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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-398**

Timothy A. Carter, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 11, 2008
Affirmed
Hudson, Judge**

Houston County District Court
File No. K7-04-414

John M. Stuart, State Public Defender, Ngoc Nguyen, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, Minnesota 55104 (for appellant)

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

Richard W. Jackson, Jr., Houston County Attorney, 304 South Marshall, Suite 201, Caledonia, Minnesota 55921 (for respondent)

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

UNPUBLISHED OPINION

HUDSON, Judge

This appeal arises from the denial of a petition for postconviction relief. Appellant argues that the postconviction court abused its discretion when it denied his petition for

postconviction relief because (a) appellant's guilty plea was not voluntarily or intelligently made and the district court did not assess whether a withdrawal of appellant's plea was fair and just; and (b) imposition of the five-year conditional release period violated his constitutional rights. Respondent argues that appellant's petition for postconviction relief was not timely filed; therefore, this court need not address the merits of appellant's appeal. Because appellant's petition was timely filed, we will review the merits of this appeal. And because the postconviction court did not abuse its discretion in denying appellant's request to withdraw his plea, and the imposition of the conditional release period did not violate his constitutional rights, we affirm.

FACTS

In December 2004, appellant Timothy Carter pleaded guilty to one count of criminal sexual conduct in the first degree in violation of Minn. Stat. § 609.342, subds. 1(e)(i), 2 (2004). Before entering his plea, appellant stated on the record that he: had sufficient time to discuss the case with his attorney; understood the maximum sentence available under the sentencing guidelines for the offense charged; understood that the plea agreement recommended a sentence of 72 months in prison; and knew his sentence included an additional five-year conditional release period. Based on appellant's statements, the district court found that: appellant was represented by "experienced, thorough, and competent counsel"; appellant understood his constitutional rights and consequences that could result from his plea; and the plea was "knowledgeable and voluntary."

At the sentencing hearing, appellant requested permission from the district court to withdraw his guilty plea. Appellant stated that he wanted to withdraw his guilty plea because: “There [are] some things in this case that don’t add up to me.” Appellant indicated that he had issues with the evidence in his case, and he explained that he did not present his concerns when he entered his plea because he “wanted to get this thing over with.”

The district court denied appellant’s request to withdraw his guilty plea and sentenced appellant to 72 months with a five-year conditional release period following appellant’s release from the correctional facility.

In September 2006, appellant filed a petition for postconviction relief and argued that the district court should have granted his presentencing request to withdraw his guilty plea. The postconviction court denied appellant’s petition and found that appellant’s guilty plea was voluntary, intelligent, and accurate; appellant did not prove that the guilty plea had to be withdrawn to correct a manifest injustice; and appellant did not show that a withdrawal of the guilty plea was fair and just even though the district court did not address the issue of prejudice. This appeal follows.

D E C I S I O N

I

Respondent argues that this court need not address the merits of appellant’s postconviction appeal because the petition was not timely filed. We disagree.

A postconviction petitioner’s delay in seeking relief is a factor to be considered by the court when determining whether relief should be granted, but dismissing a petition for

postconviction relief solely on the basis of delay is inappropriate if the case had never received review from an appellate court. *Black v. State*, 560 N.W.2d 83, 85 (Minn. 1997) (affirming denial of petition for postconviction relief because appellant waited 18 years to file his petition and appellant’s conviction was reviewed by appellate court); *see also Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003) (stating that while “delay is one relevant factor against granting relief, and in extreme cases may justify denial of relief[,] . . . we have a commitment to convicted defendants’ rights to at least one substantive review.”).

Here, appellant’s petition for postconviction relief was filed nine months after sentencing and appellant’s conviction has not been previously reviewed by an appellate court. Therefore, appellant’s petition was not unduly delayed and, accordingly, we will address the merits of appellant’s appeal.

II

Appellant argues that the postconviction court abused its discretion when it denied appellant’s request to withdraw his guilty plea because the plea was not intelligently or voluntarily made and it was otherwise fair and just to allow withdrawal of the plea. We disagree.

“The burden is on the petitioner at a post-conviction proceeding to prove by a preponderance of the evidence the facts which would warrant withdrawal of his guilty plea.” *Doughman v. State*, 351 N.W.2d 671, 674 (Minn. App. 1984), *review denied* (Minn. Oct. 16, 1984). When reviewing a postconviction court’s ruling, this court is limited to determining whether sufficient evidence existed to support the postconviction

court's findings, and we will not disturb the postconviction court's decision unless that court abused its discretion. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). "The decision whether to permit a plea of guilty to be withdrawn is addressed to the sound discretion of the trial court." *Doughman*, 351 N.W.2d at 674.

Here, appellant requested that the district court grant him permission to withdraw his plea prior to sentencing. Under Minn. R. Crim. P. 15.05, subd. 2, a district court may exercise its discretion to allow a criminal defendant to withdraw his guilty plea before sentencing, "if it is fair and just to do so, giving due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea."

But once a guilty plea is entered, the criminal defendant has no absolute right to withdraw it, and the criminal defendant "bears the burden of proving that there is a 'fair and just' reason for withdrawing his plea." *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007); *Doughman*, 351 N.W.2d at 674. When determining whether "the defendant's reason is 'fair and just,' the trial court is to give due consideration not just to the reasons advanced by the defendant," but to whether the prosecution would suffer any prejudice as a result of the plea withdrawal. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). Criminal defendants, however, "may not withdraw their guilty pleas for simply any reason before a sentence is imposed." *Farnsworth*, 738 N.W.2d at 372.

Voluntary and Intelligent Plea

Appellant contends in his brief and pro se supplemental brief that his guilty plea was not entered voluntarily or intelligently because (1) it “was induced by undue pressure and fear”; (2) he did not understand what he was pleading to and he “argued for his innocence”; and (3) the five-year conditional release period was not part of his plea agreement.

A plea must be accurate so that the defendant does not plead guilty to a more serious offense than he could be convicted of had he insisted on his right to a trial. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). A criminal defendant must also enter the plea voluntarily and not plead guilty because of “improper pressures.” *Id.* And the plea must be intelligent “to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.” *Id.*

At the sentencing hearing, appellant explained that he wanted to withdraw his guilty plea because “some things in this case . . . don’t add up to me.” But upon inquiry by the district court, appellant acknowledged that when he entered his plea, he told the district court that he had sufficient time to talk with his attorney and told his attorney all the relevant facts, and that he understood his rights and the consequences of his actions. The district court then asked appellant whether his proffered reason to withdraw the plea was based on evidentiary concerns, and appellant agreed. The district court asked appellant why he did not raise these concerns when he entered his plea, to which appellant replied, “[b]ecause I really wasn’t thinking about it because I just wanted to get

this thing over with.” At that time, the district court asked appellant whether he recalled stating when he entered his plea that he did not plead guilty because he just wanted to get it over with and that he pleaded guilty because he was guilty, to which appellant agreed. Thereafter, appellant stated that he had nothing further to add. After this exchange, the district court denied appellant’s request to withdraw his guilty plea.

This exchange amply supports the postconviction court’s finding that there was no evidence “in the record that the plea was based on coercion or threats that were made.” When appellant entered his plea, appellant agreed that he had sufficient time to discuss the plea with his attorney; agreed that he was pleading guilty because he was guilty; and denied that anyone otherwise induced him to plead guilty.

There is also sufficient evidence in the record to support the postconviction court’s finding that it was “abundantly clear that [appellant] was aware of the consequences of the plea.” Prior to entering his plea, appellant signed a negotiated plea agreement. When appellant entered his plea, the district court outlined the terms of the negotiated plea agreement, stated the sentence to which appellant agreed and the maximum sentence for his offense available under the sentencing guidelines, and twice asked appellant whether he needed more time to discuss the plea with his attorney.

Further, there is sufficient evidence in the record to support the postconviction court’s conclusion that at sentencing appellant did not argue for his innocence. Appellant agreed when he entered his plea that he was not pleading guilty to “just to get this over with,” but that he was pleading guilty because he was guilty. Further, when appellant requested the district court’s permission to withdraw his guilty plea, at no point did

appellant assert that he was innocent, but instead only stated that he had evidentiary concerns and that there were “some things in this case that don’t add up to me.”

Lastly, the record demonstrates that appellant knew his plea agreement included a five-year conditional release period when he entered his guilty plea. The conditional release period was specifically outlined in the negotiated plea agreement that was signed by appellant prior to entering his plea. And the conditional release period was discussed by the district court when appellant entered his plea.

We conclude that the postconviction court did not abuse its discretion when it concluded that appellant’s guilty plea was voluntarily and intelligently entered.

Fair and Just Standard

Appellant also argues that his presentence request to withdraw his plea should have been granted under the fair-and-just standard because the district court (1) did not analyze whether the withdrawal of the plea would prejudice the prosecution; and (2) only analyzed whether a manifest injustice occurred. We disagree.

Appellant is correct that at the sentencing hearing, the district court did not assess on the record whether the prosecution would be prejudiced by the withdrawal of appellant’s guilty plea.¹ But mere lack of prejudice to the prosecution does not render the

¹ In its order denying appellant postconviction relief, the postconviction court acknowledged that the district court did not address any possible prejudice the prosecution might suffer if the plea were withdrawn. However, the postconviction court observed that “it is clear that prejudice would exist now not with regard to [appellant] but with regard to the victim, because it would force the victim” to testify as to an incident occurring over two years ago. But because appellant requested to withdraw his plea prior to sentencing, the postconviction court’s assessment of prejudice years later does not

withdrawal of a guilty plea prior to sentencing fair and just under rule 15.05. In addition, rule 15.05 does not require the district court to make findings on the record as to any possible prejudice the prosecution might suffer.

Appellant also contends that the postconviction court abused its discretion when it concluded that appellant's request to withdraw his plea was properly denied because the district court did not assess whether appellant met the fair-and-just standard, and only considered the manifest-injustice standard. *See* Minn. R. Crim. P. 15.05, subds. 1–2 (stating that the district court may allow a withdrawal of a guilty plea to correct a manifest injustice or before sentencing if the withdrawal is fair and just); *State v. Abdisalan*, 661 N.W.2d 691, 693–94 (Minn. App. 2003) (explaining that manifest injustice need not be shown to meet the fair-and-just standard), *review denied* (Minn. Aug. 19, 2003). But, as found by the postconviction court, appellant's proffered arguments were insufficient to withdraw his guilty plea under either standard set forth in rule 15.05. Appellant provided a vague and unsupported reason that “some things . . . don't add up” as to why his plea should be withdrawn. At no time did appellant explain why he had issues with the evidence in his case. Moreover, he agreed that he pleaded guilty because he was guilty. Further, appellant did not provide any additional evidence at the postconviction proceeding to support his motion to withdraw his guilty plea.

Accordingly, the postconviction court did not abuse its discretion when it found that appellant's request to withdraw his guilty plea was properly denied.

meet the mandate to consider prejudice to the prosecution under Minn. R. Crim. P. 15.05, subd. 2.

III

In his pro se supplemental brief, appellant argues that the imposition of the five-year conditional release period violated the due process or the double jeopardy clauses of the state and federal constitutions. These arguments have no merit.

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) (citation omitted). The decision of a postconviction court will not be reversed unless the court abused its discretion, but its legal determinations are reviewed de novo. *Id.*; *Berkow v. State*, 573 N.W.2d 91, 95 (Minn. App. 1997), *aff’d*, 583 N.W.2d 562 (Minn. 1998).

Appellant contends that he was deprived of due process of law because he was not “fairly apprised of the consequences of his plea” when a five-year conditional release period was imposed on his sentence, which was not part of the stipulated plea agreement accepted by the district court. But the stipulated plea agreement appellant signed clearly stated that appellant “would also be subject to the statutorily mandated five-year conditional release period following discharge from prison.” And when he entered his plea, the district court asked appellant whether he understood that his sentence included a five-year conditional release period, to which appellant responded: “Yes.” Therefore, appellant was fairly apprised of the consequences of his plea and the imposition of the conditional release period did not deprive appellant of due process of law.

Appellant also contends that the conditional release period was a separate sentence from his initial prison sentence because the conditional release period has a different

expiration date. Thus, appellant argues, he was sentenced for the same crime twice in violation of the double jeopardy clauses of the state and federal constitutions. But the conditional release period was a statutorily mandated term of appellant's sentence, which did not include multiple punishments in violation of the double jeopardy clauses, but consisted of a "single punishment." *See State v. Calmes*, 632 N.W.2d 641, 649 (Minn. 2001) (holding that amending defendant's sentence to add conditional release period did not violate double jeopardy because it was statutorily mandated and therefore consisted of a "single punishment"). Accordingly, the imposition of the conditional release period did not violate appellant's double jeopardy rights.

Affirmed.