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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1703**

Winfred Howard La'Virgne, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 8, 2010
Affirmed
Hudson, Judge**

Dakota County District Court
File No. 19-K8-98-003014

David W. Merchant, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James Backstrom, Dakota County Attorney, Nicole Nee, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Hudson, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

On appeal from the postconviction court's denial of his motion to correct his sentence, appellant argues that the imposition of a mandatory conditional-release period violated his plea agreement and that he received ineffective assistance of counsel. Because appellant's plea agreement was not violated and because he alleges no circumstances showing ineffective assistance of counsel, we affirm.

FACTS

On April 5, 1999, appellant Winfred Howard La'Virgne pleaded guilty to one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(c) (1998), with the agreement that additional charges of kidnapping and aggravated robbery arising from the same incident would be dropped.

The plea agreement stated that appellant would receive a 122-month prison sentence but did not mention the statutorily mandated 5-year conditional-release period to follow the prison term. *See* Minn. Stat. 609.109, subd. 7 (1998). The conditional-release period was discussed twice in appellant's presence at the sentencing hearing; once when the prosecutor requested that the court impose the guideline sentence of 122 months "and also . . . five years of conditional release as provided by the statute," and again when the district court sentenced appellant to "122 months . . . followed by five years of conditional release after your prison term is completed." Appellant did not object to his sentence at any time during the sentencing hearing.

On June 24, 2009, appellant filed a pro se motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9, arguing that the imposition of the conditional-release period violated his plea agreement and that he believed that the conditional-release period ran concurrently with his prison term. Appellant's motion was denied by the postconviction court, and this appeal follows.

DECISION

We review a postconviction court's denial of relief for abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). Interpretation and enforcement of a plea agreement involves legal issues, reviewed de novo. *Id.*

“A defendant does not have an absolute right to withdraw a valid guilty plea.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). After sentencing, a defendant may withdraw a guilty plea only to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if the guilty plea is not voluntary, intelligent, and accurate. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). “[W]here the addition of the conditional release term would result in a sentence that exceeded the maximum executed sentence agreed to in the plea bargain, we have held that the addition of the conditional release term violates the plea agreement.” *Rhodes*, 675 N.W.2d at 326. But where the conditional-release term is mentioned at sentencing and the defendant is on notice of the mandatory nature of the conditional release term, a postconviction court does not abuse its discretion in determining that a plea was intelligently made. *See id.* at 327.

Here, appellant was on notice that he was subject to the mandatory conditional-release period because the requirement was codified by statute and recognized by the Minnesota Supreme Court prior to his sentencing. *See* Minn. Stat. 609.109, subd. 7; *State v. Humes*, 581 N.W.2d 317, 319 (Minn. 1998); *State v. Garcia*, 582 N.W.2d 879, 881 (Minn. 1998). Also, appellant failed to object to the state’s recommendation or the district court’s imposition of the conditional-release period. The postconviction court could infer from these failures to object that appellant understood that the conditional-release period was a mandatory addition to his plea agreement. *See Rhodes*, 675 N.W.2d at 327.

Appellant also argues that he believed that the conditional-release period would run concurrent to his prison term and that his plea was therefore not intelligently made. But the district court clearly stated that appellant’s 122-month sentence “will run concurrent and be followed by five years of conditional release after your prison term is completed.” The district court referenced the presentence investigation and clearly ordered appellant’s prison term to run concurrent to another sentence for aggravated robbery, rather than to the conditional-release period. Therefore, no manifest injustice occurred, and the postconviction court did not abuse its discretion in denying the relief requested.

Appellant also argues pro se that he received ineffective assistance of counsel because his counsel did not object to the imposition of the conditional-release period and did not adequately counsel appellant regarding his plea. To prove ineffective assistance of counsel, appellant must show that his trial counsel’s representation fell below an

objective standard of reasonableness and that he was prejudiced by that failure. *Gates v. State*, 398 N.W.2d 558, 561–62 (Minn. 1987). A defendant is prejudiced if there is a reasonable probability that, but for the unprofessional errors, the result of the proceeding would have been different. *Id.* Here, appellant does not allege any circumstances showing that his plea or the result of the proceeding would have been different had he been informed earlier of the conditional-release period. Therefore, this claim also fails.

Affirmed.