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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1078**

James Adam Roth,
petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 2, 2009
Affirmed
Crippen, Judge***

Dakota County District Court
File No. 19-K6-00-000890

Mark D. Nyvold, 332 Minnesota Street, Suite W-1610, St. Paul, MN 55101 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

James C. Backstrom, Dakota County Attorney, Nicole E. Nee, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for respondent)

Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and Crippen, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant James Roth pleaded guilty to charges of kidnapping in July 2001. Several years later he filed a petition for postconviction relief, arguing that he was entitled to withdraw his plea because it was involuntary. Because the record sustains the district court's findings that the plea was voluntary and because we find no merit in appellant's additional pro se arguments, we affirm.

FACTS

In 2000, the state charged appellant with a number of counts of kidnapping and criminal sexual conduct involving two girls, ages 12 and 14. This appeal arises out of the prosecution for holding and then sexually assaulting the younger of the two girls. Several days into appellant's trial in July 2001, before the state rested, he pleaded guilty to the kidnapping charge, and in exchange for his plea, the state dropped six other charges involving the same victim. The district court sentenced appellant to an executed 158 months in prison.

In December 2005, appellant filed a pro se motion to correct or modify his sentence or, in the alternative, to withdraw his guilty plea. The district court summarily denied his motion, construing it as a postconviction petition. On his appeal from this order, this court remanded to the district court for appointment of counsel and reconsideration of appellant's claims. *Roth v. State*, Nos. A06-190, A06-609 (Minn. App. Aug. 17, 2007) (order op.). On remand, counsel was appointed, and in April 2008, an evidentiary hearing was held. The postconviction court then issued an order denying

appellant's motion to withdraw his guilty plea and holding that appellant had not received constitutionally ineffective assistance of counsel.

D E C I S I O N

1. Voluntariness of Plea

After sentencing, withdrawal of a guilty plea is appropriate to correct a “manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1; *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). “When reviewing the decision of a postconviction court, we review questions of law de novo, but our review of questions of fact is limited to whether there is sufficient evidence in the record to support the findings of the postconviction court.” *Sanchez-Diaz v. State*, 758 N.W.2d 843, 846 (Minn. 2008). We review a postconviction court’s application of the manifest-injustice standard for an abuse of discretion. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997).

Manifest injustice exists if a defendant can show that a guilty plea is invalid. *Theis*, 742 N.W.2d at 646. To be valid, a guilty plea “must be accurate, voluntary, and intelligent.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). Appellant argues that his guilty plea was not voluntary because his trial attorney pressured him to plead guilty and pressured his sisters to urge him to plead guilty. “The voluntariness requirement insures that a guilty plea is not entered because of any improper pressures or inducements.” *James v. State*, 699 N.W.2d 723, 728 (Minn. 2005) (quotation omitted).

Testimony of appellant and his sisters supported his claim that he did not want to plead guilty and that he was told he would be sentenced to 40 years if he went to trial. But at appellant’s plea hearing, he indicated that his plea was voluntary and that he was

not pressured by anyone to plead guilty. Appellant's trial attorney testified at the postconviction evidentiary hearing that she did not pressure appellant or his sisters to encourage a guilty plea and that the plea "was his choice." She added that she did not threaten him or his sisters regarding a possible sentence of 40 years, and in fact, she recalled telling appellant that the district court judge was fair.

The district court determined that the trial attorney was credible and that "[appellant's] sisters are inaccurate in their recollection of the events leading up to [his] plea in this matter." Because "the postconviction court is in a unique position to assess witness credibility," we "give the court considerable deference." *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006). Appellant also submitted a signed plea petition, which the supreme court has held tends to establish that a plea is voluntary and intelligent. *State v. Propotnik*, 299 Minn. 56, 58, 216 N.W.2d 637, 638 (1974). The district court did not err by concluding that appellant failed to show a manifest injustice that would entitle him to withdraw his plea.

The state also argues that appellant's postconviction petition is untimely, but we need not address this argument because we conclude that appellant is not otherwise entitled to plea withdrawal.

2. Pro Se Arguments

Alford Plea

Appellant argues that the plea was improper because he entered an *Alford* plea but then admitted the offense rather than merely acknowledging the state's evidence. *See North Carolina v. Alford*, 400 U.S. 25, 38-39, 91 S. Ct. 160, 167-68 (1970); *State v.*

Goulette, 258 N.W.2d 758, 761 (Minn. 1977). But the record does not sustain the conclusion that appellant entered a plea under *Alford* and *Goulette*. Rather, at the outset of the plea hearing, the prosecutor stated: “Mr. Roth will tell the Court during his plea what happened that night, if he continues to deny any essential elements, depending on how forthright he is with the Court, the state’s going to ask the Court to accept those elements on an Alford plea basis.” At no point during the plea hearing did appellant refuse to admit any essential elements of the offense.

Trial Issues

Appellant disputes whether witnesses against him were credible, but appellant pleaded guilty and admitted the elements of the kidnapping offense. On an appeal from a guilty plea, appellant cannot challenge the sufficiency of the evidence. *See State v. Jensen*, 312 N.W.2d 673, 675 (Minn. 1981) (noting that a valid guilty plea “removes the issue of factual guilt from the case” (quotation omitted)).

Similarly, appellant claims that the district court revealed to the jury the court’s preference for a guilty plea. Because appellant does not attribute his guilty plea to court bias, he has shown no prejudice. Moreover, in reviewing claims of judicial bias, this court presumes that a judge has discharged his duties properly. *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006). And the record reflects only the court’s comment, before announcing a “short break,” that “hopefully” the attorneys were going to come to some agreement that would “shorten the trial up.” Nothing in the statement indicates a possible plea agreement nor indicates that the district court believed appellant was guilty.

Ineffective Assistance of Counsel

To prevail on a claim of ineffective assistance from his trial counsel, appellant “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.’” *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 (1984)).

Appellant asserts that his attorney should have stopped questioning to permit a simple *Alford* plea and failed during trial to fully cross-examine a witness and challenge a court’s evidentiary decision. Appellant has not shown that he had reason to expect an *Alford* plea or reason to doubt that he was fully advised of his rights associated with the plea. *See State v. Simon*, 339 N.W.2d 907, 907 (Minn. 1983) (stating that assistance of counsel at guilty plea “justifies the conclusion that counsel presumably advised defendant of his other rights”). Regarding trial occurrences, appellant has not claimed that they induced his plea of guilty or that they otherwise should be reviewed despite the plea. The district court did not err by concluding that appellant did not receive ineffective assistance of counsel.

Affirmed.