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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1950**

Jeffrey Charles Morris, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 22, 2008
Affirmed
Shumaker, Judge**

Ramsey County District Court
File Nos. K7-96-4038; K5-96-4040; K9-96-4042; KO-96-4043

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Lori Swanson, Attorney General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

John J. Choi, St. Paul City Attorney, Jessica S. McConaughy, Assistant City Attorney, 500 City Hall and Courthouse, 15 West Kellogg Blvd., St. Paul, MN 55102 (for respondent)

Considered and decided by Shumaker, Presiding Judge; Klaphake, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

Appellant contends that the postconviction court abused its discretion in denying his petition to withdraw his pleas of guilty. He claims he was incompetent to plead guilty to the charges and that his pleas were the product of ineffective assistance of counsel. Appellant raises additional arguments in his pro se briefs, including an argument challenging the voluntariness of his pleas. We conclude that the postconviction court did not abuse its discretion in concluding that appellant was competent to enter his guilty pleas, that the record does not support a claim of ineffective assistance of counsel, and that the pro se arguments are waived and otherwise lack merit. Therefore, we affirm.

FACTS

Appellant Jeffrey Morris pleaded guilty to four counts of criminal defamation in January 1997. In March 1997, Morris was sentenced to one year in jail, ordered to pay a fine, and was put on probation for six years. In October 1999, Morris was discharged from probation, more than three years earlier than scheduled. In August 2005, nearly six years after he was discharged from probation, Morris filed a pro se petition for postconviction relief in which he sought to withdraw his guilty pleas. The district court denied the petition, and Morris appealed pro se. In May 2006, this court dismissed the appeal and remanded the matter for appointment of counsel, after the Minnesota Supreme Court, in *Deegan v. State*, 711 N.W.2d 89 (Minn. 2006), held unconstitutional the statute upon which the denial of appellant's request for counsel was based. The district court

appointed counsel to represent Morris, held an evidentiary hearing, and denied Morris's motion to withdraw his pleas. This appeal followed.

D E C I S I O N

Morris argues that the district court abused its discretion when it denied his petition to withdraw his pleas of guilty. He contends, first, that he should have been allowed to withdraw his pleas because he was not competent to plead guilty to the charges against him. Second, Morris contends that he should be allowed to withdraw his pleas because they were the product of ineffective assistance of counsel. Additionally, he raises certain issues in his pro se supplemental and reply briefs.

Appellate courts “review a postconviction court’s findings to determine whether there is sufficient evidentiary support in the record.” *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). Appellate courts “afford great deference to a district court’s findings of fact and will not reverse the findings unless they are clearly erroneous.” *Id.* “The decisions of a postconviction court will not be disturbed unless the court abused its discretion.” *Id.* On a petition for postconviction relief, the petitioner “has the burden of establishing, by a fair preponderance of the evidence, facts which warrant” the relief sought. *State v. Warren*, 592 N.W.2d 440, 449 (Minn. 1999). We review the record to determine whether there are sufficient facts to sustain the postconviction court’s findings and will not disturb these findings absent an abuse of discretion. *Id.* at 449-50.

Competency

A defendant has a due-process right not to be tried or convicted of a criminal charge while he is incompetent. *State v. Bauer*, 310 Minn. 103, 114, 245 N.W.2d 848,

854-55 (1976). The law imposes a duty on the district court to refrain from trying a defendant who is incompetent to stand trial. Minn. Stat. § 611.026 (2006). Similarly, a defendant must be competent to plead guilty. *Godinez v. Moran*, 509 U.S. 389, 398-99, 113 S. Ct. 2680, 2686 (1993). A defendant is incompetent to plead guilty “if he lacks sufficient ability to consult, with a reasonable degree of rational understanding with defense counsel,” or if he “is mentally ill, or mentally deficient so as to be incapable of understanding the proceedings or participating in the defense.” Minn. R. Crim. P. 20.01, subd. 1 (2006); *State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997).

A competency inquiry focuses on whether the defendant has the ability to understand the proceedings. *Drope v. Missouri*, 420 U.S. 162, 171, 95 S. Ct. 896, 903 (1975). Evidence of a defendant’s irrational behavior, his demeanor during a court proceeding, and prior medical opinions on his competence to stand trial are relevant in determining whether there is reason to doubt a defendant’s competence. *Id.* at 180, 95 S. Ct. at 908. The fact that a defendant may have appeared to understand the proceedings on the record does not allow the court to ignore his history, irrational behavior, hospitalizations, or suicide attempts. *See Pate v. Robinson*, 383 U.S. 375, 378-86, 86 S. Ct. 836, 838-42 (1966) (examining erratic behavior due to defendant’s mental health problems and concluding that court could not rely on defendant’s courtroom demeanor to dispense with competency hearing).

A defendant has no absolute right to withdraw a plea of guilty after the court accepts it. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). “Public policy favors the finality of judgments and courts are not disposed to encourage accused persons to play

games with the courts by setting aside judgments of conviction based upon pleas made with deliberation and accepted by the court with caution.” *Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002) (quotations omitted). But a criminal defendant may withdraw a plea of guilty, even after sentencing, if the defendant shows ““that withdrawal of the plea is necessary to correct a manifest injustice.”” *State v. Ecker*, 524 N.W.2d 712, 715-16 (Minn. 1994) (quoting Minn. R. Crim. P. 15.05, subd. 1). “A manifest injustice occurs when a guilty plea is not accurate, voluntary, and intelligent.” *Alanis*, 583 N.W.2d at 577.

Morris claims that he was incompetent at the time he entered his pleas of guilty in 1997, asserting that he was not taking his prescribed medication for bipolar disorder and that he had been civilly committed 12 years earlier as mentally ill. But he does not offer any evidence that an unmedicated bipolar condition renders an individual incompetent to enter a plea of guilty to a criminal charge per se or that it rendered him incompetent. The judge who accepted his pleas specifically inquired into Morris’s competency and his level of understanding. Morris expressly acknowledged that he fully understood the charges and the nature of the criminal proceedings and that he understood he would be waiving an insanity defense if he pleaded guilty. Responding to the judge’s question about whether his bipolar condition prevented him from understanding the court proceedings, Morris stated that his condition “would not in any way impair my ability to [comprehend] any of the charges brought against me or my ability to participate in my defense.” The judge also inquired into Morris’s mental-health history, but Morris identified nothing that would support an inference of his incompetency at the time he entered his pleas.

Thus, the judge, who accepted the pleas, was able to observe and assess Morris's general demeanor, his manner of responding to questions, the content of each response, and Morris's ostensible understanding of both the context and the particulars of the criminal proceedings, including the rights he was waiving by pleading guilty. The picture that Morris presented to the judge was that of an intelligent and lucid individual who was able to follow the questions asked and to give responsive answers. There is nothing in the record that raised any doubt about Morris's competency to plead guilty, and Morris has failed to show anything in that record that would reasonably compel a contrary conclusion. We hold, therefore, that the district court did not abuse its discretion in denying Morris's petition for postconviction relief.

Ineffective Assistance of Counsel

To prevail on a claim of ineffective assistance of counsel, the defendant must show that his attorney'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)). A postconviction decision regarding a claim of ineffective assistance of counsel involves mixed questions of fact and law and is reviewed de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004).

Morris's ineffective assistance of counsel claim also fails. The judge asked him how he felt about his legal representation and whether he was satisfied with it before he entered his pleas. He replied, "Yes. We haven't agreed on everything, but I am

satisfied.” Morris also acknowledged that he had enough time to meet with his attorney to discuss the complaint and his rights. Although he claims that he was not informed of defenses to the charges against him, he does not assert that he needed any information that was not provided to him in order to make intelligent pleas. There is nothing in the record to suggest that Morris’s attorney failed to answer any legal questions for him, or that he failed to discuss defenses as well as charges. Furthermore, Morris failed to show that, but for his attorney’s conduct, he would not have pleaded guilty. Morris told the court that he wished to plead guilty because he had violated the law, not because he had no defenses to the charges against him. The reasonable inference is that he wanted to plead guilty despite the possibility of defenses. Morris also signed a plea petition that outlined all of the consequences of pleading guilty. The record does not show that Morris’s counsel’s actions fell below an objective standard of reasonableness or that, but for counsel’s actions, Morris would have proceeded to trial. Therefore, the district court did not abuse its discretion in ruling that Morris’s ineffective-assistance-of-counsel claim failed.

Pro Se Issues

Morris has filed a pro se reply brief that raised an argument regarding the voluntariness of his guilty pleas. Morris relies on *United States v. Brown*, which held that a defendant’s guilty plea was not voluntary since the defendant was “specifically and affirmatively misinformed” of the nature of the charge against him. 117 F.3d 471, 479 (11th Cir. 1997). In the case at hand, however, Morris is not claiming that he was affirmatively misinformed about anything. Morris was not induced into pleading guilty

by misinformation; rather, he pleaded guilty because he knew that he “violate[d] the law.”

Morris has also filed a pro se supplemental brief that raises no legal issues and provides no citation to the record or legal authority. We therefore conclude that he has waived the arguments raised in his supplemental brief. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (concluding that pro se defendant’s assertions are waived if they contain no argument or legal authority to support allegations); *Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996) (requiring that material assertions of fact be supported by citation to the record), *aff’d*, 568 N.W.2d 705 (Minn. 1997).

Affirmed.