain an appellate remedy without filing a notice of related appeal. *See* Minn. R. Civ. App. P. 106; *City of Ramsey v. Holmberg*, 548 N.W.2d 302, 305 (Minn. App. 1996), *rev. denied* (Minn. Aug. 6, 1996). Furthermore, in a criminal case, the state may appeal as of right only in limited situations, which do not include the denial of a motion to withdraw a guilty plea. *See* Minn. R. Crim. P. 28.04, subd. 1.

Thus, the state is not entitled to opportunity to supplement the evidentiary record on remand.

In sum, the district court erred by not giving due consideration to Moen's asserted reasons why withdrawal would be fair and just. Therefore, we reverse and remand for reconsideration of his motion.

Reversed and remanded.