

Office of the Attorney General  
State of North Dakota

Opinion No. 85-37

Date Issued: October 9, 1985

Requested by; Peter H. Furuseth  
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--QUESTION PRESENTED--

Whether a defendant's plea of guilty in municipal court waives the right of appeal to county court for a new trial.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a defendant's plea of guilty in municipal court waives the right of appeal to county court for a new trial unless proper procedure is followed for withdrawal of the guilty plea.

--ANALYSIS--

N.D.C.C. § 40-18-19 provides, in part, as follows:

40-18-19. APPEALS FROM DETERMINATIONS OF MUNICIPAL JUDGE. An appeal may be taken to the district court or the county court from a judgment of conviction in a municipal court in accordance with the North Dakota Rules of Criminal Procedure. . . .

N.D.C.C. § 29-28-06 specifically sets forth the determinations of a municipal judge from which a defendant may appeal.

29-28-06. FROM WHAT DEFENDANT MAY APPEAL. An appeal may be taken by the defendant from:

1. A verdict of guilty;
2. A final judgment of conviction;
3. An order refusing a motion in arrest of judgment;
4. An order denying a motion for a new trial; or
5. An order made after judgment affecting any substantial right of the party.

This section does not state that a defendant's plea of guilty in municipal court is appealable to county court for a new trial.

N.D.C.C. § 1-02-05 provides as follows:

1-02-05. CONSTRUCTION OF UNAMBIGUOUS STATUTE. When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

Based upon these statutes, therefore, it can be concluded that the Legislative Assembly of North Dakota does not intend to allow a defendant to appeal a plea of guilty in municipal court to the county court for trial anew.

In the case of State v. Johnson, 142 N.W.2d 110 (N.D. 1966), the North Dakota Supreme Court held that there is no right of appeal in the absence of a statute conferring such a right. The Court held that an order denying the defendant's motion to dismiss prosecution was not appealable.

The United States Supreme Court held, in McCarthy v. U.S., 394 U.S. 459 (1969), that a defendant who enters a plea of guilty simultaneously waives several constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers.

In addition, the United States Court of Appeals for the Eighth Circuit has held that a defendant who enters a plea of guilty gives up the right to a jury trial. United States v. Picone, --- F.2d ---, No. 85-1335 (8th Cir., filed Sept. 19, 1985). See also N.D.R.Crim.P. 11(b)(4).

Rule 32(d)(3) of the North Dakota Rules of Criminal Procedure establishes the procedure for the withdrawal of a plea of guilty. N.D.R.Crim.P. 32(d)(3) provides, as follows:

(3) In the absence of a showing that withdrawal is necessary to correct a manifest injustice, a defendant may not withdraw his plea of guilty as a matter of right once the plea has been accepted by the court. Before sentence, the court in its discretion may allow the defendant to withdraw his plea for any fair and just reason unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea.

This rule requires that prior to the withdrawal of a guilty plea, a defendant has the burden to establish that the withdrawal of the plea is 'necessary to correct a manifest injustice.' In 1982, the North Dakota Supreme Court held in State v. DeCoteau, 325 N.W.2d 187 (N.D. 1982), that the trial court did not abuse its discretion in denying defendant's motion to withdraw a guilty plea which had been

accepted after defendant had changed his original plea of not guilty, where defendant failed to establish any fair and just reason why his guilty plea should be allowed to be withdrawn and failed to show any manifest injustice resulting from allowing the guilty plea to stand.

In summary, unless a defendant follows the proper procedure in withdrawing his guilty plea entered in municipal court, his guilty plea acts to waive his right to appeal to county court for a new trial.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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