

NOT DESIGNATED FOR PUBLICATION

Nos. 125,216
125,217
125,218
125,219

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

JACOB AGUIRRE,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; JEFFREY SYRIOS, judge. Opinion filed September 1, 2023.
Affirmed.

Jennifer C. Roth, of Kansas Appellate Defender Office, for appellant.

Kristi D. Allen, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before COBLE, P.J., GARDNER and CLINE, JJ.

PER CURIAM: In 2020, Jacob Aguirre was arrested and charged with 18 offenses in four separate criminal cases. The State offered a plea agreement that would dismiss 12 of those charges and Aguirre was advised by his trial counsel to accept it. Aguirre's trial counsel reviewed the plea agreement with him before the plea hearing, and again during the plea hearing. Aguirre accepted the plea agreement and the district court found that Aguirre knowingly and voluntarily entered his plea of guilty. Aguirre then sought a

dispositional and durational departure sentence. While his departure motion was pending, he moved the court to withdraw his plea and remove his trial counsel. Aguirre argued his trial counsel promised he would receive probation and inpatient treatment. The district court granted the removal of counsel but after an evidentiary hearing, denied Aguirre's motion to withdraw his plea.

Aguirre timely appeals. After reviewing the record, we find no abuse of discretion and affirm the district court's decision.

FACTUAL AND PROCEDURAL BACKGROUND

Over the span of 2020, the State of Kansas charged Aguirre with a total of 18 counts of misdemeanor and felony offenses in four separate cases in Sedgwick County—case Nos. 20CR77, 20CR1814, 20CR1818, and 20CR2004. The State offered Aguirre a plea agreement that would dismiss 12 of the 18 counts, leaving one count of possession of methamphetamine and one count of criminal in possession of weapon in case No. 20CR77, one count of aggravated burglary in case No. 20CR1818, one count of burglary in case No. 20CR1814, one count of fleeing or attempting to elude a law enforcement officer, and one count of the circumvention of an ignition interlock device in case No. 20CR2004. On May 13, 2021, during the plea hearing, Aguirre pleaded guilty to those six charges and the State moved to dismiss the remaining counts.

On the day of the plea hearing, Aguirre signed a "Defendant's Acknowledgement of Rights and Entry of Plea," stating that he understood the rights he waived and that he knowingly entered into the plea agreement. The State recommended that Aguirre be sentenced to the low number in the appropriate sentencing grid box under the revised Kansas Sentencing Guidelines Act for each felony count, and 12 months jail time and a minimum fine for the misdemeanor charge related to the ignition interlock in case No. 20CR2004. Per the plea agreement, the State would recommend that each count within

each case to run concurrently while recommending that each case should run consecutive to each other and any prior cases. The State recommended that the statutory presumption would be imprisonment but agreed that Aguirre was free to argue otherwise.

As permitted by the plea agreement, Aguirre moved the district court for a dispositional and durational departure sentence, arguing he is a father of four children with a wife who is very supportive of him. He claimed his drug use played a strong role in his crimes and asked the court to order him to inpatient drug treatment rather than prison. Soon after his departure motion, Aguirre moved to withdraw his plea and asked the court to remove his trial counsel, Michael Studtmann, for ineffective assistance of counsel. Aguirre alleged in his pro se motion to withdraw his plea that Studtmann offered him false promises and misled him into signing the plea agreement. He also claimed that he accepted the plea agreement based on misinformation and that it was not fairly and knowingly made. Studtmann subsequently filed a motion to withdraw from representation of Aguirre. After holding a hearing on the two motions, the district court granted counsel's motion to withdraw, dismissed Aguirre's motion to remove counsel, and appointed new counsel for Aguirre.

Four months later, the district court held a hearing on the motion to withdraw plea. The motion to withdraw plea was not supplemented or amended by the newly appointed defense counsel and the issues before the district court remained unchanged. The district judge acknowledged that Aguirre's motion seemed to "implicate all three or all of the *Edgar* factors," however the only issue before the court was whether "he was guaranteed probation and treatment," by Studtmann, despite the language of the plea agreement. Aguirre did not object to or complain about the court's summary of his pro se motion.

Aguirre testified on his own behalf. He confirmed that Studtmann personally reviewed the plea agreement with him while he was in jail. He also testified that Studtmann explained the plea agreement but denied that Studtmann reviewed the specific

terms of the plea, especially the section in which the State recommended low numbers in the grid box for each felony, to have the cases run consecutive, and recommend statutory presumptive imprisonment. Aguirre testified that Studtmann told him not to worry and promised he would get probation with inpatient drug treatment. Aguirre stated he did not expect that it would be possible for him to receive a prison sentence based on the plea agreement he signed. He told the court that he did not notify the court of his concerns during the plea hearing because he "didn't know what [the State's position] meant at that time." Aguirre stated that he asked Studtmann about the State arguing for imprisonment during the plea hearing but was told "not to worry, that everything—that [he] was going to get probation since [he had] drug charges."

Aguirre swore he only realized that he might go to prison when he read his counsel's downward departure motion a month later and brought it to Studtmann's attention by sending him letters. Aguirre testified that he did not believe he could be going to prison under the plea and that if he had known, he would not have signed the plea agreement and would have taken his cases to trial. He testified that he signed the plea agreement based on what he believed was a promise of probation. Aguirre told the district court he tried to get ahold of Studtmann, and when that failed, he moved to withdraw his plea and remove Studtmann as counsel.

Aguirre acknowledged that during the plea hearing, he told the judge it was his signature on the plea agreement, he had read the agreement, and that Studtmann had explained the meaning, nature, and consequences of signing the plea agreement. He also recalled the district judge notifying him of his rights and the State reading the plea into the record. Aguirre also confirmed that the district court asked if he understood the State could recommend the statutory presumption of imprisonment and that he answered, "Yes." Aguirre acknowledged that the court was not bound by the plea agreement and the judge could impose any legal sentence that was appropriate.

Aguirre stated that he recalled the judge explaining the maximum amount of time for each count and then going through each count in each case separately. Aguirre remembered telling the court he was not threatened or forced to accept the guilty plea and he was satisfied with the services of his attorney. He was provided a copy of the plea agreement while in the jail, and went to his room to read it over, as requested by Studtmann. Aguirre testified he had some questions about the plea, but Studtmann never came to the jail to visit him. Despite remembering the district judge telling him the court could impose any sentence and it did not have to follow the plea agreement, Aguirre stated he still thought he would receive probation as he was promised and never thought he would go to prison for 236 months.

The State called Studtmann as a witness. Studtmann testified he typically prepares a letter or something in writing breaking down a plea agreement for his clients, and he prepared one for this case when he met with Aguirre at the jail. Studtmann explained the breakdown reviewed what counts would be dismissed, that a certain amount of time was being requested by the State for the one misdemeanor count, and the rest of the felony counts would be up to the district court to determine, whether it be probation or prison sentence. Studtmann testified he gave Aguirre the letter with the plea agreement two days before the plea hearing and went through every aspect of the documents as well as the evidence against Aguirre in each case. Studtmann recalled that it was a good plea agreement and he recommended it, as there was ample evidence, including video evidence, against Aguirre. Studtmann also said he informed Aguirre that a motion for departure would be the best option, because the State had good evidence and Aguirre would be looking at a longer sentence if he went to trial.

Studtmann testified he did not remember ever promising a client they would receive probation because it is something that needs to be argued in court and is decided by the judge, not by the plea agreement. He also stated that such a promise by an attorney would be unethical, and he does not promise any type of result in court. He would only

advise a client what would normally happen, based on his experience through similar cases, but each case has its own unique issues.

During his testimony, Studtmann stated he "believed [Aguirre] knew what he was doing at [that] point in time" and thought Aguirre was an intelligent person. Studtmann discussed with Aguirre the possible risk of being sentenced to prison, but believed Aguirre had a strong argument for probation because he genuinely wanted treatment and help for his drug problems and wanted to change his life for his family.

During cross-examination, Studtmann further testified that he met with Aguirre on an evening prior to the plea hearing, he believed on May 11, 2021. Again, Studtmann testified that in that meeting, Studtmann went through all of the details regarding each of Aguirre's charges and the evidence against him for each, along with the supplemental letter explaining the plea agreement. Studtmann said although he could not remember the reason, Aguirre did not sign the plea agreement when they met that evening but signed the agreement on the day of the hearing. When questioned if Studtmann remembered anything about Aguirre asking about the promised probation during the plea hearing, Studtmann testified that he did not remember having such a conversation. Studtmann reiterated that any attorney who promises probation is not being true to the code of ethics and professional responsibility, and that no attorney can ever promise an outcome because that is up to the judge. Studtmann recalled receiving letters from Aguirre stating he wanted to withdraw the plea but did not remember seeing anything about the promise of receiving probation in those letters.

After receiving testimony and hearing the parties' arguments, the district court denied Aguirre's motion to withdraw plea. The court found its decision came down to the credibility of the witnesses, "bolstered by a recognized rule of ethics [and] a recognized consequence to violating those rules of ethics." The district court found Studtmann's testimony to be more credible and the evidence did not support that Studtmann promised

Aguirre he would get probation. The court found that the weight of the evidence pointed to Aguirre knowing exactly what he was doing when signing the plea agreement, and the only evidence supporting Aguirre's version of events was his own testimony.

The district court sentenced Aguirre to a total of 236 months imprisonment between all cases and Aguirre filed timely notices of appeal in each of the four cases. We consolidated the four appeals—case Nos. 125,216, 125,217, 125,218, and 125,219 under the initial case No. 125,216.

THE DISTRICT COURT DID NOT ERR IN DENYING
AGUIRRE'S MOTION TO WITHDRAW HIS GUILTY PLEA

Aguirre argues on appeal that he presented good cause to withdraw his plea and the district court abused its discretion by denying the motion based on errors of fact. He claims the court's findings were not supported by substantial competent evidence. The State counters that Aguirre misstates the foundation of the district court's decision and is not entitled to relief. On our review of the record, we conclude that the district court did not abuse its discretion.

Applicable Legal Standards

Although K.S.A. 2022 Supp. 22-3602(a) broadly prohibits an appeal from a criminal conviction after a defendant has pleaded guilty, it does not preclude an appeal from the district court's denial of a motion to withdraw a plea under K.S.A. 2022 Supp. 22-3210(d). See *State v. Smith*, 311 Kan. 109, 122, 456 P.3d 1004 (2020) (stating Court of Appeals will have jurisdiction to consider an appeal from a district court's denial of defendant's motion to withdraw plea). "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. 2022 Supp. 22-3210(d)(1).

When determining whether a defendant has shown good cause to withdraw their plea, a district court commonly looks to the following three factors from *State v. Edgar*, 281 Kan. 30, 36, 127 P.3d 986 (2006): (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). 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). These factors establish "'viable benchmarks'" for the district court when exercising its discretion, but the "court should not ignore other factors that might exist in a particular case." *State v. Schaefer*, 305 Kan. 581, 588, 385 P.3d 918 (2016). See *Frazier*, 311 Kan. at 382 (noting "plea agreements are akin to civil contracts" and applying contract principles to the good cause showing).

Generally, appellate courts review a district court's decision to deny a motion to withdraw a guilty plea for an abuse of discretion. *Frazier*, 311 Kan. at 381. 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. [Citation omitted.]" *State v. Hutto*, 313 Kan. 741, 745, 490 P.3d 43 (2021).

The District Court Did Not Abuse Its Discretion.

On appeal, Aguirre claims the district court abused its discretion when denying his motion. Although he recites the *Edgar* factors to argue he showed good cause to withdraw his guilty plea, Aguirre does not specify which of the *Edgar* factors he believes is applicable to his case. Instead, he makes an overarching claim that the district court's findings were not supported by substantial competent evidence. He argues the court's

ruling erred in two primary ways: first by relying on Aguirre's prior experience with plea agreements, and then by relying on Studtmann's testimony.

Because Aguirre only argues that the district court's decision was based on errors of fact, we neither review the decision for an error of law nor whether it was arbitrary, fanciful, or unreasonable. See *State v. Gallegos*, 313 Kan. 262, 277, 485 P.3d 622 (2021) (Issues not adequately briefed are deemed waived or abandoned.). And, although Aguirre does not articulate his arguments within the technical *Edgar* framework, his ultimate argument—that Studtmann wrongly promised him a sentence of probation—suggests that all three *Edgar* factors could apply: (1) Aguirre claims his counsel was either incompetent or unethical; (2) Aguirre argues he was misled by the promise of probation to sign the plea agreement; and (3) that because of Studtmann's promise, Aguirre's plea was not understandingly or fairly made. See *Frazier*, 311 Kan. at 381 (discussing the *Edgar* factors).

We generally review the factual findings of a district court under the substantial competent evidence standard. *State v. Dooley*, 313 Kan. 815, 819, 491 P.3d 1250 (2021). Substantial competent evidence is "such legal and relevant evidence as a reasonable person might accept as being sufficient to support a conclusion." *State v. Smith*, 312 Kan. 876, 887, 482 P.3d 586 (2021).

1. *The District Court Did Not Rely on Earlier Plea Agreements.*

Aguirre first argues the district court erred by finding that he was aware of the consequences of the plea agreement given his prior criminal cases. Aguirre asserts that no evidence was presented to show that his previous experience with plea agreements allowed him to understand the circumstances in which he was placed in his current cases.

The district judge noted in its ruling that Aguirre had been sentenced twice before and those felony cases involved plea agreements. The judge stated, "You know how Plea Agreements work, Mr. Aguirre. You're experienced at it. You have a fairly extensive criminal history My point is this Plea Agreement is the third . . . you have signed, so you're experienced at how these things go."

The district judge's comments regarding Aguirre's past plea agreements were presumptive and no information about his prior plea agreements in other cases is available for our review. We are only provided a glimpse into Aguirre's prior history through his criminal history presentence investigation (PSI) report, but the PSI does not show whether cases were resolved through plea agreements. However, even if the district court's commentary lacked an evidentiary basis in the record, the comments are not critical to our review because the district court's decision was not solely based on the premise that Aguirre is experienced with plea agreements. The record contains enough other substantial evidence to support the district court's ultimate decision.

At the motion to withdraw plea hearing, the district court clearly identified the facts it used to support its ruling. The court outlined the discussions Studtmann testified to, during which he explained the plea agreement to Aguirre prior to the plea hearing. The court also focused on the events during the earlier plea hearing, over which the same judge presided.

During the motion hearing, the court reiterated that Aguirre himself confirmed that Studtmann visited him at the jail, reviewed the terms of the plea agreement, and left the plea agreement with Aguirre to review. The district court summarized the facts presented and found that the weight of the evidence was heavily against Aguirre.

Additionally, as the judge who also presided over the plea hearing, the district court based its decision on the acknowledgments Aguirre communicated during the plea

hearing. The record supports the count's recollection of the plea hearing, during which Aguirre answered a series of questions confirming that he understood the terms of the plea agreement.

"THE COURT: Do you understand that by pleading guilty you are admitting to the truth of the charges and every material fact contained in the charges and the Affidavit of Probable Cause?

"[AGUIRRE]: Yes, sir.

"THE COURT: I have two documents in my hands. One is a three-page Plea Agreement. The other is a four-page Acknowledgment of Rights and Entry of Plea. They both indicate your signature under today's date. Now, did you sign these documents?

"[AGUIRRE]: Yes, sir.

"THE COURT: Did you read them?

"[AGUIRRE]: Yes, sir.

"THE COURT: Has counsel explained to you the meaning, the nature, and the consequences of signing them?

"[AGUIRRE]: Yes, sir.

THE COURT: Do you understand what they say and what they mean?

"[AGUIRRE]: Yes, sir.

"THE COURT: Do you have any questions?

"[AGUIRRE]: Not at the moment."

The district court also reviewed the acknowledgment of rights document and confirmed that Aguirre understood the rights he would be waiving and that there would be no trial or the right to appeal. After asking the State to summarize the charges to which Aguirre would be pleading guilty, the court reaffirmed Aguirre understood that he could be possibly imprisoned or sent to jail in each case and that there were fines associated with the charges. Aguirre also answered in the affirmative when asked if he understood that the district court was not bound by the plea agreement and could impose any legal sentence appropriate, and the sentence could be greater if the counts were to run consecutive. The court also confirmed that Aguirre was not threatened or forced to accept

the guilty plea and that he had not consume alcohol, medication, or other drugs—impairing his comprehension medically or physically—and that he was of clear mind. Aguirre stated during the plea hearing he was satisfied with the service of his attorney, Studtmann, and after all the questions and answers, it was still his choice to proceed with the plea agreement.

Given all these details, the district court's findings were based on substantial competent evidence. Although the record on appeal does not support the district judge's dictum regarding Aguirre's prior plea agreements, the record is clear as to Aguirre's understanding of the plea agreement. On the contrary, other than arguing without evidence that he was promised probation and inpatient treatment by Studtmann, Aguirre's contradictory testimony was the only evidence supporting good cause to withdraw the plea. Aguirre did not deny acknowledging all the terms and the court's questions during the plea hearing and could not articulate why he failed to raise any issues during the plea hearing. Aguirre failed to establish he had good cause to withdraw his plea and the district court's ruling was supported by substantial competent evidence.

2. We Cannot Reweigh the Credibility of Witnesses

Aguirre also argues that the district court's finding that Studtmann was more credible was erroneous. It has been long held that this court does not reweigh the district court's credibility findings. *State v. Reu-El*, 306 Kan. 460, 472, 394 P.3d 884 (2017). Also, Aguirre's argument is conclusory and fails to present authority to support how the district court's credibility finding was erroneous. Failure to support a point with pertinent authority is like failing to brief the issue. *State v. Meggerson*, 312 Kan. 238, 246, 474 P.3d 761 (2020).

That said, the record sufficiently shows that the district court's credibility finding was supported by substantial competent evidence. The court found Studtmann's

testimony was more credible because it was bolstered by a recognized rule of ethics and consequences of violating such rules. The court took notice that Studtmann had practiced law since 1985 and practiced criminal law during his entire career. The judge stated, "I don't believe that for a second, that Mr. Studtmann would make a promise like that and expose his license on such a basic issue that we all are taught in Ethics 101: Never promise something you cannot deliver. He was absolutely right." The district court further found the evidence did not support Aguirre's testimony that Studtmann promised he would get probation, because Studtmann was aware of the code of ethics and professional responsibilities as an attorney.

The district court supported its findings by stating it was in the best position to determine witness credibility because it has a "powerful vantage point . . . in observing the witnesses as they testify. An appearance on the witness stand is perhaps the most discerning crucible for separating honesty and accuracy from misstatement." We agree, and as noted, must not reweigh the evidence. *Reu-El*, 306 Kan. at 472.

Conclusion

In summary, we find the district court did not abuse its discretion by denying Aguirre's motion to withdraw his plea. First, substantial competent evidence supports the district court's finding that Aguirre understood the consequences of the plea agreement. Second, Aguirre failed to show the court erred by finding Studtmann's testimony more credible and we do not reweigh the credibility of witnesses. As a result, we uphold the district court's denial of Aguirre's motion to withdraw plea.

Affirmed.