

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff-Appellee,)	Supreme Court No. 20190124
vs.)	
)	District Court No. 09-2013-CR-03705
Jason James Vogt,)	
)	
Defendant-Appellant.)	

Appeal from the Order Denying Motion to Vacate Judgment and Withdraw Plea
Filed March 13, 2019
Cass County District Court
East Central Judicial District
State of North Dakota
The Honorable John C. Irby, presiding

APPELLEE’S BRIEF

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[¶2] TABLE OF AUTHORITIES

Paragraph No.

State Cases:

Eaton v. State, 2011 ND 35, 793 N.W.2d 790¶12

State v. Bates, 2007 ND 15, 726 N.W.2d 595¶15

State v. Pixler, 2010 ND 105, 783 N.W.2d 9¶12

Vogt v. State, 2016 ND 48, 876 N.W.2d 485¶9, 14

[¶3] STATEMENT OF ISSUES

[¶4] 1. Whether the district court acted within its discretion in concluding that the Defendant failed to prove that allowing him to withdraw his guilty plea was necessary to correct a manifest injustice;

[¶5] 2. Whether the district court erred when ruling upon the Defendant's initial and subsequent motion to withdraw his guilty plea.

[¶6] STATEMENT OF THE CASE

[¶7] This is an appeal from the district court's order denying Defendant's motion to withdraw his guilty plea. The Defendant filed his motion on March 7, 2019. The State responded on March 11, 2019. The district court denied the Defendant's motion on March 13, 2019. The Defendant then filed a response on March 25, 2019. The district court issued an order entitled Order Confirming Order Denying Defendant's Motion to Withdraw Guilty Plea and Order Denying Motion on March 25, 2019. The State requests that this Court affirm the district court's denial of the Defendant's motion to withdraw his guilty plea.

[¶8] STATEMENT OF FACTS

[¶9] The State generally agrees with the facts as recited in the Defendant's Statement of Facts. However, in addition to the facts mentioned by the Defendant, the Defendant pled guilty to one count of Gross Sexual Imposition, an A Felony, and was sentenced to 20 years, first to serve 12, with 5 years of supervised probation. (App. at 5-6.) The Defendant initiated a post-conviction action in 2015 which was ultimately denied in Cass County District Court file 09-2015-CV-957. That denial was upheld by the North Dakota Supreme Court in . The Defendant submitted another post-conviction application in Cass County District Court file 09-2017-CV-03345, to which the State asserted that the Defendant did not raise any issues that were not originally raised in the initial application. The district court agreed and issued two orders: An Order of Dismissal and an Order Denying Post-Conviction Relief. The latter matter was not appealed to this Court.

[¶10] LAW AND ARGUMENT

[¶11] I. **The district court acted within its discretion in concluding that the Defendant failed to prove that allowing him to withdraw his guilty plea was necessary to correct a manifest injustice.**

[¶12] The standard used when a request is made to withdraw a guilty plea is dependent upon when the motion is made. State v. Pixler, 2010 ND 105, ¶ 6, 783 N.W.2d 9 (quoting State v. Bates, 2007 ND 15, ¶ 6, 726 N.W.2d 595). The Defendant previously entered a guilty plea and the court accepted it and imposed a sentence. After a district court has accepted a guilty plea and imposed sentence, a defendant cannot withdraw the plea unless withdrawal is necessary to correct a manifest injustice. Eaton v. State, 2011 ND 35, ¶ 5, 793 N.W.2d 790 (applying N.D.R.Crim.P. 11(d)(2)). The Defendant has the burden of proving a manifest injustice. Pixler, 2010 ND 105, ¶ 6, 783 N.W.2d 9 (quoting State v. Millner, 409 N.W.2d 642, 643 (N.D.1987)). The trial court has discretion to determine whether a manifest injustice exists, and its decision will not be reversed on appeal except for an abuse of discretion. Id.

[¶13] In this case, the district court issued an order entitled Order Denying Defendant's Motion to Withdraw Guilty Plea on March 13, 2019 (App. at 20-21.) and following an additional response by the Defendant filed on March 25, 2019 (App. at 22-23.), an order entitled Order Confirming Order Denying Defendant's Motion to Withdraw Guilty Plea was entered on March 25, 2019. (Doc ID# 57.)

[¶14] The Defendant argues that he proved a manifest injustice to the district court and disputes that the matter has already been litigated. The district court indicated in both

of its orders that the Defendant had not proved a manifest injustice that is sufficient, and also ruled that the issues raised had already been litigated. (App. at 20.) The district court explained its denial was based upon “the circumstances and upon a review of the record.” (App. at 21.) The Defendant appears to present arguments that allege ineffective assistance of counsel to prove a manifest injustice, and that issue was already addressed by this Court in Vogt, 2016 ND 48, 876 N.W.2d 485. The district court has discretion to determine whether a manifest injustice exists, and it did so in its explanation of the denial of the Defendant’s motion. (App. at 20-21.)

[¶15] The Defendant also appears to argue that the district court erred in denying his motion because his guilty plea was not knowingly, intelligently and voluntarily entered. To be valid, a guilty plea must be knowingly, intelligently, and voluntarily entered. Bates, 2007 ND 15, ¶ 13, 726 N.W.2d 595. The Defendant argues that the district court “was not able to state how or where it determined he entered a knowingly and voluntarily plea of guilty and that the court cannot point to something in the record of this occurring.” (Defendant’s Brief at ¶ 9.) However, the change of plea hearing on this matter, held on June 30, 2014 in the Cass County District Court is dispositive.

[¶16] The district court asked the Defendant whether he understood his rights. (Tr. of Plea at 2:8-9.) The Defendant said that he did. (Tr. of Plea at 2:10.) The fact that the Defendant would be pleading to an amended charge was also discussed. (Tr. of Plea at 2:15-3:20.) The district court advised the Defendant of the amended charge and the

maximum penalties, and of the minimum penalties, and the Defendant indicated that he understood the potential penalties. (Tr. of Plea at 3:21-4:12.)

[¶17] The district court then asked the Defendant for his plea to the amended charge and whether he understood that by pleading guilty he was giving up certain rights. (Tr. of Plea at 4:13-25.) The Defendant confirmed that he was not threatened or promised anything that would coerce him into pleading guilty. (Tr. of Plea at 5:1-3.) The district court asked the Defendant if his guilty plea was voluntarily, to which the Defendant stated it was. (Tr. of Plea at 5:4-5.) A factual basis was then accepted by the district court. (Tr. of Plea at 5:6-17.) Sentencing was then set for a later date. (Tr. of Plea at 5:18-21.) This exchange makes it abundantly clear that the district court was correct in finding that the Defendant entered a knowingly, intelligently, and voluntarily guilty plea. (App. at 20.)

[¶18] II. **The district court allowed the Defendant to file a response to the State's response and then issued an order confirming its previous denial.**

[¶19] The Defendant argues that the district court erred in not allowing him to respond to the State's Response filed on March 11, 2019. While it is accurate that the district court issued an order entitled Order Denying Defendant's Motion to Withdraw Guilty Plea on March 13, 2019, the Defendant filed another response on March 25, 2019, which was accepted by the district court for filing. (Doc ID #53.) The district court clearly reviewed the second response by the Defendant because it then issued an order entitled Order Confirming Order Denying Defendant's Motion to Withdraw Guilty Plea

and specifically mentions its review of the Defendant's second response in the subsequent denial. (Doc ID #57.) Thus, the scenario the Defendant alleges occurred is not accurate and should not warrant any further consideration because he was given the chance to have an additional response filed and considered by the district court.

[¶20] CONCLUSION

[¶21] For the foregoing reasons the decision of the district court should be affirmed.

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[¶21] CERTIFICATE OF SERVICE

[¶22] A true and correct copy of the foregoing document was sent by e-mail on the 17th day of July, 2019 to: Samuel A. Gereszek at sam@brudviklaw.com

[¶23] A true and correct copy of the foregoing document was sent by mail on the 17th day of July, 2019 to: Jason J. Vogt, #40338, 2521 Circle Drive, JRCC, Jamestown, ND 58401.

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[¶24] CERTIFICATE OF COMPLIANCE

[¶25] This brief complies with the page limit set forth in North Dakota Rules of Appellate Procedure 32(a)(8)(A) and is 10 pages in length.

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