STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0700

State of Minnesota,
Respondent,

vs.

Jesse Russell Patchen,
Appellant.

Filed February 12, 2018
Affirmed
Smith, Tracy M., Judge

Ramsey County District Court
File No. 62-CR-16-7683

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica M. Surges, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Larkin, Judge; and Hooten, Judge.

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

Appellant Jesse Russell Patchen challenges his conviction of felony domestic assault, arguing that the district court erred in denying his presentence motion to withdraw his guilty plea under the fair-and-just standard. We affirm.

FACTS

On October 27, 2016, the state charged Patchen with one count of felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2016), and one count of malicious punishment of a child in violation of Minn. Stat. § 609.377, subd. 3 (2016). According to the complaint, Patchen was sitting inside an SUV with his two-year-old son, S.J.P., when Patchen grabbed and violently shook the child's car seat as S.J.P. cried. The complaint further alleged that, when S.J.P. continued to cry, Patchen grasped the child's hands and forced him to hit himself in his face over and over again, and mocked and mimicked S.J.P.'s cries after S.J.P. cried more. Patchen had been convicted of two domestic-violence-related offenses within the previous ten years.

On November 23, 2016, the district court held a plea hearing in which Patchen pleaded guilty to felony domestic assault in exchange for dismissal of the charge of malicious punishment of a child and a stay of execution with a 60-day cap of jail time. Patchen testified that he had reviewed the plea petition line by line with his attorney, signed the plea petition when he was thinking clearly, understood everything in the petition, and understood that he was waiving his pretrial and trial rights by pleading guilty. Patchen

further testified that he was not making a claim of innocence because he was guilty of the offense and that he wanted the district court to accept his plea of guilty.

The district court received Patchen's plea petition, and the state questioned Patchen to establish the factual basis for his guilty plea. Patchen agreed that, on October 25, 2016, he was sitting in a parked SUV with his two-year-old son, S.J.P. Patchen acknowledged that he became angry with S.J.P., violently shook the child's car seat, yelled "shut up," and swore. Patchen admitted that S.J.P. cried harder as Patchen shook the car seat. Patchen further acknowledged his 2013 convictions of terroristic threats and misdemeanor domestic assault.

The district court was initially "very reluctant to accept" Patchen's plea and asked Patchen whether he was denying that he hit S.J.P. in the face. Patchen denied hitting S.J.P. in the face, but agreed that he assaulted S.J.P. and violently shook S.J.P.'s car seat knowing that the act would injure a two-year-old child. The district court acknowledged that Patchen's statements constituted a "minimal factual basis" but accepted Patchen's plea and adjudicated him guilty.

Patchen filed a presentence motion to withdraw his guilty plea, arguing that the district court should permit him to withdraw his guilty plea under either the manifest-injustice standard or the fair-and-just standard. The district court held a motion hearing and clarified that the factual basis of Patchen's guilty plea was "minimal" because the court felt that Patchen "was minimizing the behavior." The district court denied the plea-withdrawal motion and proceeded to sentence Patchen.

Patchen appeals.

D E C I S I O N

"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). "Withdrawal is permitted in two circumstances." *Id*. First, a district court must allow a defendant to withdraw a guilty plea "[a]t 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. Although the district court denied Patchen's plea-withdrawal motion under both standards, Patchen challenges only the district court's denial under the fair-and-just standard. *See id*.

When deciding whether to grant a motion to withdraw a guilty plea 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*. "A defendant bears the burden of advancing reasons to support withdrawal," and the state "bears the burden of showing prejudice caused by withdrawal." *Raleigh*, 778 N.W.2d at 97. "The ultimate decision is left to the sound discretion of the [district] court, and it will be reversed only in the rare case in which the appellate court can fairly conclude that the [district] court abused its discretion." *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

This court "[c]onsider[s] the entire context in which [a defendant's] plea of guilty occurred, as demonstrated by the record" to determine whether sufficient reasons exist to support a plea-withdrawal motion. *State v. Abdisalan*, 661 N.W.2d 691, 695 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003). Although the fair-and-just standard "is less

demanding" than the manifest-injustice standard, "it does not allow a defendant to withdraw a guilty plea for simply any reason." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quotation omitted). If a defendant could withdraw his guilty plea "for any reason or without good reason" at any time before sentence, "then the process of accepting guilty pleas would simply be a means of continuing the trial to some indefinite date in the future when the defendant might see fit to come in and make a motion to withdraw his plea." *Kim*, 434 N.W.2d at 266 (quotation omitted).

Patchen advances two reasons for plea withdrawal under the fair-and-just standard. First, Patchen argues that he only pleaded guilty "in order to be released from jail pending sentencing" and that "the district court made no finding that [his] signature on a document was any more reliable than [his] argument in court." However, Patchen checked a box on the plea petition stating that he "[did] not make the claim that the fact [he had] been held in jail since [his] arrest and could not post bail caused [him] to decide to plead guilty in order to get the thing over with rather than waiting for [his] turn at trial." At the plea hearing, Patchen testified that he had reviewed the plea petition with his attorney, "understood everything" in the petition, and signed the plea petition when he was thinking "quite clear[ly]." In addition, the district court expressly stated that it would rely on both the petition and Patchen's testimony. The district court did not abuse its discretion in crediting Patchen's plea-petition and plea-hearing statements and rejecting this argument for plea withdrawal.

Second, Patchen argues that he was innocent of the underlying charges—essentially, that the plea lacked a sufficient factual basis. *See State v. Ecker*, 524 N.W.2d 712, 716

(Minn. 1994) (holding that a defendant must have laid a "proper factual basis" for the district court to accept a guilty plea). Patchen pleaded guilty to violating Minn. Stat. § 609.2242, subd. 4, which provides: "Whoever violates the provisions of this section . . . within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions . . . is guilty of a felony . . . ." The statute defines a domestic assault as "an act with intent to cause fear in another of immediate bodily harm or death" against "a family or household member." *Id.*, subd. 1(1) (2016). During the plea hearing, Patchen admitted that, on October 25, 2016, he yelled at his son, S.J.P., and as a result, the child continued to cry and cried harder as Patchen shook the car seat. During the motion hearing, the district court expressly found, and we agree, that "to say that shaking a car seat of a two-year-old and yelling at a two-year-old and telling a two-year-old to . . . 'shut up' would not put fear in the child is unreasonable." Although Patchen denied hitting his son in any way, his admissions support an "assault-fear" offense, which "does not require a finding of actual harm to the victim." *State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012) (discussing Minn. Stat. § 609.02, subd. 10 (2010), which defines the word "assault" as used in the Minnesota Criminal Code, Minn. Stat. §§ 609.01 to .912 (2010)).[1]

Patchen argues, however, that his "claim of actual innocence" is supported by the fact that most of his answers during the plea hearing "were 'yes' and 'no' in response to leading questions." We recognize that this practice has been "long discouraged" by the

[1] Patchen does not dispute the previous-conviction element of the offense, as he acknowledges his two convictions of qualified domestic-violence-related offenses in 2013.

Minnesota Supreme Court. *Raleigh*, 778 N.W.2d at 94-95. However, in *Raleigh*, the defendant "never stated in his own words what happened and throughout the plea hearing the district court asked [the defendant] no questions." *Id.* at 94. Here, in contrast, Patchen affirmatively testified, "I shook [S.J.P.] in his car seat and I swore and I shook and said shut up and I swore," and the district court asked questions throughout the plea hearing to establish the factual basis. *See id.* at 95 ("It is to be hoped that the trial judge, in accepting a plea, will ask the questions with respect to the factual basis for the crime so as to avoid the rather common inclination of counsel to elicit these facts by leading questions.") (quotation omitted). Patchen also signed the plea petition, stating, "My attorney has told me and I understand that a judge will not accept a plea of guilty from anyone who claims to be innocent," and "I now make no claim that I am innocent." In addition, during the plea hearing, Patchen and his defense counsel had the following exchange:

> Q. And you're pleading guilty today because you are guilty of the offense, right?
> A. Yeah.
> Q. You're not making a claim of innocence?
> A. I am not.

We conclude that the record, when viewed as a whole, provides a sufficient factual basis for the plea, and the district court did not abuse its discretion in rejecting Patchen's actual-innocence argument for plea withdrawal.

Patchen also contends that the state did not meet its burden to show prejudice. The district court considered both Patchen's and the state's arguments as to whether the witnesses would still be available and would remember the incident and concluded that both arguments were "plausible" and "sort of wipe each other out." Nevertheless, the

district court denied the motion based on the insufficient reasons advanced by Patchen. This court has recognized that, "[e]ven when there is no prejudice to the state, a district court may deny plea withdrawal under [Minn. R. Crim. P. 15.05, subd. 2], if the defendant fails to advance valid reasons why withdrawal is fair and just." *State v. Cubas*, 838 N.W.2d. 220, 224 (Minn. App. 2013), *review denied* (Minn. Dec. 31, 2013). Therefore, the district court was not required to reach the issue of prejudice and did not abuse its discretion in denying Patchen's plea-withdrawal motion.

Affirmed.