

NOT DESIGNATED FOR PUBLICATION

No. 126,355

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

CHARLES GARCIA COLLINS,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; SETH L. RUNDLE, judge. Submitted without oral argument.  
Opinion filed May 3, 2024. Affirmed.

*James M. Latta*, of Kansas Appellate Defender Office, for appellant.

*Robin L. Sommer*, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before ARNOLD-BURGER, C.J., MALONE and WARNER, JJ.

PER CURIAM: Charles Garcia Collins appeals the denial of his presentence motion to withdraw his guilty plea to one count of aggravated battery and two counts of battery. Collins argues that he established good cause to withdraw his plea because his counsel was ineffective, he was coerced into making his decision on the morning of trial, and he did not understand the nature of the plea or the rights he was giving up by entering it. Collins also argues that the district court erred by failing to rule on his pro se motion for reappointment of counsel handling his plea withdrawal, which Collins filed when his case

was suspended pending a competency evaluation. For the reasons explained below, we reject Collins' claims and affirm the district court's judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND

After a violent domestic incident involving Collins, his then girlfriend, and her children, the State charged Collins with two counts of aggravated battery, one count of aggravated domestic battery, two counts of domestic battery, and one count of battery. At Collins' preliminary hearing, the district court permitted the State to amend its charging document to add a count of aggravated kidnapping. The State later filed an amended information, converting one count of domestic battery to a count of battery.

On the morning of Collins' trial, the parties informed the district court that they had reached a plea agreement, under which Collins would plead guilty to one count of aggravated battery and two counts of misdemeanor battery in exchange for the State's dismissal of the remaining counts. Before accepting Collins' plea, the district court asked the State to recite the terms of the plea deal, which Collins confirmed adhered to his understanding of the parties' agreement. The district court then informed Collins of the sentencing range associated with the charges and reviewed the rights Collins would be waiving through his plea. Collins stated that he understood the terms of the agreement and that he was entering the plea of his own free will. The district court then asked about the factual basis for Collins' plea, found there was a factual basis for the plea, and determined that the plea was knowingly, voluntarily, and intelligently entered.

A week later, Collins filed a pro se "Motion to Withdraw Plea Bargain," in which he argued that he was not granted sufficient time to consider the State's offer, that he did not fully understand the deal, that he received ineffective assistance from his counsel, and that he had been "mistreated, misled and unfairly taken advantage of while unprepared."

The next week, the district court held a status conference and Collins' plea counsel, Gerard Scott, withdrew from the case.

Following Scott's withdrawal, the district court appointed several different attorneys to represent Scott, all of whom were later removed from the case based on Scott's motions. The district court finally appointed Stephen Brave, who would represent Collins for the rest of the case. Once Brave was appointed, he promptly moved to determine whether Collins was competent to assist in the proceedings. The district court granted the motion and removed the case from the docket pending the competency evaluation. Four days after his case was removed from the docket, Collins filed a pro se motion entitled "Motion For Reappointment Of Counsel Due To Ineffective Assistance." The clerk of the district court sent a letter to Brave notifying him of the pro se motion and informing him that "no hearings have been scheduled or further action will be taken at this time." The letter included a certificate of service to Collins and the district attorney's office signed by the deputy clerk. Ultimately, the district court found Collins competent to assist in the proceedings.

The district court held an evidentiary hearing on the motion to withdraw plea on February 10, 2023. At the start of the hearing, the district court asked whether there were any preliminary matters to address, and neither party raised any. Both Collins and Scott testified at the hearing. Collins focused on Scott's alleged failure to communicate with him or to prepare a defense on his behalf. He asserted that Scott ignored his calls, emails, and letters, and that they argued about the nature of the charges when Scott met with him in the jail on the night before trial. Collins did not remember speaking with Scott about any plea offers from the State that evening. Collins stated that the next morning, he asked Scott to seek a continuance, but Scott failed to do so, and instead insisted that he should take the State's plea offer. With the trial about to begin, Collins testified that he took the plea because he felt trapped and believed Scott had not prepared any trial strategy. He also stated that he did not understand the terms of the agreement and that he was only

given 10 minutes to decide whether to take the deal. Finally, he asserted that Scott had forged his signature on the acknowledgment of rights and entry of plea form, although he subsequently admitted that he signed them.

Scott's testimony refuted most of Collins' claims. Scott explained he began communicating with Collins through email and letters as soon as he was appointed to the case. According to Scott, Collins did not deny doing the charged acts but told Scott that he believed he had only committed a domestic battery. Scott told Collins that he disagreed, telling him that his girlfriend's broken jaw meant the State had a strong case for aggravated battery, on top of the kidnapping charge. During their meeting on the night before trial, Scott recalled that Collins asked him to approach the State for a more beneficial plea deal, but Scott had doubts that any better deal could be negotiated. Scott testified that despite his disagreements with Collins on strategy, he had reviewed the materials and was prepared to defend Collins at trial. Scott testified that on the morning of the trial, the State offered a similar deal to the one it had extended after the preliminary hearing. Scott said after talking to Collins that Collins thought "it was a decent deal under the circumstances, but [Collins] kept thinking that he could get something better." Scott testified that Collins told him that he would just accept the deal and then move to withdraw his plea, apparently believing this would improve his bargaining power. Scott told Collins that this plan would not work, but Collins took the plea offer anyway.

After hearing the evidence, the district court found that Collins "has not established good cause to withdraw his plea." The district court's ruling makes clear that it found Scott's testimony more credible than Collins'. The district court found that Scott did not provide ineffective assistance of counsel, that Collins was not mistreated, coerced, or taken advantage of, and that Collins had knowingly and voluntarily entered his plea. As for Collins' motive in entering his plea with the intent of immediately moving to withdraw it, the district court found that permitting such a strategy "would be tantamount to ratifying a right to perpetrate fraud on the court." After denying Collins'

motion, the district court followed the plea negotiations and sentenced Collins to 172 months' imprisonment. Collins timely appealed the district court's judgment.

DID THE DISTRICT COURT ERR IN DENYING COLLINS'  
PRESENTENCE MOTION TO WITHDRAW HIS PLEA?

Collins argues that the district court abused its discretion when it denied his presentence motion to withdraw his plea because he was not represented by competent counsel, was coerced into entering his plea, and did not understand the agreement. The State contends the district court did not abuse its discretion in denying the motion.

A motion to withdraw plea is governed by K.S.A. 22-3210(d), and the decision on whether to grant such a motion is left to the sound discretion of the district court. Judicial discretion is abused if the decision is arbitrary, fanciful, or unreasonable; based on an error of law; or based on an error of fact. *State v. Frazier*, 311 Kan. 378, 381, 461 P.3d 43 (2020). In reviewing the district court's denial of Collins' presentence motion to withdraw his plea, this court will not reweigh the evidence or assess witness credibility and must give deference to the district court's findings of fact. *State v. Anderson*, 291 Kan. 849, 855, 249 P.3d 425 (2011). Collins bears the burden to establish any abuse of discretion. See *State v. DeAnda*, 307 Kan. 500, 503, 411 P.3d 330 (2018).

Under K.S.A. 22-3210(d)(1), a defendant may withdraw a plea at any time before sentencing "for good cause shown." In considering whether a defendant has shown good cause, the district court looks to at least three 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. *Frazier*, 311 Kan. at 381 (citing *State v. Edgar*, 281 Kan. 30, 36, 127 P.3d 986 [2006]). These factors, often called the *Edgar* factors, "need not apply in a defendant's favor in every case, and other factors may be duly considered in the district

judge's discretionary decision on the existence or nonexistence of good cause." *State v. Macias-Medina*, 293 Kan. 833, 837, 268 P.3d 1201 (2012).

Collins asserts that all three of the *Edgar* factors establish good cause to withdraw his plea. He argues: (1) he received lackluster advocacy from his plea counsel, Scott, who allegedly failed to communicate with him or prepare a defense on his behalf; (2) he was coerced in entering his plea by only being afforded 10 minutes to consider the State's offer; and (3) he did not understand the nature of the agreement he entered into. We will examine each of these factors in turn.

*Representation by competent counsel*

Collins argues that his plea counsel's "[t]wo or three short, in-person visits" were "worthless" because they failed to produce any "trial defense or plea discussion." At the evidentiary hearing on Collins' motion, Scott confirmed that he had only met with Collins in person two times before Collins accepted the plea deal. But Scott also explained that because of Collins being held in another county, they had communicated via email and letters throughout his representation. Scott explained that they had discussed the severity of the charged offenses even though Collins was reluctant to discuss his account of the events underlying the offenses and discounted his girlfriend's injuries. Scott also testified that he had been fully prepared to proceed to trial if Collins desired to exercise his right to a jury trial rather than accepting the State's plea offer. For his part, Collins asserted that he and Scott never discussed trial strategies.

The district court addressed Collins' allegations of his counsel's lack of a defense but found them unpersuasive, crediting Scott's testimony that Collins was uncooperative, noting the strength of the State's case, and explaining that a defendant "always has the defense of the burden of proof beyond a reasonable doubt." And the court noted that Scott "successfully negotiated the resurrection of a plea offer highly favorable to

[Collins]." The district court could observe the testimony of both Collins and Scott, and it found Scott's recollection to be more persuasive—this court cannot second guess that judgment. See *Anderson*, 291 Kan. at 855. The record does not support Collins' claim that he received ineffective assistance from his plea counsel. Thus, the first *Edgar* factor weighs against Collins' claim that he established good cause to withdraw his plea.

### *Coercion*

Next, Collins claims he was coerced into making his plea because he was only given 10 minutes to choose between exercising his right to a jury trial or accepting the State's deal. Collins does not expand on how he was coerced beyond claiming that he felt trapped when making his decision. Contrary to Collins' contention that he was coerced and pressured, the record reflects that during his plea colloquy, he told the district court that he was entering his plea of his own free will. Although the plea hearing transcript does not reveal how long Collins was given that morning, Scott recalled that the district court granted a significant amount of time for Collins to consider whether to accept the State's plea offer. Moreover, the State's plea deal offered on the morning of trial was very similar to the one offered after his preliminary hearing almost a year before the plea. Scott did not believe that Collins was coerced into accepting the plea deal on the morning of the trial. The lack of any indicia of coercion or pressure in the record, other than the lengthy sentence Collins could expect if he proceeded to trial and was convicted, supports the district court's finding on the second *Edgar* factor.

### *A knowing and intelligent plea*

Finally, Collins asserts that he did not understand the nature of the plea agreement because of the pressure of his decision and the lack of time he was given to reach it. During the plea hearing, the district court informed Collins of the nature of the charges and of his constitutional rights that were waived upon his plea of guilty. The district court

also told Collins about the maximum penalties he could face. The plea hearing transcript shows Collins entered his plea understandingly and voluntarily. The judge observed Collins when he stated he understood the nature of the charges against him, the constitutional rights he was giving up, and the consequences of his plea. The district court is allowed to consider the plea colloquy as a factor in deciding whether to grant a motion to withdraw a plea. See *State v. Schaefer*, 305 Kan. 581, 595, 385 P.3d 918 (2016).

Scott testified that he not only believed Collins understood the plea agreement and its impact, but he also testified that Collins divulged to him that he would accept the plea agreement to attempt to use it to his advantage. The district court credited this testimony, finding that Collins not only entered his plea knowingly but intended to turn around and attempt to withdraw the plea to somehow strengthen his bargaining power with the State. The district court stated:

"The evidence established that [Collins] knowingly, intelligently, and voluntarily waived his trial rights, pled guilty because he was in fact guilty, and pled guilty in bad faith to avoid the jeopardy of a jury trial for kidnapping so that he could obtain additional time to attempt negotiation of a more favorable plea agreement.

....

"[Collins] entered his plea in bad faith. He entered the plea for two related purposes. The first purpose was to delay the start of jury trial. He intended to enter the plea so the jury would be dismissed. He intended to then move to withdraw his plea so that he could negotiate a more favorable plea agreement than offered by the State on the morning of the jury trial."

In short, Collins' ill-fated plan to try to manipulate the plea process illustrates that he understood the nature of the bargain into which he was entering, even if he misinterpreted the possibility that his plan would succeed. Thus, the third *Edgar* factor weighs against Collins' claim that he established good cause to withdraw his plea. Collins



fails to show that the district court abused its discretion in denying his motion to withdraw the plea.

DID THE DISTRICT COURT ERR IN FAILING TO ADDRESS COLLINS'  
PRO SE MOTION FOR REAPPOINTMENT OF COUNSEL?

Next, Collins claims this case must be remanded because the district court failed to rule on his pro se motion for reappointment of counsel, which he filed after the district court ordered a competency evaluation but before the court found Collins competent to proceed. Collins asserts the district court abused its discretion by failing to perform any inquiry about an alleged conflict of interest with the attorney who represented him on his motion to withdraw his plea and at sentencing. The State asserts that the case should not be remanded for a ruling on the motion for new counsel "that was filed when the case was off docket to determine competency and not refiled thereafter."

To review the facts, following the removal of several attorneys who had been appointed to represent Collins, the district court appointed Brave to represent Collins on his motion to withdraw his plea and for the rest of the case. Brave promptly moved to determine whether Collins was competent to assist in the proceedings. The district court granted the motion and removed the case from the docket pending the competency evaluation. Four days later, Collins filed a pro se motion to remove Brave due to ineffective assistance of counsel. The clerk of the district court sent a letter to Brave notifying him of the pro se motion and stating that "no hearings have been scheduled or further action will be taken at this time." The letter included a certificate of service to Collins and the district attorney's office. The district court later found Collins competent to assist in the proceedings. About a month after the district court found Collins competent to proceed, it held an evidentiary hearing on Collins' motion to withdraw his plea. Collins did not object to Brave representing him at the hearing, and he never reasserted his motion to remove Brave as counsel. Collins did not complain about Brave's

representation at the sentencing hearing held two months later, even though the district court allowed him to make a statement at the sentencing hearing.

District courts are required to ensure that a defendant's right to conflict-free counsel under the Sixth Amendment to the United States Constitution is honored. *State v. Sharkey*, 299 Kan. 87, 96, 322 P.3d 325 (2014). In order to fulfill this duty, when the district court learns about a possible conflict of interest between an attorney and a defendant charged with a felony, the court has a duty to inquire further. 299 Kan. at 96. "A district court abuses its discretion if it becomes aware of a potential conflict of interest between a defendant and his or her attorney but fails to conduct an inquiry." *State v. Pfannenstiel*, 302 Kan. 747, Syl. ¶ 5, 357 P.3d 877 (2015).

Collins argues that the district court learned about a potential conflict between himself and his counsel when he filed a pro se motion for reappointment alleging his counsel was ineffective. He contends the district court abused its discretion by failing to rule on his motion for reappointment of counsel or otherwise address the alleged conflict with his attorney. Collins' argument fails on two grounds. First, when Collins filed his pro se motion his case was suspended pending his competency evaluation, and Collins failed to reassert his motion after the district court found him competent to assist in the proceedings. Second, despite Collins' categorization of his motion on appeal, he did not sufficiently assert any conflict of interest with his attorney.

When a district court orders a competency evaluation because it finds that there is reason to believe a defendant is incompetent, K.S.A. 22-3302(a) mandates that "the proceedings shall be suspended" and the district court is effectively deprived of jurisdiction until a judicial determination is made that the defendant is competent. *State v. Trotter*, 296 Kan. 898, 903, 295 P.3d 1039 (2013) ("The only proceedings that may occur in that situation are those related to the determination of competency. Only after a judicial determination that the defendant is competent may the proceeding resume."). Per

K.S.A. 22-3202(a), when Collins filed his pro se motion for reappointment of counsel his case was suspended pending the completion of a competency evaluation. The district court notified the parties that no action would be taken on the motion "at this time." Collins did not reassert his motion once he was found competent and the district court regained jurisdiction over the case. When the district court held an evidentiary hearing on the motion to withdraw the plea, Collins did not object to Brave representing him at the hearing. Likewise, Collins did not object to Brave representing him at the sentencing hearing held two months after the hearing on the motion to withdraw the plea.

Moreover, although Collins asserts on appeal that his motion raised a potential conflict of interest with Brave, this categorization does not fairly describe the nature of the allegations in his motion. A conflict of interests exists when an attorney is put in a position where divided loyalty is likely, "and can include situations in which the caliber of an attorney's services 'may be substantially diluted.'" *Pfannenstiel*, 302 Kan. at 758. In his motion, Collins alleged that Brave was ineffective and had failed to provide him with transcripts, and made him feel he was being deprived of a proper defense. He also asserted that Brave told him that "[h]e believe[d] nothing I have to say." While Collins' motion shows that he was dissatisfied with Brave's counsel, it does not indicate that Brave's loyalty was divided, nor that any other potential conflict existed that would have undermined his representation.

Only when a defendant's pro se motion alleges a possible conflict of interest between the defendant and counsel does the district court have a duty to inquire into the nature of the conflict to determine whether substitute counsel is needed. *Sharkey*, 299 Kan. at 96. Under the facts presented here, we find that the district court's duty to inquire into Collins' alleged conflict of interest with his attorney was not triggered. Thus, we reject Collins' claim that the case must now be remanded for the district court to address Collins' motion for reappointment of counsel.

Affirmed.