DA 18-0460

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 122N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOSEPH DEE WALBRIDGE,

Defendant and Appellant.

APPEAL FROM: District Court of the Nineteenth Judicial District,
In and For the County of Lincoln, Cause No. DC-16-28
Honorable Matthew Cuffe, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Nick K. Brooke, Smith & Stephens, P.C., Missoula, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, J. Stuart Segrest, Assistant Attorney General, Helena, Montana

Marcia Boris, Lincoln County Attorney, Libby, Montana

Submitted on Briefs: May 1, 2019

Decided: May 28, 2019

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Appellant Joseph Dee Walbridge (Walbridge) appeals the denial of his motion to withdraw his guilty plea, without a hearing, by the Montana Nineteenth Judicial District Court, Lincoln County.

¶3 On December 14, 2015, Walbridge was charged with two counts of sexual intercourse without consent, in violation of § 45-5-503, MCA. On January 30, 2017, Walbridge entered into a plea agreement with the State that provided for his entry of guilty pleas to reduced charges of two counts of criminal endangerment, in violation of § 45-5-207, MCA. The plea agreement stated the State would recommend, at sentencing, that "[t]he Defendant shall complete a Sexual Offender Evaluation and comply with any recommendations."

¶4 At the change of plea hearing on January 30, 2017, the court inquired into Walbridge's state of mind, his understanding of the plea agreement, the representation of his counsel, and other issues. The court determined that Walbridge was not subject to any undue influence in deciding to change his plea. When the court asked whether Walbridge understood the terms of the plea agreement when he signed it with his attorney, Walbridge

answered, "[f]ully. I fully understand." When the court asked whether Walbridge was prepared to plead to the charges and whether there was any reason that they should not proceed with the plea, Walbridge stated he was prepared to enter a plea and pled guilty to both counts of criminal endangerment. The court stated Walbridge was "acting under the advice of competent counsel" and was entering his plea "voluntarily, knowingly and intelligently."

¶5 Then, the following conversation took place regarding Walbridge's sexual offender evaluation, which the court imposed as part of Walbridge's pre-sentence investigation:

> The [c]ourt: Now part of this pre-sentence investigation will include a sexual offender evaluation, and so to the extent that this has to be factored into our timing, let me know and we will set it for whenever works for you.
>
> . . .
>
> The State: . . . I guess just for clarity, the [c]ourt is ordering that he undergo a sex offender evaluation, is that correct?
>
> The [c]ourt: Yes, I hope that is what I just said. If it is not, that is what I am saying right now. Anything else from [defense counsel]?
>
> Defense counsel: No, sir.

¶6 Walbridge's completed pre-sentence investigation indicated that he failed to complete the sexual offender evaluation despite "already agree[ing] to do this evaluation when he changed his plea before the [c]ourt on January 30, 2017." At Walbridge's sentencing hearing on April 10, 2017, the State notified the court that Walbridge may have breached the plea agreement by failing to complete the sexual offender evaluation. The

State elected to stick to its previous bargain. Regarding the possible breach of the plea agreement, Walbridge stated:

> I just want to say for refusing the eval, I didn't realize when I signed it that it was a sexual offender's eval. My apologies, it is no one's fault except for my own because I was over excited over the amended charges. I would really like that to be noted that I didn't realize it was—it was a non-sex offense and I wouldn't have signed my plea agreement otherwise if I had known that the eval was a sexual offender eval.

The court sentenced Walbridge to ten years in the Montana State Prison, none suspended, on count one, and ten years in the Montana State Prison, seven years suspended, on count two, to run consecutively. The court also ordered that Walbridge complete the sexual offender evaluation prior to any release, noting it was "part of the original deal."

¶7 About a year later, on April 4, 2018, Walbridge moved to withdraw his guilty pleas, arguing he entered them without "a complete understanding of the plea agreement and the consequences of his guilty plea." Walbridge also asserted he received ineffective assistance of counsel because his attorney "failed to give [him] adequate information on the nature of his guilty plea and the plea agreement" and that his attorney refused to help him withdraw his guilty plea after Walbridge realized he was subject to the evaluation requirement. The court denied the motion without a hearing, but entered a lengthy order, relying on the record from the change of plea and sentencing hearings, as well as the "plain and straightforward" nature of the plea agreement. The court reasoned that Walbridge had entered his plea voluntarily after being "interrogated regarding his knowledge and voluntariness in accepting the plea offer," received the benefit of the favorable bargain

made in the plea agreement, did not promptly assert a desire to withdraw his plea, and that Walbridge's allegation of ineffective assistance of counsel had no bearing upon the entry of his plea.

¶8 Walbridge appeals the court's denial of his motion to withdraw without a hearing, seeking reversal and remand for a hearing, including his assertions that his plea was involuntary and that he received ineffective assistance of counsel. Walbridge argues his plea was not voluntary, knowing, and intelligent because he did not know about the sexual offender evaluation.

¶9 A guilty plea must be voluntary, knowing, and intelligent. *State v. Garner*, 2014 MT 312, ¶ 26, 377 Mont. 173, 339 P.3d 1. This Court has explained that the touchstone of this inquiry is voluntariness. *State v. Lone Elk*, 2005 MT 56, ¶ 14, 326 Mont. 214, 108 P.3d 500, *overruled in part by State v. Brinson*, 2009 MT 200, ¶ 9, 351 Mont. 136, 210 P.3d 164. If a plea was made involuntarily, a court may allow it to be withdrawn within one year from final judgment. *Garner*, ¶ 26; *State v. Warclub*, 2005 MT 149, ¶ 16, 327 Mont. 352, 114 P.3d 254; § 46-16-105(2), MCA. To determine the voluntariness of a plea, the Court considers "all of the relevant circumstances surrounding it" and "case-specific considerations including the adequacy of the plea colloquy, the benefit the defendant obtained from the plea agreement, and the timing of the motion to withdraw." *Garner*, ¶ 26 (internal quotations and citations omitted); *see also State v. McFarlane*, 2008 MT 18, ¶¶ 26-27, 341 Mont. 166, 176 P.3d 1057. If the record leaves genuine doubt as to whether a defendant misunderstood the nature of his plea, that doubt should be resolved in the

defendant's favor. *State v. Rave*, 2005 MT 78, ¶ 19, 326 Mont. 398, 109 P.3d 753. On the other hand, "[i]f the defendant was aware of the consequences of the plea, and if the plea was not induced by threats, misrepresentation, or improper promises, we will not overturn a district court's denial of a motion to withdraw plea." *Garner*, ¶ 26.

¶10 The voluntariness of a plea presents "a mixed question of law and fact," and, as such, "we review a district court's ruling on a motion to withdraw a guilty plea de novo." *State v. Terronez*, 2017 MT 296, ¶ 18, 389 Mont. 421, 406 P.3d 947. Denial of an evidentiary hearing is reviewed for a clear abuse of discretion, which occurs when a court "acts arbitrarily without the employment of conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice." *Terronez*, ¶ 19.

¶11 Our review of the record reveals that, first, the written plea agreement entered into by Walbridge clearly stated that, upon sentencing, the State would recommend that "[t]he Defendant shall complete a Sexual Offender Evaluation and comply with any recommendations." That recommendation—one of only four—was written directly below the charges to which Walbridge was pleading. Those terms permitted the State to withdraw from the agreement if Walbridge failed or refused to comply with any of the agreement terms. The agreement was only two pages long, and Walbridge acknowledged reviewing the terms with his counsel, acknowledged the terms by initialing each page, and signed at the end.

¶12 Second, during the change of plea hearing, the District Court questioned Walbridge extensively to determine his understanding of the proceedings. The court asked Walbridge

whether he had seen the Acknowledgement of Rights and Plea Agreement. Walbridge confirmed that he had. The court then asked whether Walbridge had initialed each page and signed the document. Walbridge confirmed that he had. The court then asked Walbridge, "[d]o you understand the terms of this agreement when you signed those with your attorney?" Walbridge responded, "[f]ully. I fully understand." Walbridge then also stated that he understood that the court was not bound by the terms of the agreement. The court confirmed with Walbridge that there would be a pre-sentence investigation prior to sentencing, and that Walbridge was waiving various rights by choosing to plead guilty. Walbridge also confirmed that he understood he would not be entitled to withdraw his plea if the court did not follow the agreement.

¶13 Based on this colloquy, the court concluded Walbridge was acting under the advice of competent counsel; that he understood his rights; that he was not under the influence of alcohol or drugs or suffering from any mental, physical, or emotional disability; that no threats had been made against him, or promises made in exchange for his admissions; that he was competent to aid in his own defense; and that his plea was entered voluntarily, knowingly, and intelligently.

¶14 Then, immediately following, the court stated in open court, in the presence of Walbridge, that a pre-sentence investigation would be completed, and that investigation would include a sexual offender evaluation. When asked by the court if there was anything else to consider, the prosecutor asked the court to clarify that Walbridge would need to undergo a sexual offender evaluation. The court explicitly confirmed that Walbridge was

required to complete a sexual offender evaluation as part of the pre-sentence investigation, and, as quoted above, further emphasized the requirement so that there was no misunderstanding about it. When the court then asked Walbridge if he had anything else to add, neither Walbridge nor his attorney objected, questioned, or disputed the sexual offender evaluation requirement the court had just emphasized.

¶15 The record further supports the District Court's assessment of other factors of voluntariness, including that Walbridge received a significant benefit from the plea agreement, *see Garner*, ¶ 28, which resulted in dismissal of two felony counts of sexual intercourse without consent, the maximum punishment for which is 100 years imprisonment per count charged or a life sentence in prison. Walbridge instead was sentenced to ten years in the Montana State Prison on count one, and ten years with seven years suspended on count two. Also, Walbridge's motion to withdraw his plea, although made within the one-year statutory period pursuant to § 46-16-105(2), MCA, was filed over one year after his plea was entered. "We have previously found that such a delay may weigh against the defendant." *Garner*, ¶ 28 (citing *McFarlane*, ¶ 19). This corresponds to Walbridge's lack of objection during the sentencing hearing. Instead, he made a statement taking responsibility for his asserted lack of understanding, and thereafter continued with the hearing.

¶16 As he did to the District Court, Walbridge also asserts he received ineffective assistance of counsel because his counsel failed to adequately inform him about the sexual offender evaluation at the time of his plea, and thereafter refused to help Walbridge

withdraw his plea. Ineffective assistance of counsel can constitute good cause for withdrawal of a plea, because "the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Terronez*, ¶ 28 (internal citations and quotations omitted). However, we cannot conclude that ineffectiveness has been established here. First, the claim that counsel failed to assist Walbridge to withdraw his plea would have occurred, as the District Court noted, after the plea was entered, and did not impact the voluntariness of the plea. Second, Walbridge's claimed misunderstanding about the evaluation is not only contradicted by the plea agreement he initialed and signed, but also by the change of plea hearing, in which the issue was specifically and repeatedly discussed in open court, and the court emphasized the requirement to remove any misunderstanding. We could analyze the ineffectiveness issue more broadly to assess counsel's performance overall, such as acquiring the favorable plea agreement, but further analysis is unnecessary here.

¶17 An evidentiary hearing may have been the prudent course, given that Walbridge made allegations against his counsel that occurred outside of the record, but we conclude there was no error. "A hearing on a request to withdraw a plea is not expressly mandated as a matter of law," *Terronez*, ¶ 25, and we conclude the District Court did not abuse its discretion by failing to conduct a hearing under these circumstances. The record supports the District Court's determination that Walbridge entered his plea knowingly and voluntarily.

¶18 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's conclusions of law were correct.

¶19 Affirmed.

/S/ JIM RICE

We concur:

/S/ INGRID GUSTAFSON
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR
/S/ LAURIE McKINNON