

NOT DESIGNATED FOR PUBLICATION

No. 125,209

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

IVAN FURSOV,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; TIMOTHY P. MCCARTHY, judge. Opinion filed September 8, 2023. Affirmed.

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

Shawn E. Minihan, assistant district attorney, *Stephen M. Howe*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before WARNER, P.J., GARDNER and HURST, JJ.

PER CURIAM: Ivan Fursov appeals from the district court's denial of his motion to withdraw his plea. Fursov argues he did not knowingly make his plea because he was experiencing serious health issues at the time and does not speak English as a first language. After a hearing in which Fursov was afforded a translator, the district court denied his request, finding he failed to show good cause to withdraw his plea. Finding the district court did not abuse its wide discretion, this court affirms the district court's denial.

FACTUAL BACKGROUND

In January 2021, Fursov entered into a plea agreement wherein the State agreed to dismiss three misdemeanor charges in exchange for his guilty plea for felony battery on a detention officer, for acts that occurred May 1, 2020. The parties also agreed to recommend a downward durational departure to an 11-month prison sentence. At the plea hearing, the district court questioned Fursov about his understanding and intent regarding the plea agreement. Fursov denied being under the influence, confirmed he discussed the charge and plea with his attorney, and confirmed that he was satisfied with his attorney's services. He also denied that any threats or promises had been made to induce him to make his plea and confirmed he was pleading guilty voluntarily.

Two months later, Fursov requested to withdraw his plea and asked for appointment of new counsel. In December 2021, after appointment of new counsel and nine months of hearings and continuances, Fursov formally moved to withdraw his plea, asserting that his plea was not fairly and understandingly made. The district court held a hearing on Fursov's motion in which it heard testimony from Fursov and his former attorney who represented him throughout the plea negotiations. Fursov testified through an interpreter that his native language is Russian and, although he speaks English, he does not understand everything in English. He explained that when he spoke with his former attorney about entering a guilty plea, he was having serious health problems and was on a liquid-only diet.

Fursov testified that although he understood he was pleading guilty to an 11-month sentence, he believed he would be in jail for only one or two weeks. He explained that his attorney told him 11 months in prison was not a felony, and he did not understand he was pleading guilty to a felony charge until after the plea hearing. Fursov also

testified that he spoke to an immigration attorney who was friends with his former counsel but did not hire that attorney.

Fursov's former counsel testified that he spoke with Fursov about the Kansas Sentencing Guidelines and the level of his offenses being a felony or misdemeanor. He also testified that in the four conversations he had with Fursov, they only conversed in English. He never had any concerns about Fursov's ability to understand what he was saying because Fursov spoke in English about his legal and medical issues and used specific medical terms. Fursov's former counsel also testified that he spoke with Fursov multiple times regarding the immigration implications of the case and spoke with an immigration attorney on Fursov's behalf to ensure a plea deal that would give Fursov the best opportunity in immigration court.

Fursov's former counsel testified that two months after the plea hearing, Fursov indicated that he wanted to withdraw his plea. Fursov's former counsel testified:

"During the course of our meetings, Mr. Fursov has been concerned about his health and has been receiving treatment while in custody with the jail. He was concerned that he would not receive as quality of treatment if he were no longer there which was part of the reason he requested the sentencing date be set farther out which the Court did grant. He was hopeful that through this time his parathyroid issues could be addressed."

At the conclusion of the hearing, the district court found Fursov failed to establish good cause to withdraw his plea. The court explained that Fursov was represented by competent counsel and was not mistreated, coerced, or treated unfairly. The district court also determined that language fluency was not an issue and that the plea was knowingly made. Thereafter the district court granted Fursov a dispositional departure and sentenced him to 11 months in prison.

Fursov appeals the district court's denial of his motion to withdraw plea.

DISCUSSION

Fursov alleges that the district court abused its discretion by denying his motion to withdraw his plea because he did not fully understand the details due to his health issues and his inability to fully understand the English language.

When a defendant files a motion to withdraw a guilty plea before sentencing, the district court has discretion to withdraw the plea for good cause. K.S.A. 2022 Supp. 22-3210(d)(1). District courts generally consider the following three factors to determine if a defendant has shown good cause to withdraw their plea: (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.' [Citations omitted.]" *State v. Edgar*, 281 Kan. 30, 36, 127 P.3d 986 (2006). Although the *Edgar* factors guide the district court's analysis, it may also consider other factors to determine if the defendant has shown good cause to withdraw the plea. *State v. Aguilar*, 290 Kan. 506, 512-13, 231 P.3d 563 (2010).

This court reviews a district court's denial of a presentence motion to withdraw a plea for an abuse of discretion. A district court abuses its discretion when its decision is based on an error of law or fact or if the decision is arbitrary, fanciful, or unreasonable. Fursov carries the burden of establishing that the district court abused its discretion, and this court will not assess witness credibility or reweigh evidence in this determination. See *State v. Woodring*, 309 Kan. 379, 380, 435 P.3d 54 (2019).

Fursov claims only that the district court abused its discretion by determining his plea was fairly and understandingly made. He does not allege that he received ineffective assistance of counsel or that he was coerced, mistreated, or misled during his plea hearing. Therefore, Fursov waives any challenge to the district court's findings regarding

those issues to which he has failed to appeal. See *State v. Williams*, 303 Kan. 750, 758, 368 P.3d 1065 (2016) (issues not briefed are waived or abandoned).

Fursov argues that he did not understandingly enter the plea because he believed he would not be able to obtain necessary surgery for his medical condition unless he entered the plea agreement. He explains that the district court only asked whether "any threats or promises [were] made to induce" him to plead guilty, but the district court failed to ask if he was under any other form of duress. The State argues Fursov only moved to withdraw his plea so he could remain in jail for medical treatment, as evidenced by his former counsel's testimony.

A guilty plea must be entered knowingly, voluntarily, and "done with sufficient awareness of the relevant circumstances and likely consequences." *State v. Adams*, 311 Kan. 569, 575, 465 P.3d 176 (2020). To be "voluntary," the defendant must have been coerced into pleading guilty. However, a person's personal, internal motivation is not the same as prohibited coercion. "[E]very man charged with crime is influenced by personal considerations which may later not appear valid to him, but psychological self-coercion is not the coercion necessary in law to destroy an otherwise voluntary plea of guilty.' [Citation omitted.]" *State v. Denmark-Wagner*, 292 Kan. 870, 876, 258 P.3d 960 (2011).

Through its hearing on the issue, the district court determined that Fursov voluntarily and knowingly entered his plea. At the hearing, Fursov confirmed his decision-making was not influenced by medications, confirmed he understood the felony charge and sentence, and confirmed no threats or promises were made to induce him to plea. Fursov's personal concerns about access to medical treatment in or out of jail is not a form of coercion that would make his plea involuntary. See *Williams v. State*, 197 Kan. 708, 710, 421 P.2d 194 (1966). Although Fursov testified that he spoke to jail personnel regarding his medical condition and need for surgery, he does not claim that anyone

promised he would receive medical care or a particular level of medical care whether in or out of jail.

Fursov also briefly asserts that his plea was not made understandingly because he does not speak English as his first language. However, it is undisputed that Fursov does speak and understand English, even if it is not his first language. The lack of an interpreter is just one factor in determining if a person's plea was voluntarily and understandingly made under the totality of the circumstances. See *State v. Zuniga*, 237 Kan. 788, 791-92, 703 P.2d 805 (1985) (finding *Miranda* waiver voluntarily and freely given despite lack of interpreter); *State v. Chavez-Aguilar*, No. 103,878, 2011 WL 6382742, at *8 (Kan. App. 2011) (unpublished opinion). Fursov's former counsel testified that after several conversations, the attorney had no concerns about Fursov's ability to understand English. Further, during the hearing on Fursov's motion to withdraw plea, Fursov demonstrated his understanding of English by attempting to answer questions that were presented in English before the interpreter completed the translation. The district court had the opportunity to interact with Fursov in English and ultimately determined that Fursov speaking Russian as a first language did not render his plea unknowing. This court does not assess witness credibility or reweigh the evidence when determining whether the district court abused its discretion. *Woodring*, 309 Kan. at 380-81; see also *State v. Perez-Sanchez*, No. 123,660, 2021 WL 5979308, at *4 (Kan. App. 2021) (unpublished opinion) (determining defendant understood consequences of his plea because he never asked for interpreter and his former counsel had no concerns about his understanding of English).

CONCLUSION

The district court did not abuse its discretion in denying Fursov's motion to withdraw his plea. Fursov failed to demonstrate good cause in support of his motion, and the district court's decision is affirmed.

Affirmed.