IN THE COURT OF APPEALS OF THE STATE OF ALASKA

RUSSEL S. GRIFFIN, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12466 Trial Court No. 1JU-12-00943 CR SUMMARY DISPOSITION No. 0050 — July 3, 2019

Appeal from the Superior Court, First Judicial District, Juneau, Trevor N. Stephens, Judge.

Appearances: Carolyn Perkins, Law Office of Carolyn Perkins, Salt Lake City, Utah, under contract with the Office of Public Advocacy, Anchorage, for the Appellant. Michal Stryszak, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Russel S. Griffin was charged with three counts of first-degree sexual abuse of a minor and four counts of second-degree sexual abuse of a minor for conduct involving two girls under the age of thirteen.[1] Pursuant to a plea agreement with the

[1] AS 11.41.434(a)(1) and AS 11.41.436(a)(2), respectively.

State, Griffin pleaded guilty to one count of second-degree sexual abuse of a minor.[2] The remaining charges were dismissed. Five months later, during the allocution portion of his sentencing hearing, Griffin indicated that he wanted to withdraw his plea.

The court advised Griffin that he could file a motion to withdraw his plea and then appointed a new attorney to represent him. Griffin, through his new attorney, moved to withdraw his plea, arguing that his original attorney unduly influenced him to accept the plea agreement. After an evidentiary hearing, the trial court denied Griffin's motion and sentenced Griffin in accordance with the plea agreement.

On appeal, Griffin argues that the trial court erred when it found that he did not have a fair and just reason to withdraw his plea. Having reviewed the record, we reject Griffin's claim of error.[3]

Under Alaska Criminal Rule 11(h), a defendant may not withdraw a plea of guilty as a matter of right, but rather must move for permission to withdraw the plea. Before sentencing and upon timely motion, "the trial court may in its discretion allow the defendant to withdraw a plea for any fair and just reason unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea."[4] The burden is on a defendant to establish such a reason.[5]

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[2] AS 11.41.436(a)(2).

[3] Griffin also argues that the trial court erred by finding that the State would be substantially prejudiced by allowing Griffin to withdraw his plea. Because we uphold the trial court's finding that Griffin did not have a fair and just reason to withdraw his plea, we decline to reach this issue.

[4] Alaska R. Crim. P. 11(h)(2).

[5] *Perry v. State*, 928 P.2d 1227, 1228 (Alaska App. 1996) (citing *Monroe v. State*, 752 P.2d 1017, 1019 (Alaska App. 1988)).

To meet his burden, Griffin testified at the evidentiary hearing that he felt pressured by his former attorney to enter into the plea agreement, that she did not discuss the agreement with him until the day of the change of plea hearing, and that she spoke to him about it for only fifteen minutes. Griffin testified that he felt that he had "no choice" but to accept the State's offer. In particular, he testified to his belief that he would not get a proper trial because his attorney was not going to do her job.

In response, Griffin's former attorney testified about her litigation of Griffin's case. She testified that she reviewed all of the discovery, hired an investigator who conducted an investigation, and filed motions to limit the admissibility of the evidence against Griffin.

However, based on the anticipated evidence and her own experience, the attorney thought that the State's case against Griffin was strong, and she expressed concern that, if Griffin was convicted at trial, the trial court would consider imposing a 99-year sentence — particularly in light of Griffin's prior similar criminal conduct. She relayed these concerns to Griffin multiple times both in person and over the phone. The attorney believed that she had not overwhelmed Griffin with her recommendation but rather that Griffin had decided to accept the offer on his own, after considering it for a lengthy period of time.

After considering the evidence, the trial court found that the pressure Griffin felt was the same as that commonly felt when a person faces serious charges and that Griffin's former attorney did not unduly influence him to enter into the plea agreement. The court found that Griffin had sufficient time to consider the facts of the case, the results of the investigation, the motions filed, and his attorney's views of the case, which the court found were reasonable. After specifically finding that Griffin's testimony was not credible, the court concluded that Griffin had merely changed his mind and no longer wanted to accept the agreed-upon sentence. Based on these findings,

the trial court further concluded that Griffin had not established a fair and just reason to withdraw his plea.

A defendant's "mere change of mind" about accepting a plea agreement does not constitute a fair and just reason to withdraw a plea.[6] And although requests to withdraw a plea before sentencing should be liberally granted if there is no prejudice to the State, liberality does not require that a plea be set aside in the absence of a fair and just reason.[7]

Here, the trial court found that there was no fair and just reason to allow Griffin to withdraw his plea, and the record supports the court's finding. We therefore conclude that the court did not abuse its discretion in denying Griffin's motion to withdraw his plea.

The judgment of the superior court is AFFIRMED.

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[6] *See Shetters v. State*, 751 P.2d 31, 35 (Alaska App. 1988); *see also Monroe*, 752 P.2d at 1020.

[7] *See Shetters*, 751 P.2d at 35.