

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff-Appellee,)	
)	Supreme Court No. 20210137
vs.)	
Justin Allen)	District Court No. 02-2020-CR-00077
Randy Scott Hatcher,)	
)	
Defendant-Appellant.)	

BRIEF OF PLAINTIFF-APPELLEE

APPEAL FROM CRIMINAL JUDGMENT DATED 04/28/2021

BARNES COUNTY DISTRICT COURT
SOUTHWEST JUDICIAL DISTRICT
HONORABLE JAY SCHMITZ, PRESIDING

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STATEMENT OF THE ISSUE

[¶ 1] Whether the District Court correctly denied the defendant's request to withdraw his guilty plea.

STATEMENT OF THE CASE

[¶ 2] Appellant, Justin Allen Hatcher (“Hatcher”) was charged with 11 counts of Possession of Certain Materials Prohibited, in violation of N.D.C.C. § 12.1-27.2-04.1, all class C Felonies, Unlawful Possession of Controlled Substance, in violation of N.D.C.C. § 19-03.1-23(7), a class C Felony, and Unlawful Possession of Drug Paraphernalia, in violation of N.D.C.C. § 19-03.1-04(2), a class C Felony, by an Amended Criminal Information dated April 24, 2020.

[¶ 3] This case was set for a trial to commence on December 18 and 21-23, 2020. That trial date was rescheduled due to COVID concerns with both the State and Hatcher’s counsel. The next scheduled trial dates were then cancelled due to a district wide cancellation of all jury trials. The case was then rescheduled for trial to begin February 9, 2021.

[¶ 4] Earlier on in the case, Hatcher had bond conditions set. (CoP Tr. 4) Included in those conditions was a requirement that Hatcher participate in the 24/7 Sobriety Program through the use of a drug patch. (CoP Tr. 4) An affidavit of violation of this program was filed on January 15, 2021, and the Court set an Order to Show Cause hearing for the alleged violation for January 22, 2021. (CoP Tr. 4)

[¶ 5] At the Order to Show Cause hearing, Hatcher decided to plead guilty instead of continuing with the previously scheduled trial. A Pre-Sentence Investigation was ordered, and sentencing was held on April 27, 2021. A criminal judgment was entered on April 28, 2021.

[¶ 6] This appeal subsequently ensued with a notice of appeal and order for transcripts on May 6, 2021.

STATEMENT OF THE FACTS

[¶ 7] The relevant facts for this appeal are largely procedure based and start with perspectives. Hatcher changed his plea to the counts in an amended criminal information on January 22, 2021. On the same date, a Pre-Sentence Investigation (PSI) was ordered. The PSI and its Addendum were filed on April 13, 2021. Hatcher filed a motion to withdraw his guilty pleas on April 26, 2021, simultaneously with a motion for Hatcher's counsel to withdraw as Hatcher's counsel. Sentencing was held on April 27, 2021, and a criminal judgement was entered on April 28, 2021.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN ITS DECISION TO DENY THE DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA.

a. Standard of Review

[¶ 8] The appropriate standard for reviewing a trial court's denial of a motion to withdraw a guilty plea is the abuse of discretion standard. See State v. Feist, 2006 ND 21, ¶22, 708 N.W.2d 870 (“A district court's determination of a manifest injustice, or the occurrence of a fair and just reason, is within the court's discretion and will not be reversed on appeal absent an abuse of discretion.”). A district court abuses its discretion when it acts in an arbitrary, unreasonable, or capricious manner, or misinterprets or misapplies the law. Id. at ¶ 22; State v. Farrell, 2000 ND 26, ¶ 8, 606 N.W.2d 524.

b. The District Court Correctly Concluded That the Defendant Had Not Shown a Fair and Just Reason to Withdraw His Guilty Plea.

[¶ 9] Rule 11, N.D.R.Crim.P., dictates when a guilty plea may be withdrawn. “(1) In general. A defendant may withdraw a plea of guilty:

(A) before the court accepts the plea, for any reason or no reason; or

(B) after the court accepts the plea, but before it imposes sentence if:

(i) the court rejects a plea agreement under Rule 11(c)(5); or

(ii) the defendant can show a fair and just reason for the withdrawal.”

N.D.R.Crim.P. 11(d)(1).

[¶ 10] In this case, the Court accepted Hatcher’s guilty plea on January 22, 2021. (Change of Plea Transcript, hereinafter “CoP Tr.” 13) As such, Rule 11(d)(B) then applies to this argument. There was not a plea agreement on this case, so specifically Rule 11(d)(B)(ii) applies.

[¶ 11] The ultimate question comes down to whether Hatcher demonstrated a fair and just reason to withdraw his guilty pleas. The State submits Hatcher failed to do this, for several reasons.

[¶ 12] “[A] defendant has the burden of proving that a fair and just reason supports withdrawal of a guilty plea. Once a defendant establishes a fair and just reason, the burden then shifts to the State to establish that it would be prejudiced by granting leave to withdraw.” State v. Yost, 2018 ND 157, ¶ 6, 914 N.W.2d 508. “Courts do not inquire into the matter of prejudice unless the defendant first shows a good reason for being allowed to withdraw his plea.” Id.

[¶ 13] While there is a preference to liberally allow a defendant to withdraw a guilty plea, withdrawal is not a matter of right. State v. Sisson, 1997 ND 158, ¶ 17, 567 N.W.2d 839; N.D.R.Crim.P. 32(d) (“[T]he defendant may not withdraw a plea of guilty as a matter of right once the court has accepted the plea.”) “Given the great care with which pleas are taken under the revised 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.” Sisson, at ¶ 17.

[¶ 14] “[A]mong the factors that a district court may consider in determining whether a fair and just reason exists to withdraw a guilty plea before sentencing are: (1) the amount of time that has passed between the entry of the plea and the motion to withdraw; (2) defendant's assertion of innocence or a legally cognizable defense to the charge; (3) prejudice to the government; (4) whether the plea was knowing and voluntary; (5) whether the plea was made in compliance with Rule 11, N.D.R.Crim.P.; (6) whether adequate assistance of counsel was available to the defendant; (7) the plausibility of the reason for seeking to withdraw; (8) whether a plea withdrawal would waste judicial resources; and (9) whether the parties had reached or breached a plea agreement. (citation omitted) These factors are not intended to be an exclusive list and other factors based on the specific case may be relevant to a district courts determination of a fair and just reason.” State v. Lium, 2008 ND 232, ¶17.

[¶ 15] Here, the State asserts that fair and just reasons were not established, and as such, there was not a shift to the State to establish any sort of prejudice. The District Court went through these factors individually, and extensively, after Hatcher requested to withdraw his guilty plea the day before the sentencing hearing. (Sentencing Transcript, hereinafter “Sent. Tr.” 39-51)

[¶ 16] The State submits that there really is only a question to be addressed on factors 1 and 2. Factor 1 does not weigh in Hatcher’s favor because he filed the withdrawal motion on the eve of sentencing. The State submits this is due to Hatcher simply not wanting to be incarcerated. While the reason for the time period between the plea and sentencing was due

to the PSI being conducted, if Hatcher wanted to withdraw his pleas, he certainly could've done that more in advance than he did.

[¶ 17] Factor 2 also does not weigh in Hatcher's favor. As the Court pointed out, "you can assert whatever you want. It's completely contrary to what he told the police in the affidavit of probable cause." (Sent. Tr. 14) The State agrees with the Court's summary and also notes that as was mentioned at the Sentencing hearing, the illegal images that were found, were found on several different devices, and the child that Hatcher insinuates is the actual person who possessed these images, had his phone searched, and there were no illegal images found on the child's phone. (Sent. Tr. 41) There is not a legally cognizable defense to these counts.

[¶ 18] Factor 3 weighs in favor of Hatcher, in that there is not a prejudice to the government; other than it relates to factor 8 in that it becomes a waste of judicial resources. However this factor weighing in Hatcher's favor does not in itself provide a fair and just reason to withdraw the guilty pleas.

[¶ 19] Factor 4 does not weigh in Hatcher's favor, as the Court had a discussion with Hatcher personally during the Change of Plea hearing to ensure that Hatcher's pleas were knowing and voluntary.

[¶ 20] Factor 5 does not weigh in Hatcher's favor, as the Court complied with Rule 11, N.D.R.Crim.P.

[¶ 21] Factor 6 does not weigh in Hatcher's favor, as he was represented by counsel at all stages of the proceedings.

[¶ 22] Factor 7 does not weigh in Hatcher's favor, as the plausibility of the reason for seeking to withdraw is a fairly obvious one to the State. Hatcher did not want to be

incarcerated, albeit for good reason, but that does not provide a fair and just reason to withdraw guilty pleas. Hatcher's family situation at the time of these hearings was a difficult one, however, that situation does not prevent cases from coming to a conclusion.

[¶ 23] Factor 8, whether a plea withdrawal would waste judicial resources, weighs heavily against Hatcher. Hatcher had an opportunity to have a trial on a scheduled date in February 2021. Although Hatcher's trial was technically scheduled 3 separate times, the final trial date was Hatcher's main opportunity to have his case heard. (The first 2 cancellations were not at all Hatcher's fault, although he had COVID concerns himself during the first cancelled trial.)

[¶ 24] Factor 9, whether the parties had reached or breached a plea agreement, does not weigh in Hatcher's favor, as Hatcher knew what the State would be recommending, knew what his attorney would be recommending, and understood the Court would make the final determination on what to do with his case. (CoP Tr. 9) The State did not threaten Hatcher with any potential amount of incarceration, despite the repetitive allegations of such in Hatcher's brief. As the Court mentioned, the 110 years was a mathematical calculation, and not a threat. (Sent. Tr. 48) Throughout the duration of this case, the State would ask Hatcher's counsel if there was progress towards a resolution and would repeatedly be told that Hatcher's counsel was unable to get ahold of Hatcher. Hence the reason the State mentioned the comment of "if the silence continues..." (Sent. Tr. 36) The State acknowledged that the offer would not be the same one that was being made that day and would instead revert to more than original offer (which was not 110 years, it was 7 years). (Sent. Tr. 36)

[¶ 25] The State also disagrees with Hatcher’s perspective that he was told about the State’s plea offer “two minutes” before coming into court. The State sent Hatcher’s attorney an email on Thursday, January 14th and Hatcher’s counsel forwarded the email to Hatcher the following Monday (January 18th). (Sent. Tr. 38) The email gave a deadline of January 21st to accept the offer, and court was subsequently held on January 22, 2021. (Sent. Tr. 37 and CoP Tr. 3) A period of one week to consider an offer, or if it was forwarded by Hatcher’s attorney on the following Monday, then 4 days to consider an offer, and 5 days in advance of the next scheduled court hearing, is not quite “two minutes” as Hatcher describes.

[¶ 26] Hatcher has a history of wanting to put things off. It was clear Hatcher and his counsel disagreed on trial strategy and struggled with communicating with each other. Hatcher’s filing of a motion to withdraw his guilty pleas was another effort in furtherance of putting his case off. The State presumes this was to provide care for Hatcher’s father, but the reasons Hatcher submitted to the Court did not provide fair and just reasons for withdrawing his guilty pleas. They were simply delay tactics, and while the Courts have held clearly that defendant’s requests to withdraw guilty pleas should be liberally granted, they can’t just be allowed to do so in ‘tentative’ fashion in situations where the government can’t find prejudice. There has to not just be a reason, but a fair and just reason. There wasn’t either of those in this case.

CONCLUSION

[¶ 27] The State does not request oral argument on this case and would waive such, as the State does not feel there is anything more to clarify on the procedural issue here.

[¶ 28] There was not an error in finding that the District Court correctly denied Hatcher’s

request to withdraw his guilty pleas. Based on the foregoing, the State respectfully asks this Court to affirm the District Court's decision to deny Hatcher's Motion to Withdraw Guilty Pleas.

Dated the 16th day of September, 2021.

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)	COMPLIANCE
Respondent/Appellant.)	

Pursuant to North Dakota Rules of Appellant Procedure 32(e), I certify the Appellee’s Brief is not in excess of thirty-eight (38) pages. The document consists of fourteen (14) pages, including the cover page, table of contents, table of authorities, the written brief, the certificate of electronic service, and the certificate of compliance.

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)	ELECTRONIC SERVICE
Respondent/Appellant.)	

I hereby certify that September 16, 2021, I served an electronic copy of Appellee’s Brief
via e-mail through the Supreme Court File and Serve System upon:

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