

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

State of North Dakota,)	Supreme Court No. 20150211
)	
Plaintiff and Appellee,)	
)	District Court No. 18-2014-CR-01844
vs.)	
)	
Cody Atkins,)	
)	
Defendant and Appellant.)	

ON DIRECT APPEAL FROM CRIMINAL JUDGMENT
FROM THE DISTRICT COURT
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT
GRAND FORKS COUNTY, NORTH DAKOTA
THE HONORABLE LOLITA HARTL-ROMANICK, PRESIDING

BRIEF OF APPELLEE

Meredith H. Larson
ND Bar ID #06206
Assistant State's Attorney
Grand Forks County
124 South 4th Street
P.O. Box 5607
Grand Forks, ND 58206-5607
(701) 780-8281
E-Service Address: sasupportstaff@gfcounty.org

M. Jason McCarthy
ND Bar ID #05656
Assistant State's Attorney
Grand Forks County
124 South 4th Street
PO Box 5607
Grand Forks, ND 58206-5607
(701) 780-8281
E-Service Address: sasupportstaff@gfcounty.org

TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Statement of the Issues iii

Statement of the Case ¶1

Statement of the Facts ¶2

Law and Argument ¶8

I. The record is insufficient to support a claim of ineffective assistance of counsel on direct appeal.

II. The trial court substantially complied with Rule 11 of the North Dakota Rules of Criminal Procedure.

Conclusion ¶18

TABLE OF AUTHORITIES

North Dakota State Cases

State v. Schweitzer, 2007 ND 122, 735 N.W.2d 873.¶8, 12

State v. Keener, 2008 ND 156, 755 N.W.2d 463¶8

State v. Bates, 2007 ND 16, 726 N.W.2d 595¶8, 12

State v. Farrell, 2000 ND 26, 606 N.W.2d 524¶13

State v. Beckman, 1999 ND 54, 591 N.W.2d 120.....¶16

State v. Hoffarth, 456 N.W.2d 111, (N.D. 1990).....¶16

State v. Sisson, 1997 ND 158, 567 N.W.2d 839.....¶17

North Dakota Rules

N.D.R.Crim.P. 11(b)(1)(A)-(I).¶13, 17

STATEMENT OF THE ISSUES

- I. Whether the record supports a claim of ineffective assistance of counsel on direct appeal?**

- II. Whether the trial court substantially complied with Rule 11 of the North Dakota Rules of Criminal Procedure?**

STATEMENT OF THE CASE

[¶1] On September 8, 2014, a criminal information was filed in Grand Forks County District Court charging the defendant and a co-defendant with Gross Sexual Imposition. (Appellant's App. at 2.) Initially, the information alleged a Class AA Felony Gross Sexual Imposition occurring in November 2013. Information, September 8, 2014. An initial appearance was held on September 10, 2014. (Appellant's App. at 2.) On September 17, 2014, the defendant filed an application for court-appointed counsel. (Appellant's App. at 2.) On September 19, 2014 counsel was appointed. (Appellant's App. at 2.) A preliminary hearing had been scheduled and continued once at the request of the State due to scheduling conflicts. State's Motion to Continue Preliminary Hearing, September 15, 2014, Order Granting Motion to Continue Preliminary Hearing, October 6, 2014. After counsel was appointed for defendant the discovery process commenced. (Appellant's App. at 2.) On October 14, 2014, counsel for defendant filed a motion to continue the preliminary hearing in order to have an opportunity to be properly prepared for the preliminary hearing. Expedited Motion for Continuance, October 14, 2015. On October 15, 2014, defendant's motion was granted. A continued preliminary hearing was scheduled for November 7, 2014. (Appellant's App. at 3.) The State made a motion on the record to amend the information to a Class A Felony Gross Sexual Imposition and to correct the date to reflect September of 2013. Preliminary Hearing Tr. p. 3. Neither the defendant nor his co-defendant objected to the State's motion. Preliminary Hearing Tr. pp. 3-10. The oral motion to amend the information was granted and the Amended Information was filed with the Court. Preliminary Hearing Tr. p. 5. A preliminary hearing was held. The defendant was bound over. Preliminary Hearing Tr. pp. 50-51.

An arraignment was held on November 10, 2014. (Appellant App. at 3.) A bond review hearing was held on February 12, 2015. (Appellant App. at 3.) The defendant's bond was reduced. Bond Hearing Tr. p. 12. A pre-trial conference was held on March 19, 2015. (Appellant App. at 3.) The Defendant entered an open plea of guilty. Pre-trial conference Tr. p. 6. Sentencing was held on June 29, 2015. (Appellant App. at 3.) The defendant was sentenced to 20 years with the North Dakota Department of Corrections with 5 years suspended for 10 years and 10 years of supervised probation. Sentencing Tr. p. 18, Criminal Judgment, June 29, 2015. The defendant filed an application for court appointed counsel on July 21, 2015. (Appellant App. at 4.) The defendant filed notice of this appeal on July 22, 2015. (Appellant App. at 4.) The State responds urging this Court to deny the defendant's appeal.

STATEMENT OF THE FACTS

[¶2] In September of 2013, the defendant participated in a sexual assault of a two (2) year old child. Pre-trial Conference Tr. p. 7. Specifically, the defendant held down the toddler while his co-defendant placed a tampon in her vagina. Id. The defendant placed his finger in the toddler's vagina while she was screaming. Id. The defendant admitted these facts to law enforcement, as did his co-defendant. Id. The defendant was under twenty-two (22) years of age at the time of the offense. Preliminary Hearing Tr. p. 3. On September 8, 2014 a criminal information was filed charging the Defendant with the offense. Information, September 8, 2014. Initially, the defendant was charged with a Class AA Felony Gross Sexual Imposition alleged to have occurred in November of 2013. Information, September 8, 2014. An initial appearance was held on September 10, 2014. The Honorable Debbie Kleven presided over the hearing. Initial Appearance Tr. p. 2. The defendant was informed of his rights to include, the right to remain silent and that any statements made could be used against him, the right to assistance of an attorney before making any statement, the right to assistance of counsel at each stage of the proceeding, the right to a court-appointed attorney, the right to bail and a jury trial, the right to a speedy and public trial, the right to confront and cross-examine any witnesses, the presumption of innocence and the State's burden of proof, the right to a preliminary hearing and the burden of the State at that hearing and the maximum and minimum mandatory penalty of a AA Felony. Initial Appearance Tr. pp. 2-6. The defendant indicated he understood those rights. Id.

[¶3] A preliminary hearing was held on November 7, 2014 for both the defendant and his co-defendant. (Appellant's App. at 3.) The defendant was represented by Tyler

Morrow. His co-defendant was represented by Theodore Sandberg. At the beginning of the hearing, the State moved to amend the information to correct the date and the level of the offense. Preliminary Hearing Tr. p. 3. The level of offense was amended to a Class A Felony rather than a Class AA Felony. Id. The date of the offense was amended to September of 2013. Id. Mr. Sandberg created a record that he provided a copy of the amended information to his client, that his client understood the purpose and result of the amended information, and that there was no objection to the amended information. Id. at 4. Mr. Morrow also created a record that he and his client had reviewed the amended information and had no objection to that amendment. Id. at 5. The court granted the State's motion and filed the amended information. Id. The court ensured that the defendant was aware of the maximum penalties associated with the amended charge. Preliminary Hearing Tr. pp. 6-10. The court gave the defendants the opportunity to continue the preliminary hearing or to proceed. Id. Mr. Sandberg indicated that he and his client were prepared to proceed with the preliminary hearing on the amended information as the amendment was based on facts that they were already prepared to argue at the preliminary hearing and there were no substantive changes or significant factual changes that required a continuance for more time to prepare. Preliminary Hearing Tr. p. 6. The court turned to Mr. Morrow after obtaining Mr. Sandberg's input and Mr. Morrow, on behalf of the defendant, indicated that the defendant echoed Mr. Sandberg's response and they were prepared to go forward with the preliminary hearing that day. Id. The court held the preliminary hearing. Testimony was taken and the court made a finding that there was probable cause to bind the defendant over. Id. at 50-51.

[¶4] An arraignment was held on November 10, 2014. (Appellant's App. at 3.) The Honorable Judge Lawrence Jahnke presided over the hearing. The defendant was reminded of the maximum penalty associated with the amended charge of a Class A Felony. Arraignment Tr. p. 2. The defendant entered a not guilty plea. Id.

[¶5] A bond review hearing was held on February 12, 2015. (Appellant's App. at 3.) Again, the defendant was read his rights. Bond Hearing Tr. pp. 5-8. The court advised the defendant he had a right to have a copy of the charging instrument, the right to be present at all stages of the proceedings, the right to remain silent other than to enter a plea of guilty or not guilty, that statements made in court or to law enforcement could be used against him, the right to assistance of counsel, right to indigent defense, right to a delay of the proceedings to prepare a defense, right to be informed of minimum and maximum penalties, right to reasonable bail, right to a preliminary hearing, right to a speedy and public trial by jury, right to subpoena witnesses, presumption of innocent, consequences of a guilty plea, and the right to appeal. Id. After hearing those rights, Mr. Morrow successfully obtained a bond reduction on behalf of the defendant. Id. at 12.

[¶6] A pre-trial conference was held on March 19, 2015. (Appellant's App. at 3.) The defendant continued to be represented by Mr. Morrow. The defendant entered an open plea of guilty. Pre-trial Conference Tr. p. 6. The court inquired if the defendant was on any medication, alcohol, or any drugs that would cause him to be confused or have difficulty understanding the proceedings. Pre-trial conference Tr. p. 3. The defendant indicated he had not. Id. The court reiterated that the defendant had the right to remain silent and that any statements made could be used against him. Id. at 4. The defendant also was informed he had the right to be informed of the mandatory minimum and

maximum punishments, the right to reasonable bail, speedy and public trial, cross-examine and confront witnesses, the subpoena power of the State, and presumption of innocence. Id. The defendant was reminded of the State's burden of proof and that by pleading guilty he would be waiving the right to trial and the right to confront and cross-examine witnesses. Id. The defendant indicated he understood those rights. Id. at 5. The defendant was informed of the maximum penalties associated with the case. Id. He was also informed of the possibility of having to register as a sexual offender. Id. The defendant indicated that he was prepared to proceed with an open plea of guilty. Id. at 6. The defendant was informed that on an open plea he could be sentenced to the maximum penalty and he indicated he did understand that. Id. The defendant was informed that he could not withdraw his guilty plea if it was accepted by the court. Id. The defendant entered a plea of guilty. Id. He indicated that no one threatened or coerced him to enter that plea. Id. The defendant indicated that he was not promised anything to enter the plea. Id. at 7. The defendant agreed with the factual basis provided by the State. Id. The court accepted the defendant's plea and found that it was freely, voluntarily, and knowingly made and there was a sufficient factual basis for the plea. Id. at 7-8. A sentencing was scheduled for June 29, 2015. Id. at 9.

[¶7] On June 29, 2015 a sentencing hearing was held as previously scheduled. The Honorable Lolita Hartl Romanick presided over the hearing. The State initially made its recommendation to the court for sentencing. Sentencing Tr. pp. 2-3. The court then turned to Mr. Morrow for the defendant's recommendation. Id. Mr. Morrow specifically indicated that he had prepared arguments for sentencing, however, that prior to sentencing the defendant asked that the defendant be able to present his own argument to

the court instead of Mr. Morrow. Id. at 3. Mr. Morrow did proceed to provide a couple comments to the court, but reiterated that his client asked Mr. Morrow to allow the defendant to address the court rather than Mr. Morrow. Id. at 3. The defendant addressed the court initially apologizing to the family and then minimizing and recanting his offense. Id. at 4-5. The defendant never asked to withdraw his plea of guilty. In fact, the only person who categorized the defendant's statements as a motion to withdraw a guilty plea was Mr. Morrow. Id. at pp. 5-6. The court then turned to the State for comments. The State pointed out that the defendant confessed to law enforcement, that his confession was consistent with the co-defendant's confession, that his guilty plea was accepted at the pre-trial conference on March 19, 2015, that the defendant admitted the crime to the pre-sentence investigator, and also admitted the crime to Dr. Newberry during the pre-sentence investigation. Id. at pp. 6-7. The State urged the court to proceed with sentencing. The court asked Mr. Morrow if the defendant was requesting a change of plea. Id. at p. 8. The defendant himself responded, "we'll stay with the open guilty plea". Id. The court inquired if the defendant had an opportunity to discuss that with his attorney. Id. The defendant responded that he had. Id. Again, the defendant reiterated he wanted to maintain his plea of guilty and that he understood he could be sentenced to the maximum penalty. Id. at 8-9. The defendant was sentenced to 20 years at the North Dakota Department of Corrections with 5 years suspended for 10 years and 10 years of supervised probation. Id. at 18.

LAW AND ARGUMENT

I. The record is insufficient to support a claim of ineffective assistance of counsel on direct appeal.

[¶8] In order to successfully establish a claim of ineffective assistance of counsel a defendant must prove 1) counsel's representation fell below an objective standard of reasonableness, and 2) the defendant was prejudiced by counsel's deficient performance. State v. Schweitzer, 2007 ND 122, ¶ 23, 735 N.W.2d 873, quoting Flanagan v. State, 2006 ND 76, ¶ 10, 712 N.W.2d 602. A claim of ineffective assistance of counsel should not be raised on direct appeal. State v. Keener, 2008 ND 156, ¶ 13, 755 N.W.2d 462, quoting Schweitzer, 2007 ND 122, ¶ 25. Ineffective assistance of counsel claims should be raised on post-conviction relief so a proper record can be developed. Id. However, if a claim of ineffective assistance of counsel is raised on a direct appeal, the Court will review the record to determine if counsel was plainly defective. Id., quoting State v. Noorlun, 2005 ND 189, ¶ 30, 705 N.W.2d 819. In State v. Bates, a defendant filed a direct appeal after entering a plea of guilty. State v. Bates, 2007 ND 15, 726 N.W.2d 595. The defendant raised two issues on direct appeal, 1) that the district court erred in denying his motion to withdraw a guilty plea and 2) that his counsel was ineffective. Id. The defendant claimed that his counsel was ineffective because he failed to obtain a progress report from a private investigator and failed to follow up about a possible alternative suspect for the crime. Id. at ¶ 18. However, because the defendant raised these two issues on direct appeal rather than in a post-conviction action, the record was not fully developed and the defendant could not meet the two elements required to establish a claim of ineffective assistance of counsel. Id. at ¶ 20. Similarly, in State v.

Schweitzer, following a conviction at a jury trial, the defendant, on direct appeal, alleged ineffective assistance of counsel for a variety of reasons including requesting continuances, failure to object to certain testimony, as well as many other trial related actions or inactions by counsel. 2007 ND 122 at ¶¶ 26-27. The North Dakota Supreme Court reiterated that direct appeal is not appropriate for a claim of ineffective assistance. Id. at ¶ 25. Further, because the defendant's complaints could generally be explained as a matter of trial strategy and a record was not developed by the defendant otherwise, the defendant's direct appeal based on ineffective assistance was denied. Id.

[¶9] In the case at hand, the defendant alleges ineffective assistance on direct appeal based on three actions or inactions of Mr. Morrow: 1) failure to request a continuance after the State moved to amend the information, 2) failure to speak during sentencing at the defendant's request, and 3) failure to move to withdraw guilty plea. (Appellant's Brief at ¶¶ 9-11.) First, the amended information reduced the level of offense to a Class A Felony rather than a Class AA Felony which was a clerical error. Preliminary Hearing Tr. p. 3. Further, the date of the offense was amended to September of 2013 instead of November of 2013. Preliminary Hearing Tr. p. 3. The record reflects that the defendant and Mr. Morrow reviewed the amended information and had no objection to it. Id. at 5. Further, when asked if counsel needed a continuance to prepare because of the amendment, Mr. Morrow specifically indicated he agreed with Mr. Sandberg's representation that the amendment was based on facts they were already prepared to argue and there were no new significant factual changes to prepare for. Preliminary Hearing Tr. p. 6, lines 1-10, 21-23. On appeal, defendant makes numerous allegations about the impact this decision had on the outcome of the case. Defendant claims that it

foreclosed an opportunity to investigate an alibi. There is nothing on the record to support this allegation. Defendant makes conclusory assumptions in his claim of ineffective assistance which are not enough to satisfy his burden. The record reflects that the defendant consulted with his attorney and was aware of the motion to amend the information as well as the amended information and the nature of it. The record reflects the defendant confessed to the crime. The record does not reflect any possible alibi defense, either that there was one or that one was or was not properly investigated. The record reflects the defendant did not object to the motion to amend the information. The record reflects the defendant did not need a continuance to proceed on the amended charge for purposes of the preliminary hearing.

[¶10] The second claim of ineffective assistance relates to Mr. Morrow electing to limit his comments at sentencing at the request of his client. Defendant can cite to no case, nor does he allege, that this action fell below an objective standard of reasonableness or that the result of the proceeding would have been different. The record specifically reflects that Mr. Morrow was prepared with arguments for the proceeding and the defendant asked Mr. Morrow to allow the defendant to make those representations to the court himself. Sentencing Tr. p. 3. Despite that, the record does reflect that Mr. Morrow advocated on behalf of the defendant during the sentencing hearing. Sentencing Tr. pp. 3-26. Again, on appeal, defendant makes unsupported conclusory allegations about the quality of his representation with no support on the record or in case law to establish ineffective assistance of counsel.

[¶11] The third allegation lodged by the defendant on direct appeal regarding ineffective assistance is that Mr. Morrow did not properly move to withdraw the

defendant's guilty plea. At the sentencing hearing, the defendant claimed his confession was false and minimized his actions. Sentencing Tr. pp. 4-5. The court addressed Mr. Morrow by asking if his client was requesting a change of plea. Id. at 8. The defendant answered this question himself by stating, "we'll stay with the open guilty plea". Id. The court inquired if he had an opportunity to discuss that decision with his attorney. Id. The defendant responded that he did have an opportunity to do that. Id. Defendant alleges that Mr. Morrow remained silent during the hearing and failed to explain to the defendant the consequences of persisting in a guilty plea. (Appellant's Brief at ¶ 11.) Further, defendant alleges on direct appeal that it is impossible for defendant and counsel to have discussed this topic based on the record. (Appellant's Brief at ¶ 11). The record speaks for itself. The defendant stated he did not want to withdraw his plea of guilty and that he discussed the consequences of that decision with his counsel. Although the record does not reflect that a recess was taken, it is possible that Mr. Morrow spoke with his client during the hearing while the court was addressing the State or equally plausible that an extensive discussion was engaged in prior to the sentencing hearing on this topic. There is a reason that ineffective assistance claims are looked at unfavorably on direct appeal. The trial record is not developed for these types of claims and this allegation is a direct example of that.

[¶12] In order to establish a claim of ineffective assistance of counsel on direct appeal, the defendant must establish that counsel was plainly defective. Just as defendants in Schweitzer and Bates could not develop a trial record that established that, the defendant in this case cannot and has not established that counsel was ineffective. Direct appeal is an inappropriate venue for claims of ineffective assistance and as such,

the defendant's appeal as to this issue must be denied.

II. The trial court substantially complied with Rule 11 of the North Dakota Rules of Criminal Procedure.

[¶13] Rule 11(b)(1) of the North Dakota Rules of Criminal Procedure proscribes that a court may not accept a plea of guilty without first, by addressing the defendant personally and in open court (other than as provided by Rule 43(b)), informing the defendant and ensuring the defendant understands various rights. N.D.R.Crim.P. 11(b)(1). The rule sets forth which rights must be addressed with the defendant prior to accepting a plea of guilty. Those rights include: the right to plead not guilty or to persist in a not guilty plea, the right to a jury trial, the right to counsel and to have counsel appointed, the right to cross examine and confront witnesses, the right against compelled self-incrimination, to testify and present evidence, to compel attendance of witnesses, the waiver of those rights if the defendant were to plead guilty, the nature of the charge to which the defendant is pleading, maximum and minimum penalty of the charge or charges, and the court's ability to order restitution. N.D.R.Crim.P. 11(b)(1)(A)-(I). This Court has held that although Rule 11 of the North Dakota Rules of Criminal Procedure is mandatory and binding on the trial court, it does not require any ritualistic, predetermined formality by the trial court. State v. Farrell, 2000 ND 26, ¶ 9, 606 N.W.2d 524. The trial court must substantially comply with the procedural requirements of the rule to ensure the defendant is entering a voluntary plea of guilty. Id. After a court has imposed a sentence, a defendant cannot withdraw a plea of guilty unless he can establish that withdrawal is necessary to correct a manifest injustice. Id. at ¶ 8. A manifest injustice can occur from procedural errors at the trial court. Id.

[¶14] The defendant complains of three alleged procedural errors that occurred prior to sentencing. First, the defendant claims that he was not advised at his pre-trial conference that he had the right to plead not guilty or to persist in his not guilty plea. (Appellant's Brief. at ¶ 15). Second, the defendant claims he was not asked if he was entering a guilty plea based on a discussion between prosecutors and the defendant or his attorney to ensure the plea was voluntary. (Appellant's Brief at ¶ 15). Third and primarily, the defendant claims the court did not properly advise him of Rule 11(d) of the North Dakota Rules of Criminal Procedure. (Appellant's Brief at ¶ 15).

[¶15] With respect to the first complaint, the defendant was represented by counsel and had entered a not guilty plea on November 10, 2014 and had persisted in that not guilty plea for over four months until March 19, 2015 when the pre-trial conference was held. Arraignment Tr. p. 3. The defendant had appeared in court for an Initial Appearance, Preliminary Hearing, Arraignment, and Bond Review Hearing in which he was read or reminded of his various rights. At his bond review hearing, the defendant was specifically advised he had a right to plead guilty or not guilty in his case. Bond Hearing Tr. pp. 5-8. These hearings were all held prior to the hearing on March 19, 2015 when he entered his plea of guilty. The record demonstrates the defendant was aware of his right to plead not guilty in light of the fact that he previously had entered a plea of not guilty, persisted in that not guilty plea, was repeatedly read his rights and was represented by counsel. As this Court has held, ritualistic compliance is not required of trial court's when advising defendants of Rule 11 rights.

[¶16] The second complaint relates to the allegation that the trial court did not inquire if the defendant's willingness to plead guilty resulted from discussions between

the prosecutor and defense counsel as required by Rule 11 to ensure his plea was voluntary. In State v. Beckman and State v. Hoffarth, the North Dakota Supreme Court detailed the substantial compliance procedural requirement of Rule 11 with respect to this issue. State v. Beckman, 1999 ND 54, ¶ 9, 591 N.W.2d 120, State v. Hoffarth, 456 N.W.2d 111, 113 (N.D. 1990). In both cases, the defendants sought to withdraw their guilty pleas because the trial court did not specifically ask if their pleas were a result of a prior discussion between the prosecutor and defendant. Id. Noting that Rule 11(c) is to ensure the plea of guilty is voluntary and determine whether the plea was as a result of a plea negotiation, substantial compliance is met if the court elicits the information the rule is designed to ascertain during the guilty plea hearing. Id. In both Beckman and Hoffarth, the trial courts ensured the defendant understood he could be sentenced to more or less than what was recommended and that the defendants were not promised anything in order to plead guilty. Id. Similarly, in the instant case the trial court specifically advised the defendant that although there may be recommendations made at sentencing by the prosecutor and defense counsel, the court is not bound by those recommendations and could sentence the defendant to the maximum penalties he had been advised of. Pre-trial Conference Tr. p. 6. Additionally, the court asked the defendant if any threats or coercion had taken place to obtain his plea of guilty or if any promises were made to him that would cause him to enter a plea of guilty. Pre-trial Conference Tr. pp.6-7. Further, it is illogical to argue that there could have been a procedural error with respect to Rule 11 resulting in a manifest injustice on this issue because not only is the record clear that the court advised the defendant it was not bound by any agreed upon recommendations, but in fact, there was not an agreed upon recommendation. The pre-trial conference transcript

and the sentencing transcript clearly reflect that the defendant entered an open plea of guilty, was not promised any recommendation by the state, and was not in an agreement as to his potential sentence. Pre-trial Conference Tr. p. 6, Sentencing Tr. p. 2.

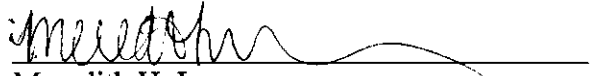
[¶17] Third, the defendant complains that a manifest injustice was created by the sentencing court because he was improperly informed that he could not withdraw his plea once it was accepted by the trial court. Withdrawal of a guilty plea is not a standardless right bestowed upon a defendant upon entry of a guilty plea. This Court has stated that given the great care with which pleas are taken under Rule 11, there is no reason to view pleas so taken as merely tentative subject to withdrawal before sentence whenever the government cannot establish prejudice. State v. Sisson, 1997 ND 158, ¶ 17, 567 N.W.2d 839. The defendant is alleging that the trial court's failure to advise the defendant of the complexities of Rule 11(d) constitutes a procedural error that now mandates a withdrawal of his guilty plea in order to correct a manifest injustice. The troubling aspect of this argument is that the defendant cannot point to a single rule of criminal procedure or case that mandates a trial court to advise a defendant of the complexities of Rule 11(d) of the North Dakota Rules of Criminal Procedure. Simply put, the court has no obligation to do this. It is true; the defendant does not have an automatic right to withdraw a guilty plea once it is accepted. Prior to accepting a plea of guilty, the defendant can withdraw for no reason or any reason. N.D.R.Crim. P. Rule 11(d)(1)(A). The trial court in this case accurately informed the defendant that after his guilty plea was accepted the automatic right to withdraw his plea was extinguished. The trial court had no obligation to advise the defendant of the different standards for withdrawing his plea set forth in Rule 11(d) of the North Dakota Rules of Criminal Procedure. The defendant cites to no

case law or rule to support his claim. The failure to advise the defendant of the complexities of withdrawing his plea at various stages after it has been accepted was not a procedural error and does not constitute a manifest injustice.

CONCLUSION

[¶18.] For the above-stated reasons, Atkins' appeal should be denied.

DATED this 25 day of November, 2015.



Meredith H. Larson
ND Bar ID #06206
Assistant State's Attorney
Grand Forks County
124 South 4th Street
PO Box 5607
Grand Forks, ND 58206-5607
(701) 780-8281
E-Service Address: sasupportstaff@gfcounty.org

