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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-452**

Vegas Ramone Huff, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 24, 2010
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-CR-08-364

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

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

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the denial of his petition for postconviction relief. Appellant contends that his felony guilty pleas were induced by the state's unqualified sentencing promise and that because his sentences were not consistent with the promise, the postconviction court should have resentenced him or allowed him to withdraw his pleas. Because the postconviction court correctly determined that the sentencing promise was conditioned on appellant's appearance for sentencing and appellant failed to comply with this condition, we affirm.

FACTS

On October 20, 2008, appellant Vegas Ramone Huff pleaded guilty to one count of terroristic threats and one count of violation of a domestic-abuse no-contact order. The pleas were tendered pursuant to a plea agreement, which was approved by the court.¹ In exchange for Huff's guilty pleas, the state dismissed several other charges and agreed that Huff would receive concurrent guidelines sentences. Huff offered, and the district court received, a petition to enter a plea of guilty. The petition states, in relevant part:

20. I have been told by my attorney and understand:

a. that my attorney discussed this case with one of the prosecuting attorneys and that my attorney and the prosecuting attorney agreed that if I enter a plea of guilty, the prosecutor will do the following: Plead to [one] count of Terroristic Threats in 364, dismiss all other counts. Plead to

¹ The plea was also pursuant to *North Carolina v. Alford*, 400 U.S. 25, 28, 39, 91 S. Ct. 160, 162-63, 168 (1970) (upholding acceptance of a guilty plea even though defendant maintains his or her innocence).

violation of OFP in 5772, plead pursuant to *NC v. Alford*, Guideline sentence, OR release pending sent[.] State will not file charges against [S.S.] from 3/7/08 or 6/29/08.

b. That if the court does not approve this agreement:

i. I have an absolute right to then withdraw my plea of guilty and have a trial, *except* if I fail to comply with any of the following:

- I fail to cooperate with probation in the preparation of the pre-sentence investigation
- I have any new criminal charges or fail to remain law abiding
- I fail to abide by the No Contact Order
-
- I fail to reappear for sentencing as ordered on 12/2/08 [at] 1:30

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The court will *not* accept the plea agreement and the court will likely sentence me to a more severe sentence than outlined in the plea agreement.

As Huff’s attorney questioned Huff regarding the contents of the plea petition, the district court asked: “What’s [Huff] looking at in terms of a guideline sentence?” Huff’s attorney answered, “a range of 23 to 32 months, 27 in the middle of the box.” The district court confirmed that the prosecutor and Huff agreed with those numbers. Huff’s attorney also indicated that the presumptive disposition was a prison commitment and not a stay of execution.

After Huff’s attorney explained the parties’ anticipated sentencing arguments to Huff on the record, the following colloquy occurred.

DEFENSE COUNSEL: From now until sentencing, you’ll have to cooperate with the preparation of the presentence investigation.

HUFF: I understand that.

DEFENSE COUNSEL: And you cannot have any new criminal charges.

HUFF: Correct.

DEFENSE COUNSEL: And you have to abide by the new No Contact Order.

HUFF: Correct.

DEFENSE COUNSEL: And you have to re-appear for sentencing, and I'll write the date down, on December 2nd[,] 2008 at 1:30 in the afternoon?

....

DEFENSE COUNSEL: Before the same judge. . . . Do you understand that?

HUFF: Correct, yes, I do.

Immediately after this exchange, Huff acknowledged that he had signed the plea petition freely and voluntarily, and his attorney submitted the petition.

Huff was released on his own recognizance after the plea hearing, but he failed to appear for sentencing on December 2. He was arrested approximately one month later and was sentenced on January 13, 2009. The district court imposed guidelines sentences of 28 months for Huff's terroristic-threats conviction and one year and one day for his conviction of violation of a domestic-abuse no-contact order. The district court executed the sentences and ordered that they run consecutively, instead of concurrently.

In November 2009, Huff filed a petition for postconviction relief, requesting that his sentences be modified to run concurrently, consistent with the terms of the plea agreement, or that he be allowed to withdraw his guilty pleas. Huff argued that the district court "failed to sentence him pursuant to the plea agreement and . . . imposed a sentence outside of the plea agreement." The postconviction court denied Huff's petition, reasoning that the promise of concurrent sentencing was conditioned on Huff's appearance for sentencing on December 2. This appeal follows.

DECISION

We review a district court's decision to deny postconviction relief for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). When considering a district court's denial of postconviction relief, we review issues of law de novo and findings of fact for sufficient evidentiary support. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

Huff argues that his guilty pleas were induced by the state's promise that he would receive concurrent guidelines sentences in exchange for his pleas. Huff asks this court to reverse his sentence and remand for concurrent sentencing pursuant to the plea agreement or for withdrawal of his guilty pleas.

"The [district] court is vested with broad discretion in determining whether a defendant is allowed to withdraw his guilty plea." *State v. Kunshier*, 410 N.W.2d 377, 379 (Minn. App. 1987), *review denied* (Minn. Oct. 21, 1987). "However, if an *unqualified* promise is made on the sentence to be imposed, a defendant should be allowed to withdraw his guilty plea if that promise is not fulfilled." *Id.* (emphasis added). "[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (quotation omitted). To determine whether a plea agreement has been violated, courts look to "what the parties to [the] plea bargain reasonably understood to be the terms of the agreement." *Id.* (quotation omitted). "What the parties agreed to involves an issue of

fact to be resolved by the district court.” *Id.* “While the government must be held to the promises it made, it will not be bound to those it did not make.” *Id.* (quotation omitted).

In determining that the state’s promise of concurrent sentences was conditioned on Huff’s appearance for sentencing, the postconviction court relied on paragraph 20.b.i. of the plea petition and the plea-hearing colloquy between Huff and his attorney regarding Huff’s obligations between the plea and sentencing hearings. The plea petition and colloquy provide sufficient evidentiary support for the postconviction court’s determination that the sentencing promise was conditional. The plea petition indicates that the district court would “likely sentence [Huff] to a more severe sentence than outlined in the plea agreement” if Huff failed to comply with the enumerated conditions, including “reappear[ing] for sentencing as ordered on 12/2/08 [at] 1:30.” This language was acknowledged by Huff on the record and by his signature on the petition. While paragraph 20.b.i. could be revised to provide greater clarity,² it adequately conveyed that the sentencing promise might not be implemented if Huff failed to appear for sentencing. The language therefore supports a finding that the parties reasonably understood one of the terms of the agreement to be that sentencing consistent with the state’s promise was conditioned on Huff’s appearance for sentencing.

² We have previously observed that “the organization and syntax of paragraph 20.b.i. of the form agreement are less than ideal. Future disputes concerning the form agreement are likely to be avoided and likely to be resolved more easily if the document is revised to provide greater clarity.” *State v. Buckhanan*, No. A07-2230, 2009 WL 510945, at *4 n.3 (Minn. App. Mar. 3, 2009). Future disputes might also be avoided, and would likely be resolved more easily, if the plea-hearing record were to contain an express statement that a plea agreement is qualified. *See, e.g., State v. Batchelor*, ___ N.W.2d ___, ___, 2010 WL 3119418, at *2 (Minn. App. Aug. 10, 2010) (providing an example of a plea-hearing record that contains an express acknowledgment that a plea agreement was conditional).

The record supports the postconviction court’s finding that the promise of concurrent sentences was qualified. And because Huff failed to comply with the relevant condition—appearance for sentencing as ordered—the plea agreement was not breached. Moreover, Huff received guidelines sentences as promised. He does not suggest that the sentence durations are not within the correct, presumptive guidelines range. And the sentencing guidelines allow permissive consecutive sentences for Huff’s conviction offenses. *See* Minn. Sent. Guidelines II.F.2 (2007) (allowing consecutive sentences for multiple current felony convictions for crimes listed in Minn. Sent. Guidelines VI); Minn. Sent. Guidelines VI (2007) (stating that terroristic threats and violation of domestic-abuse no-contact order are among the convictions eligible for permissive consecutive sentencing). The postconviction court did not abuse its discretion by denying Huff’s petition for relief.

Affirmed.

Dated: _____

Judge Michelle A. Larkin