

NOT DESIGNATED FOR PUBLICATION

No. 124,649

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

BRENDAN JONES,
Appellant.

MEMORANDUM OPINION

Appeal from Reno District Court; JOSEPH L. MCCARVILLE III, judge. Opinion filed March 3, 2023. Affirmed.

Corrine E. Gunning, of Kansas Appellate Defender Office, for appellant.

Kimberly A. Rodebaugh, senior assistant district attorney, *Thomas R. Stanton*, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before ARNOLD-BURGER, C.J., BRUNS and ISHERWOOD, JJ.

PER CURIAM: Brendan Jones appeals the district court's denial of his presentence motion to withdraw his plea. The State charged Jones with eight counts of attempted premeditated murder, three counts of criminal possession of a firearm, and one count of felony interference with law enforcement stemming from a standoff involving several Reno County police officers. Jones pleaded guilty to all charges, and the parties agreed to recommend concurrent sentences while allowing Jones the latitude to request a durational departure to 25 years in prison. Before sentencing, Jones moved to withdraw his plea and asserted it was not fairly and understandingly made because he failed to fully appreciate

its consequences, specifically, that he would not receive probation. Following an evidentiary hearing to resolve the matter, the district court found that Jones' claims were not credible and that he knowingly, voluntarily, and understandingly pleaded guilty to the series of offenses. Jones fails to convince us the district court abused its discretion in so finding, therefore, we affirm its denial of Jones' request to withdraw his plea.

FACTUAL AND PROCEDURAL BACKGROUND

Hutchinson police detectives suspected Jones and another man of committing an early morning shooting and located them at a residence a few hours later. The men refused to surrender to law enforcement and officers believed them to still be armed and dangerous. After hours of negotiations, the other man surrendered but Jones remained inside. Shortly after, law enforcement believed they finally managed to convince Jones to exit peacefully, but he opened fire on the officers when he emerged from the residence. They responded by shooting Jones several times. No officers were injured during the shooting, but Jones was medically evacuated for treatment of several gunshot wounds.

The State charged Jones with eight counts of attempted premeditated murder because he fired his gun in the direction of eight officers. Three counts of criminal possession of a firearm and one count of felony interference with law enforcement rounded out the other charges he faced. Jones waived his right to a preliminary hearing and opted to plead guilty as charged. The parties agreed that Jones' sentences would run concurrent, and he could request a durational departure to 25 years in prison. They also agreed that the State would complete Jones' presentence investigation at Larned State Hospital when he underwent his mental examination pursuant to K.S.A. 22-3429.

At sentencing, Jones' plea counsel notified the district court that Jones filed a pro se motion to withdraw his guilty plea. Jones informed the district court that counsel neglected to provide effective assistance, his medication was not "right" when he entered

his plea, and he believed he would receive probation if he participated in the mental evaluation. The district court allowed Jones' plea counsel to withdraw and appointed new counsel to represent Jones on his motion. Jones' new counsel filed an amended motion and alleged Jones did not understand the potential sentence at the time of his plea and he was not competent to stand trial or enter a plea based on his mental health evaluations.

The court held an evidentiary hearing during which Jones testified that plea counsel initially told him the State wanted him to go to Larned State Hospital for a mental health evaluation and he would then be sentenced to probation after completing mental health treatment. Jones believed this to be the basis of the plea deal and claimed he shared no further discussions with counsel about the plea, nor did counsel ever explain that it included a 25-year prison term. Jones informed the district court that he would not have entered a guilty plea if he understood it meant serving a long prison sentence.

Plea counsel also testified and asserted that he informed Jones of the charges against him and their potential penalties to help inform Jones' decision about the plea. He advised Jones early on that it was possible to receive a departure but that his discussions with the State revealed probation was not a viable option. Before the plea hearing, counsel reiterated to Jones that the plea agreement did not include the possibility of probation. Thus, he was satisfied that Jones understood the terms of the plea.

The district court declined to find good cause existed to allow Jones to withdraw his plea. It concluded that Jones understood the consequences of his plea, including the potential sentences. Before sentencing, Jones moved for a departure sentence, requesting a controlling 25-year prison sentence based on his: (1) age of 21 at the time of the events, (2) lack of intent to harm any person other than himself during the incident, (3) history of significant mental health issues, (4) ongoing drug addiction, and (5) family support in the community. The district court denied the motion and sentenced Jones to 653 months in prison.

Jones timely brings the matter before us to analyze whether the court erred in denying his request to withdraw the plea.

LEGAL ANALYSIS

The district court did not abuse its discretion when it concluded that Jones failed to establish good cause existed to allow him to withdraw his plea.

Jones argues the district court's denial of his motion amounts to an abuse of discretion because counsel's failure to fully inform him of the consequences of his plea resulted in a plea that was not fairly and understandingly made.

Generally, appellate courts review a district court's decision to deny a presentence motion to withdraw a guilty or no-contest plea for an abuse of discretion. *State v. Frazier*, 311 Kan. 378, 381, 461 P.3d 43 (2020). A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021). The movant bears the burden to prove the district court erred in denying the motion. *State v. Hutto*, 313 Kan. 741, 745, 490 P.3d 43 (2021). The district court's factual findings are reviewed for substantial competent evidence. Appellate courts do not reweigh the evidence or assess witness credibility but defer to the trial court's findings of fact when reviewing its decision to deny a motion to withdraw plea. *State v. Johnson*, 307 Kan. 436, 443, 410 P.3d 913 (2018).

"A plea of guilty or nolo contendere, for good cause shown and within the discretion of the court, may be withdrawn at any time before sentence is adjudged." K.S.A. 2021 Supp. 22-3210(d)(1). Good cause is a "lesser standard" for a defendant to meet, when compared to the manifest injustice standard for postsentence motions. *State v. Aguilar*, 290 Kan. 506, 512, 231 P.3d 563 (2010). When determining whether a defendant has shown good cause to withdraw their plea, a district court generally looks to

three factors, commonly known as the *Edgar* factors: (1) whether the defendant was represented by competent counsel; (2) whether the defendant was misled, coerced, mistreated, or unfairly taken advantage of; and (3) whether the plea was fairly and understandingly made. *State v. Frazier*, 311 Kan. 378, 381, 461 P.3d 43 (2020); *State v. Edgar*, 281 Kan. 30, 36, 127 P.3d 986 (2006). These factors should not "be applied mechanically and to the exclusion of other factors." *State v. Fritz*, 299 Kan. 153, 154, 321 P.3d 763 (2014).

Jones focuses on the third of these factors and contends it is fulfilled because counsel neglected to thoroughly inform him about the consequences of his plea. He maintains that counsel at first discussed a potential sentence to probation but failed to ever inform him that option was off the table. Thus, Jones purportedly still believed that was the sentence he would receive upon entering a plea. Jones reiterates that he never would have entered the plea if he fully understood the consequences because, in his opinion, the potential sentence did not match the acts he committed. Jones argues that the State could not prove the attempted premeditated murder charges because he did not intend to kill the officers. Rather, he simply sought to elicit gunfire from the officers intending to kill himself.

Jones' argument turns on a credibility determination, a balancing test we do not have the liberty to conduct. We are only permitted to review the district court's factual findings for substantial competent evidence. *Johnson*, 307 Kan. at 436. The record before us reflects that the district court had substantial competent evidence at its disposal from which it could properly conclude that plea counsel informed Jones that probation was not an option, and that Jones understood the potential sentences he faced when he entered the guilty plea.

First, the transcript of the plea hearing reflects that counsel informed the district court that the parties agreed that all counts would run concurrent and Jones could seek a

durational departure to a 25-year prison term. When the district court inquired whether Jones heard counsel's recitation of the agreement and believed those terms to be accurate, Jones provided an affirmative response. The district court also asked whether Jones thought there were any other terms of the agreement to be addressed and Jones only mentioned that his presentence investigation report would be conducted at Larned. The district court then explained the charges and the potential sentences Jones faced. Jones responded that he understood the possible sentences for each offense.

As for the evidentiary hearing on Jones' motion, plea counsel testified that he informed Jones probation was no longer possible after discussing plea options with the State and he reiterated the same to Jones before the plea hearing. Thus, counsel was satisfied that Jones understood the nature of his plea.

In arriving at its conclusion to deny Jones' motion, the district court ultimately found counsel's testimony carried greater credibility than Jones'. Because there was substantial competent evidence to support the district court's factual findings, we are unable to conclude that an abuse of discretion occurred when it denied Jones' presentencing motion to withdraw plea.

Affirmed.