STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1790

State of Minnesota,
Respondent,

vs.

Kenneth Larry Jenson,
Appellant.

Filed July 22, 2024
Affirmed
Reyes, Judge

Carver County District Court
File No. 10-CR-21-724

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

Mark Metz, Carver County Attorney, Cassandra K. Shepherd, Assistant County Attorney, Chaska, Minnesota (for respondent)

John A. Price, III, Prior Lake, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that, because he received ineffective assistance of counsel, the district court erred by denying his motion to withdraw his guilty plea under the manifest-

injustice standard and abused its discretion by denying his motion under the fair-and-just standard. We affirm.

FACTS

On September 13, 2021, respondent State of Minnesota charged appellant Kenneth Larry Jenson with first-degree criminal sexual conduct for forcibly sexually penetrating a woman (the victim) at his home. Shortly thereafter, appellant retained a private attorney (first attorney), with more than two decades of experience and who is certified as a criminal-law specialist, to represent him.

Between October 2021 and January 2023, appellant and his first attorney communicated regularly about the case in-person, by telephone, and through text messages. During this time, appellant intended on going to trial. To prepare, appellant's first attorney hired an investigator who tried to interview potential witnesses, including the victim and appellant's former roommate.

On January 3, 2023, one week before the scheduled jury trial, the state sent appellant's first attorney an email that initiated plea negotiations. After a series of emails back and forth, the state offered to allow appellant to plead guilty to an amended count of gross-misdemeanor fifth-degree criminal sexual conduct. In exchange, the state would agree to a stay of execution of appellant's sentence and that he be placed on supervised probation for four years, subject to various conditions, including the condition that he serve up to 90 days in jail if ordered by the district court.

Appellant met in-person with his first attorney on January 9, 2023, the day before trial. In preparing for trial, appellant recounted a version of events that "didn't make sense"

to the first attorney, who found it concerning because he "didn't think that [it] was a believable story to tell a jury" and "there was absolutely no evidence of it." The first attorney explained to appellant that, if he was convicted at trial, he likely would receive a 144-month prison sentence. The first attorney then communicated the state's plea offer but mistakenly informed appellant that the offer did not include the possibility of jail time. Appellant stated to his first attorney, "I don't want to go to trial" and decided to accept the state's offer.

The next morning, the first attorney explained to appellant that he had misstated the state's offer. He clarified that, if appellant accepted the offer, the district court could order that he serve up to a maximum of 90 days in jail as a condition of probation. Appellant decided he still wanted to plead guilty and signed a plea petition acknowledging the terms of the state's offer, including the condition that he could serve up to 90 days in jail. Later that day, appellant pleaded guilty. Appellant testified at the plea hearing that he understood the terms of the plea agreement as stated in the plea petition and as stated on the record by his first attorney. The district court asked appellant if he was satisfied by his first attorney's representation, to which appellant replied, "Yes, sir."

In March 2023, appellant discharged his first attorney and retained a different private attorney (second attorney) to represent him. Appellant moved to withdraw his guilty plea before sentencing, arguing that his first attorney provided ineffective assistance of counsel. The district court held an evidentiary hearing in May 2023, at which both appellant and the first attorney testified.

Appellant testified that, when he decided to plead guilty, he "didn't think anything was being done" to prepare for trial as his first attorney had not contacted character witnesses or interviewed his former roommate. Appellant further testified that he believed he had to plead guilty because he was "scared" of the 144-month prison sentence he likely faced if convicted at trial and because his first attorney described the state's offer as "the greatest deal."

Appellant's first attorney testified that, initially he believed the state's plea offer called for no jail time. The first attorney also testified that appellant "was upset about it" when informed that the state's offer did, in fact, include the possibility of jail time but that appellant "didn't change his decision about pleading guilty." The first attorney testified that he was prepared to go to trial had appellant wanted to do so. The first attorney testified that he did not contact character witnesses because he "didn't really plan on making character an issue in the case," and that he could not get in touch with appellant's former roommate, who was avoiding him and the investigator because the roommate "didn't want anything to do with" the case.

The district court denied appellant's motion to withdraw his guilty plea under both the manifest-injustice and fair-and-just standards. The district court sentenced appellant in accordance with the plea agreement and ordered that he serve 90 days in jail. This appeal follows.

DECISION

Appellant argues that the district court should have granted his motion to withdraw his guilty plea. "A defendant has no absolute right to withdraw a guilty plea." *State v.*

Raleigh, 778 N.W.2d 90, 93 (Minn. 2010). But a defendant may be able to withdraw a plea in two circumstances. First, a district court must allow a defendant to withdraw a guilty plea at any time upon a timely motion if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Second, a district court may, in its discretion, allow a defendant to withdraw a guilty plea before sentencing "if it is fair and just to do so." *Id.*, subd. 2. We consider each standard in turn.

I. The district court did not err by denying appellant's request to withdraw his guilty plea under the manifest-injustice standard.

Appellant first argues that the district court erred by denying his plea-withdrawal motion under the manifest-injustice standard because his first attorney provided ineffective assistance of counsel by (1) misstating that the state's plea offer included no jail time; (2) not preparing adequately for trial; and (3) agreeing to a partial refund of appellant's legal fees. We disagree.

A manifest injustice exists when a plea is not constitutionally valid because it is not accurate, voluntary, and intelligent. *Raleigh*, 778 N.W.2d at 94. A guilty plea is not voluntary and intelligent if a defendant received ineffective assistance of counsel. *Hill v. Lockhart*, 474 U.S. 52, 56-57 (1985). The constitutional validity of a guilty plea is a question of law that appellate courts review de novo. *Raleigh*, 778 N.W.2d at 94.

To determine whether a defendant received ineffective assistance of counsel, courts apply a two-part test established by *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under *Strickland*, appellant must prove both that (1) his counsel's representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but

for the alleged errors of his counsel, he would not have pleaded guilty. *Hill*, 474 U.S. at 57; *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). "The objective standard of reasonableness is defined as representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances." *State v. Vang*, 847 N.W.2d 248, 266-67 (Minn. 2014) (quotation omitted). "[T]here is a strong presumption that counsel's performance was reasonable." *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). "If a claim fails to satisfy one of the *Strickland* requirements, we need not consider the other requirement." *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

Appellant contends that his first attorney's performance fell below an objective standard of reasonableness in several ways. Appellant asserts that his first attorney did not "accurately inform [him] that the 90-days executed jail was a real possibility." But the record does not support this assertion. While appellant's first attorney initially informed him that the state's plea offer did not include the possibility of jail time, the attorney corrected the mistake less than 24 hours later and before appellant pleaded guilty. Appellant signed a plea petition that expressly stated that the plea agreement included the possibility of up to 90 days in jail, and appellant informed the district court at the plea hearing that he understood the terms of the plea agreement as outlined in the plea petition. Thus, we are unpersuaded that appellant's first attorney did not accurately inform him that he could be ordered to serve up to 90 days in jail.

Appellant also asserts that his first attorney did not prepare adequately for trial by (1) not filing a motion, notice of defense, witness list, exhibit list, or responsive motion to

the state's motions in limine; (2) not interviewing or calling certain witnesses; and (3) not preparing him for the possibility of testifying. Based on the first attorney's testimony at the evidentiary hearing, we are satisfied that these were strategic decisions, and appellate courts generally do not review attacks on trial counsel's strategy. *See Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004) (noting that appellate courts are poorly placed to second-guess decisions of trial counsel).

Appellant last asserts that his first attorney agreed to reduce his legal fees to induce a guilty plea. We are not persuaded. At no point did appellant's first attorney initiate discussions about legal-fee reductions in connection with appellant's decision to plead guilty. Appellant agreed to pay his first attorney a $100,000 flat fee for representation, regardless of whether the case went to trial. He initially paid his first attorney $75,000 by check and assignment of cash bail. Approximately five months before he pleaded guilty, appellant requested that his first attorney waive the remaining $25,000 if the case did not go to trial. The first attorney agreed. After he pleaded guilty, appellant requested his first attorney refund an additional $10,000. Again, his first attorney agreed. Nothing in the record suggests that appellant's first attorney induced his guilty plea with the promise of a reduction in legal fees.

In sum, appellant has not established that his first attorney's performance fell below an objective standard of reasonableness and, therefore, has not established that he received ineffective assistance of counsel such that a manifest injustice occurred necessitating plea withdrawal. Accordingly, we conclude that the district court did not err by denying appellant's motion under the manifest-injustice standard.

II. The district court did not abuse its discretion by denying appellant's request to withdraw his guilty plea under the fair-and-just standard.

Appellant also argues that the district court abused its discretion by denying his plea-withdrawal motion under the fair-and-just standard, asserting that his first attorney "did nothing to represent [him] or prepare his case for trial." We are not persuaded.

The fair-and-just standard is less burdensome than the manifest-injustice standard but a defendant may not withdraw his plea for simply any reason. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). Allowing a defendant to do so "would undermine the integrity of the plea-taking process." *Id.* Under the fair-and-just standard, the district court must consider "(1) the reasons [the] defendant advances to support withdrawal and (2) [the] prejudice granting the motion would cause the [s]tate." *Raleigh*, 778 N.W.2d at 97. The defendant bears the burden of providing substantiated reasons for withdrawal, and the state bears the burden to show prejudice. *Id.* But even if the state fails to show prejudice, a district court may still deny a defendant's motion if the defendant fails to advance substantive reasons why withdrawal is fair and just. *Id.* at 98.

We review a district court's denial of a defendant's presentencing motion for plea withdrawal for an abuse of discretion and will reverse only in a rare case. *Id.* at 97. A district court "abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

In this case, the district court determined that appellant had not met his burden to advance reasons that would support plea withdrawal because appellant had not

demonstrated his first attorney provided ineffective assistance. In making that determination, the district court relied on appellant's own statements at the plea hearing, which demonstrate that appellant "was satisfied with his representation, aware of his rights, aware of the [s]tate's case, aware of the consequences, and not pleading guilty [due] to pressure or coercion." Because we have already concluded that appellant did not receive ineffective assistance of counsel, we perceive no abuse of discretion on the part of the district court by denying appellant's motion under the fair-and-just standard.

Affirmed.