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1. [Mohamed v. State, 2003 Minn. App. LEXIS 733](#)

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Mohamed v. State

Court of Appeals of Minnesota

June 17, 2003, Filed

C6-02-1999, C7-02-2000, C9-02-2001

Reporter

2003 Minn. App. LEXIS 733 *; 2003 WL 21386283

Abdirashid Iman Mohamed, petitioner, Appellant, vs.
State of Minnesota, Respondent.

Notice: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

Prior History: Ramsey County District Court. File No. K3-98-668. Hon. Margaret M. Marrinan.

Disposition: Affirmed.

Core Terms

guilty plea, district court, birth date, withdraw, postconviction, manifest injustice, immigration, argues, cases, ineffective assistance of counsel, credibility, convicted, interview, innocent, card, appearance, domestic

Case Summary

Procedural Posture

Defendant filed motions for postconviction relief in the Ramsey County, Minnesota, District Court, challenging three prior convictions and seeking to withdraw his guilty pleas in each case. The trial court denied relief. Defendant appealed.

Overview

Defendant came to the United States from Somalia in 1992. His records at the time gave his birth date as 2 July 1985. Defendant later obtained a green card showing his date of birth as 10 June 1978. Defendant pleaded guilty to theft of a motor vehicle in 1998, fifth-degree domestic assault in 2001, and giving a false name to a peace officer in 2002. Defendant sought to vacate the convictions on the grounds that his true date of birth was 1985, and, therefore, he had been a

juvenile when the convictions were entered. Defendant also claimed he was innocent of the first 2 offenses and that he had been denied effective assistance of counsel. The appellate court held that defendant had not shown he was entitled to relief. Defendant's claim that he was actually 7 years younger was not credible, especially considering that defendant would have been only 12 years old at the time of the first conviction and that he was facing deportation if the convictions stood. Self-serving affidavits from defendant and his girlfriend, the alleged victim of the second offense, were insufficient to establish actual innocence. Defendant had not shown ineffective assistance of counsel in any of the cases.

Outcome

The judgments were affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > Postconviction Proceedings > General Overview

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > General Overview

[HN1](#) **Criminal Law & Procedure, Postconviction Proceedings**

The decisions of a postconviction court will not be disturbed unless the court abused its discretion. A petitioner seeking postconviction relief has the burden of establishing, by a fair preponderance of the evidence, facts that warrant relief. [Minn. Stat. § 590.04, subd. 3](#) (2002).

Civil Procedure > Judicial

Officers > Judges > Discretionary Powers

an ineffective assistance claim.

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > General Overview

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Allocution & Colloquy

Criminal Law & Procedure > Postconviction Proceedings > General Overview

International Law > Individuals & Sovereign States > Citizenship

[HN2](#) **Judges, Discretionary Powers**

As the finder of fact, the trial court is considered the best judge of witness credibility, absent a clear abuse of discretion.

[HN5](#) **Guilty Pleas, Allocution & Colloquy**

A defendant must show actual prejudice to obtain relief for violations of the Vienna Convention.

Criminal Law & Procedure > Counsel > Effective Assistance of Counsel > Tests for Ineffective Assistance of Counsel

Criminal Law & Procedure > Preliminary Proceedings > Entry of Pleas > Changes & Withdrawals

[HN3](#) **Effective Assistance of Counsel, Tests for Ineffective Assistance of Counsel**

To prevail on a claim of ineffective assistance of counsel, the defendant must affirmatively prove that his counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Effective assistance of counsel is presumed.

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > General Overview

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Changes & Withdrawals

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > General Overview

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > Guilty Pleas

[HN6](#) **Entry of Pleas, Changes & Withdrawals**

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Allocution & Colloquy

A district court has broad discretion in deciding whether to permit withdrawal of a guilty plea. An appellate court will reverse that determination only if it can fairly be concluded that the district court abused its discretion.

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > General Overview

Criminal Law & Procedure > Counsel > Effective Assistance of Counsel > General Overview

Criminal Law & Procedure > Preliminary Proceedings > Entry of Pleas > Changes & Withdrawals

Criminal Law & Procedure > Counsel > Effective Assistance of Counsel > Pleas

Criminal Law & Procedure > Preliminary Proceedings > Entry of Pleas > General Overview

[HN4](#) **Guilty Pleas, Allocution & Colloquy**

Failure to inform a defendant of immigration consequences of a guilty plea cannot form the basis of

Criminal Law & Procedure > ... > Entry of Pleas > Types of Pleas > General Overview

Criminal Law & Procedure > ... > Entry of

Pleas > Guilty Pleas > General Overview

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Changes & Withdrawals

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Knowing & Intelligent Requirement

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Voluntariness

[HN7](#) Entry of Pleas, Changes & Withdrawals

In general, a criminal defendant has no absolute right to withdraw a guilty plea once it has been entered. [Minn. R. Crim. P. 15.05](#) provides two bases for withdrawal of a guilty plea. The first allows withdrawal of a guilty plea if it is necessary to correct a manifest injustice. [Minn. R. Crim. P. 15.05, subd. 1](#). A manifest justice exists if a guilty plea is not accurate, voluntary, and intelligent. In determining whether withdrawal would be fair and just, the district court must give due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea. [Minn. R. Crim. P. 15.05, subd. 2](#). The burden is on the defendant to prove that there is a fair and just reason to withdraw his guilty plea.

Counsel: Herbert Igbanugo, Blackwell Igbanugo P.A., Minneapolis, MN (for appellant).

Mike Hatch, Attorney General, St. Paul, MN; and Susan Gaertner, Ramsey County Attorney, Mark Lystig, Assistant County Attorney, St. Paul, MN (for respondent).

Judges: Considered and decided by Randall, Presiding Judge, Kalitowski, Judge, and Schumacher, Judge.

Opinion by: Randall

Opinion

UNPUBLISHED OPINION

RANDALL, Judge

In this appeal from the denial of his petitions for postconviction relief, appellant contends that the district

court lacked jurisdiction to accept his guilty plea on his underlying crimes and, thus, the district court improperly denied his petitions for postconviction relief. Appellant argues that he was innocent of two of the three crimes, was a juvenile being handled in adult court, received ineffective assistance of counsel in his convictions, and, therefore, should be allowed to withdraw his guilty pleas to correct a manifest injustice. Because we find no abuse of the district court's discretion, **[*2]** we affirm.

FACTS

Appellant emigrated with his family to the United States from Somalia on July 7, 1992, as a refugee fleeing the civil war in Somalia. His immigration status was changed to permanent resident on October 7, 1993. Before being allowed into this country, appellant's family was interviewed in Kenya based on their application for refugee status. During this interview, appellant's birth date was stated to be July 2, 1985. This same date was also given in another interview with the INS once appellant sought permanent residence status while in this country.

Some time after his permanent residence status was granted, appellant applied for a replacement green card. In this application, he listed a different birth date that made appellant seven years older, to-wit: 6/10/78. It appears that the INS did not check this application against appellant's records; instead, they issued the replacement green card with this birth date without objection. Appellant claims he gave the INS this false birth date to be eligible for employment.

On March 10, 1998, appellant pleaded guilty to theft of a motor vehicle. On October 22, 2001, appellant pleaded guilty to fifth-degree **[*3]** domestic assault. Finally, on March 1, 2002, he was convicted of giving a false name to a peace officer. In all three of these cases, appellant represented that he was born on 6/10/78 (either affirmatively or implicitly by never stating otherwise when all records used in the cases listed 6/10/78 as his birth date). Appellant never informed either the district court or the prosecutor that his green card was inaccurate and everyone involved accepted this as his true birth date.

Appellant brought postconviction petitions seeking to vacate his three convictions on a variety of grounds. First, he claimed that his true age (he claims 7/2/85 as his true birth date) made him a juvenile and, thus, the district court lacked jurisdiction when it convicted him. Second, he claimed that he is innocent of the first two crimes. He did not challenge his conviction of the third,

giving a false name to a peace officer. Finally, he claims that he received ineffective assistance of counsel in his cases that caused a manifest injustice. The district court granted a hearing for the sole purpose of allowing appellant to prove his age. After the hearing, the district court denied relief, concluding that [*4] the facts of record, including appellant's testimony, show that he was born on June 10, 1978. The judge also noted her recollection of appellant's appearance at the earlier hearing, stating:

Mr. Mohamed has made several appearances before this Court, and due to his unique physical disability, the Court remembers well Mr. Mohamed's physical appearance. This Court also recognizes the physical differences between a 12-year-old child and a 19-year-old man.

The district court concluded that the issue came down to one of credibility and appellant had failed to produce sufficient evidence to reopen his cases.

DECISION

I.

Proof of age

[HN1](#) [↑] "The decisions of a postconviction court will not be disturbed unless the court abused its discretion." [Dukes v. State, 621 N.W.2d 246, 251 \(Minn. 2001\)](#) (citation omitted). A petitioner seeking postconviction relief has the burden of establishing, by a fair preponderance of the evidence, facts that warrant relief. [Minn. Stat. § 590.04, subd. 3](#) (2002).

Appellant argues that, despite the fact that his challenge is being made in a postconviction petition, the state must prove jurisdiction is [*5] proper beyond a reasonable doubt. We disagree. Appellant's argument is contradicted by the plain language of [Minn. Stat. § 590.04](#).

Appellant seems to confuse the burden of proof at trial and in a postconviction setting. All parties agree that the state has the initial burden to prove jurisdiction. In each of the three cases against appellant, the state met its burden; in fact, appellant himself represented that his birth date was 6/10/78 in the transcript from his first offense. In addition, at one of his probation revocation hearings, he stated that he was 21. Though he did not affirmatively state his birth date in other proceedings, it was listed throughout all the forms in all his proceedings as 6/10/78, based on his identification card. At the time

of each conviction, there was no reasonable doubt on this issue. Appellant's green card and his Minnesota identification card, both official government documents, as well as appellant's own testimony evinced he was an adult; therefore, the state met its burden of proof in each of the three cases.

To support his petitions for postconviction relief, appellant provided his affidavit stating that he was really [*6] born in 1985 and that he lied about his age to gain employment. The statute places the burden of establishing facts that warrant relief in a postconviction petition on the petitioner. [Minn. Stat. § 590.04, subd. 3](#) (2002). The district court concluded that the issue was one of credibility concerning appellant's true age and that appellant failed to "produce credible facts on this issue which would be sufficient to merit reopening his case."

[HN2](#) [↑] As the finder of fact, the trial court is considered the best judge of witness credibility, absent a clear abuse of discretion. [Johnson Bldg. Co. v. River Bluff Dev. Co., 374 N.W.2d 187, 194 \(Minn. App. 1985\)](#), review denied (Minn. Nov. 18, 1985). This case comes down to a simple determination of credibility: is appellant telling the truth now or was he telling the truth then? Appellant now has motivation to lie: he faces possible deportation if these convictions stand.

Putting appellant's current claim of his birth date together with his actions in this country show that his claims are unreasonable. If July 2, 1985, were his true birth date and we assumed his account of the car theft/rental is true, [*7] someone must have entrusted a rental car to a 12-year-old child. The district court concluded this was not reasonable. We cannot conclude that the district court erred in so finding. Appellant's argument that his age was 12 when he had the car theft/rental problem also must assume that the police didn't notice that it was a 12-year-old driving the car when they pulled it over. The district court concluded this was not reasonable. Finally, on appellate review, we must assume that neither his attorney, nor the prosecutor, nor the trial judge noticed they were dealing with a 12-year-old child. In sum, we cannot find that the district court's conclusions constitute an abuse of its discretion.

Thus, we are left with the following: (1) when applying for immigration, his birth date changed to July 2, 1985; (2) since his entry into the country, appellant has represented his birth date as 6/10/78; (3) he now claims that his true birth date is July 2, 1985; (4) he has

motivation to lie now to avoid the possible implications of deportation; (5) the facts leave doubt that he was 12 at the time of his car-theft conviction and that no one noticed he was 12 at the time. Given this record, we cannot [*8] say that the district court's conclusion that he had not shown that he is entitled to relief on his age-based claims constitutes an abuse of discretion.

II.

Ineffective assistance of counsel

The district court concluded that appellant failed to produce sufficient evidence regarding his claims of ineffective assistance of counsel and innocence. In addition, the court denied appellants request to withdraw his guilty plea, distinguishing appellant's case from other cases where defendants have been allowed to withdraw guilty pleas by noting appellant's "lengthy record of criminal behavior going back to 1996 which includes not only crimes of dishonesty, but also crimes of violence."

Appellant argues that he has put forth sufficient evidence to establish a manifest injustice has occurred. He accepts that the ineffective-assistance claim is insufficient in itself, but argues that, combined with his age claim, it is sufficient to constitute a manifest injustice.

As stated previously, the decisions of a postconviction court are reviewed under the abuse of discretion standard. [Dukes, 621 N.W.2d at 251.](#)

[HN3](#) [↑] To prevail on a claim of ineffective assistance of counsel:

[*9] The defendant must affirmatively prove that his counsel's representation "fell below an objective standard of reasonableness" and "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." "A reasonable probability is a probability sufficient to undermine confidence in the outcome."

[Gates v. State, 398 N.W.2d 558, 561 \(Minn. 1987\)](#) (quoting [Strickland v. Washington, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068, 80 L. Ed. 2d 674 \(1984\)](#)). Effective assistance of counsel is presumed. [Strickland at 690, 104 S. Ct. at 2066.](#)

Appellant presents a two-pronged attack on the performance of his prior lawyers. First, he argues that

he was not told about the possible immigration consequences of his pleas, though he admits this is insufficient under Minnesota law to show either ineffective assistance of counsel or a manifest injustice. The second part of his argument appears to be that he received ineffective assistance of counsel because he was actually innocent and counsel recommended that he plead guilty without fully informing him or affirmatively [*10] misinforming him of the consequences. Appellant claims that he was led to believe that if he pleaded guilty, this would be a "clean record" for immigration purposes.

As the district court noted, appellant failed to establish any additional facts relating to the offenses themselves, aside from his own and his wife's affidavits. Appellant also fails to identify any significant error that counsel committed. The alleged misinformation about the consequence of a guilty plea on immigration, while certainly significant to appellant, relates to a collateral consequence, which does not form the basis of an ineffective assistance claim. See [Alanis v. State, 583 N.W.2d 573, 579 \(Minn. 1998\)](#) (holding [HN4](#) [↑] failure to inform of immigration consequences cannot form basis of ineffective assistance claim). Even if this were not the case, the district court concluded that appellant recognized his possible immigration problems on the record. Implicitly, the court determined appellant's affidavit to the contrary was not credible.

Finally, appellant claims that his rights under the Vienna Convention were violated because he was not given a chance to consult with the Kenyan embassy (Kenyan, [*11] rather than the Somali embassy, because Somalia did not have an operating government at the time). The court determined that appellant failed to show any actual prejudice that resulted and, therefore, he was entitled to no relief. See [State v. Miranda, 622 N.W.2d 353, 356-57 \(Minn. App. 2001\)](#) (holding [HN5](#) [↑] appellant must show actual prejudice to obtain relief for violations of Vienna Convention).

The other error that appellant now argues his lawyers committed was the failure to "investigate the crimes" sufficiently. Appellant suggests that his counsel's failure to depose or interview the Avis worker who he claims either permissively gave him the car to use or rent was an error by his lawyer. In general, we agree that attorneys ought to interview potential witnesses. That may not have been possible here. The police report states that the officer contacted Avis and was told that no one worked there by the name that appellant gave them. Thus, the record does show that the police

attempted to verify appellant's explanation of how he got the car. We find no ineffective assistance of counsel for failure to interview a person who may or may not exist. Appellant cannot simply [*12] assert that the result would be different had this "witness" been found and testified.

III.

Innocence of the Crimes

Appellant claims that he is innocent of two of the three crimes to which he pleaded guilty: theft of a motor vehicle and fifth-degree domestic assault. As to the car-theft conviction, appellant presents no new evidence except his own affidavit. We affirm the district court's conclusion that the affidavit was insufficient to warrant reopening that case.

As to his prior domestic abuse charge, appellant produced only his wife's affidavit stating that she lied about the incident back when it happened. The district court did not specifically address this issue. Appellant might have an argument if his wife had testified against him and a jury had convicted him. However, to the charge of domestic abuse, appellant chose to plead guilty. An after-the-fact self-serving affidavit by appellant's spouse does not undermine appellant's open admission of guilt in court to the point where a new trial is warranted. At the guilty plea hearing on the domestic abuse charge, appellant told the court that he understood the charge and wanted to plead guilty. Producing the affidavit [*13] of his wife now to argue against what he admitted doing at the time is insufficient for us to conclude that the district court erred by denying appellant relief on this case.

IV.

Withdrawal of Guilty Pleas

[HN6](#) [↑] A district court has broad discretion in deciding whether to permit withdrawal of a guilty plea. [Barragan v. State, 583 N.W.2d 571, 572 \(Minn. 1998\)](#). This court will reverse that determination "only if it can fairly be concluded that the district court abused its discretion." [Id.](#)

[HN7](#) [↑] In general, a criminal defendant has no absolute right to withdraw a guilty plea once it has been entered. [Alanis, 583 N.W.2d at 577](#). The rules provide two bases for withdrawal of a guilty plea. [Minn. R. Crim. P. 15.05](#). The first allows withdrawal of a guilty plea if it is necessary to correct a manifest injustice. [Minn. R.](#)

[Crim. P. 15.05, subd. 1](#). A manifest justice exists if a guilty plea is not accurate, voluntary, and intelligent. [Alanis, 583 N.W.2d at 577](#). Appellant argues that a manifest injustice has occurred here. Appellant seems to argue that his claims, although individually insufficient, constitute a manifest injustice when [*14] combined. In determining whether withdrawal would be fair and just, the district court must give due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea.

[Minn. R. Crim. P. 15.05, subd. 2](#). The burden is on appellant to prove that there was a fair and just reason to withdraw his guilty plea. [Kim v. State, 434 N.W.2d 263, 266 \(Minn. 1989\)](#).

For all of the reasons stated above, appellant failed to convince the district court that he had a just reason to withdraw his prior guilty pleas. Appellant failed to show an abuse of the district court's discretion.

Affirmed.

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