

STATE OF MINNESOTA
IN SUPREME COURT
ADM10-8049

FILED

May 10, 2019

**OFFICE OF
APPELLATE COURTS**

**ORDER REGARDING PROPOSED AMENDMENT TO THE
RULES OF CRIMINAL PROCEDURE**

In a report filed on November 14, 2018, the Advisory Committee for the Minnesota Rules of Criminal Procedure recommended an amendment to Minnesota Rule of Criminal Procedure 15.04, subdivision 3, to clarify the responsibilities of a district court judge during plea negotiations. The report was filed in response to our request in *Wheeler v. State*, 909 N.W.2d 558, 565 n.4 (Minn. 2018), that the advisory committee consider a rule amendment consistent with our decision in the case.

We opened a public comment period on December 20, 2018, and received public comments from the Criminal Law Section of the Minnesota State Bar Association (MSBA) and Senior Judge Mark Wernick. The MSBA Criminal Law section opposed the proposed amendment to the rule. In his initial written comment, Senior Judge Wernick supported the proposed amendment to Rule 15.04 with modifications, but later notified the court that he opposed the proposed amendment.

We held a public hearing on March 27, 2019. Ramsey County District Court Judge Richard H. Kyle Jr., Chair of the advisory committee, presented the committee's recommendations. We also heard remarks from Max Keller, a member of the MSBA Criminal Law section, and from Senior Judge Wernick.

We have reviewed the proposed amendment and the public comments. We conclude that the advisory committee's proposed amendment should be adopted, but we make some revisions for clarity. As amended, the rule fairly reflects our decision in *Wheeler*.

IT IS HEREBY ORDERED that the attached amendment to Minnesota Rule of Criminal Procedure 15.04, subdivision 3, is prescribed and promulgated to be effective July 1, 2019, in all cases filed on or after the effective date.

Dated: May 10, 2019

BY THE COURT:



Lorie S. Gildea
Chief Justice

AMENDMENT TO THE RULES OF CRIMINAL PROCEDURE

Deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.

1. Amend Minn. R. Crim. P. 15.04:

Subd. 3. Responsibilities of the ~~Trial~~ District Court Judge.

(1) A district court judge must not participate in plea negotiations. At any time, the judge may inquire into the status of settlement negotiations, but the judge must not provide comments about the parties' competing settlement offers or propose a plea agreement not presented by the parties. Before the entry of a guilty plea, and based upon the parties' joint request, the judge may disclose general sentencing practices. The substance of the judge's disclosures must be reflected in writing or orally on the record.

~~(1)~~(2) When a plea is entered and the defendant questioned, the ~~trial~~ district court judge must reject or accept the plea of guilty on the terms of the plea agreement. The court may postpone its acceptance or rejection until it has received the results of a pre-sentence investigation. If the court rejects the plea agreement, it must advise the parties in open court and then call upon the defendant to either affirm or withdraw the plea.

~~(2)~~(3) The judge may accept a plea agreement of the parties when the interest of justice would be served. Among the considerations appropriate in determining whether acceptance should be given are that:

- (a) defendant by pleading guilty has aided in ensuring the prompt and certain application of correctional measures;
- (b) defendant has acknowledged guilt and shown a willingness to assume responsibility for the criminal conduct;
- (c) concessions will make possible the application of alternative correctional measures, which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant;
- (d) defendant has made trial unnecessary when good reasons exist for not having a trial;
- (e) defendant has given or offered cooperation, which has resulted or may result in the successful prosecution of other offenders engaged in serious criminal conduct;

(f) defendant by pleading has aided in avoiding delay in the disposition of other cases and has contributed to the efficient administration of criminal justice.

2. Amend the Comment to Minn. R. Crim. P. 15:

Comment—Rule 15

Although a failure to include all of the interrogation set forth in Rule 15.01 will not in and of itself invalidate a plea of guilty, a complete inquiry as provided for by the rule will in most cases assure and provide a record for a valid plea. The requirement that the court make certain that a defendant disabled in communication has a qualified interpreter comports with Rule 8 of the Minnesota General Rules of Practice and the general requirement for interpreter services established in Rule 5.01 and Minn. Stat. §§ 611.31-611.34, and emphasizes the critical importance of this service in the guilty plea process.

*The inquiry required by paragraph 6.l. of Rule 15.01, subd. 1 and by paragraph 3 of Rule 15.02, subd. 1 (concerning deportation and related consequences), is similar to that required in a number of other states. See, e.g., California, Cal. Penal Code § 1016.5; Connecticut, Conn. Gen. Stat. Ann. § 54-1 j; Massachusetts, Mass. Gen. Laws Ann. ch. 278, § 29D; New York, N.Y. Crim. Proc. Law § 220.50 (7); Ohio, Ohio Rev. Code Ann. § 2943.031; Oregon, Or. Rev. Stat. § 135.385(2)(d); Texas, Tex. Code Crim. Proc. Ann. art. 26.13(a)(4); and Washington, Wash. Rev. Code Ann. § 10.40.200(2). In the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996), Congress extensively amended the Immigration and Nationality Act and greatly expanded the grounds for deportation of non-citizens convicted of crimes. Consequently, non-citizens pleading guilty will subject themselves to deportation proceedings. The consequences of such proceedings will often be more severe and more important to the non-citizen defendant than the consequences of the criminal proceedings. It is therefore appropriate that defense counsel advise non-citizen defendants of those consequences and that the court inquire to be sure that has been done. As to the obligation of defense counsel in such situations, see ABA Standards for Criminal Justice, Pleas of Guilty, 14-3.2 (3d ed. 1999). The requirement of inquiring into deportation and immigration consequences does not mean that other unanticipated non-criminal consequences of a guilty plea will justify later withdrawal of that plea. See *Kim v. State*, 434 N.W.2d 263 (Minn. 1989) (unanticipated employment consequences).*

Before entry of a guilty plea, defense counsel should review with the defendant the effect of the Minnesota Sentencing Guidelines on the case. Further, it may be desirable for the court to order a pre-plea sentencing guidelines

worksheet to be prepared so that the court, the defendant, and both counsel will be aware of the effect of the guidelines at the time the guilty plea is entered.

It is suggested by the Advisory Committee that the defendant sign a Petition to Plead Guilty in the form appearing in the Appendices to these rules (which contain in even more detailed form the information showing the defendant's understanding of defense rights and the consequences of pleading), and that the defendant be asked upon the inquiry under Rule 15.01 to acknowledge signing the petition, that the defendant has read the questions set forth in the petition or that they have been read to the defendant, and that the defendant understands them, that the defendant gave the answers in the petition, and that they are true.

The court in State v. Casarez, 295 Minn. 534, 203 N.W.2d 406 (1973), applied the Boykin standard to misdemeanors, holding that a misdemeanor guilty plea must be vacated where the record does not show a knowing and voluntary waiver of the defendant's constitutional rights. It is clear then that at least some limited inquiry is necessary on the record before a misdemeanor guilty plea is accepted, and Rule 15.02 prescribes the minimal standards for this questioning.

A prior guilty plea without the assistance of defense counsel cannot be used to aggravate a later charge absent a valid waiver of counsel on the record for the earlier plea. State v. Nordstrom, 331 N.W.2d 901 (Minn. 1983). Also, a prior guilty plea which lacks a factual basis on the record cannot be used to aggravate a later charge. State v. Stewart, 360 N.W.2d 463 (Minn. Ct. App. 1985).

Under Rule 15.03, subd. 2, a "Misdemeanor/Gross Misdemeanor Petition to Enter Plea of Guilty" as provided for in the Appendix B to Rule 15, may be completed and filed with the court. This petition in written form contains in substance the information and questions required by Rule 15.02, subd. 1, questions 2-5. When properly completed, the petition may be filed by either the defendant or defense counsel. It is not necessary for the defendant to personally appear in court when the petition is presented to the court. If the court is satisfied that the plea is being knowingly and voluntarily entered according to the standards of Rule 15.02, subd. 1 it will dispose of the plea in the same manner as if the defendant entered the plea in person.

See Minn. Stat. § 611A.03 regarding the prosecutor's duties under the Victim's Rights Act to make a reasonable and good faith effort to inform victims of proposed plea agreements and to notify of the right to be present at sentencing to make an objection to the plea agreement or to the proposed disposition.

When the defendant is questioned as to the plea agreement under Rule 15.01, the court must inform the defendant if the plea agreement is rejected, unless the court decides to postpone a decision on acceptance or rejection until the pre-sentence report is received.

Rule 15.04, subd. 3(1), adopts the standards governing judicial involvement in plea negotiation as set forth in *Wheeler v. State*, 909 N.W.2d 558 (Minn. 2018). As noted by the court in *Wheeler*:

[A] district court judge should not participate in the plea bargaining negotiation itself. . . . A district court judge's function is limited to approving or rejecting a plea submitted for judicial acceptance. . . . A judge does not violate this bright-line rule, however, by inquiring into the status of negotiations, sharing general sentencing practices, or disclosing nonbinding plea and sentencing information at the joint request of the parties.

Wheeler, at 564-65 (internal quotation marks and citations omitted). The *Wheeler* court specifically prohibited judges from "providing unsolicited comments regarding the propriety of the parties' competing settlement offers" or proposing "a plea deal not presented by the parties." *Id.* at 560, 567.

Whenever a plea agreement has been rejected, the defendant must be afforded the opportunity to withdraw a plea of guilty, if entered. Rules 15.04, subd. 3(2)(1); 15.01. If the defendant has made factual disclosures tending to disclose guilt of the offense charged, the judge should disqualify himself or herself from the trial of the case.

Rule 15.04, subd. 3(3)(2)(d) includes situations in which certain witnesses, such as young children involved in sexual offenses, may be protected from unnecessary publicity.

Rule 15.05, subd. 1 authorizing the withdrawal of a guilty plea to correct manifest injustice does not provide guidelines for determining whether a motion for withdrawal of the plea is timely or whether withdrawal is necessary to correct manifest injustice. This is left by the rule to judicial decision. See, e.g., *Chapman v. State*, 282 Minn. 13, 162 N.W.2d 698 (1968).

Rule 15.06 is consistent with Rule 410 of the Minnesota Rules of Evidence, which also governs the admissibility of evidence of a withdrawn plea of guilty. Rule 410 is broader in that it makes inadmissible evidence relating to withdrawn pleas from other jurisdictions, including withdrawn pleas of *nolo contendere* from those jurisdictions that allow such a plea.

It is strongly recommended that when the defendant is disabled in communication due to difficulty in speaking or comprehending English, a multilingual guilty plea petition be used that is in English as well as the language in which the defendant is able to communicate. The use of a multilingual petition would help assure that the translation is accurate and is preferable to the use of a petition that contains only the language other than English.