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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0621**

Scott Kermit Peterson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 24, 2009
Affirmed
Connolly, Judge**

Steele County District Court
File No. K4-06-2

Lawrence Hammerling, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Lori Swanson, Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101;
and

Douglas L. Ruth, Steele County Attorney, Scott L. Schreiner, Assistant County Attorney, 303 South Cedar, Owatonna, MN 55060 (for respondent)

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

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant argues that the district court abused its discretion by denying his motion to withdraw his guilty plea because sufficient evidence regarding his post-traumatic stress disorder was not admitted at sentencing. Because the district court did not abuse its discretion, we affirm.

FACTS

On December 31, 2005, appellant Scott Kermit Peterson was arrested and subsequently charged with two counts of driving while impaired, speeding, and possession of drug paraphernalia. On November 13, 2006, appellant pleaded guilty to gross misdemeanor second-degree driving with an alcohol concentration of .08 or more within two hours of driving. The other counts were dismissed. At the sentencing hearing, appellant and his attorney introduced substantial information relating to appellant's post-traumatic stress disorder. The district court subsequently sentenced appellant to 365 days in jail with 335 days stayed, a fine of \$3,000 with \$2,500 stayed, and three years of probation subject to numerous conditions.

Several months later, appellant submitted a petition for postconviction relief seeking to withdraw his guilty plea as not being made in an intelligent and voluntary manner. Appellant argued that his defense counsel had promised to introduce information into evidence and subpoena doctors to testify at the sentencing hearing regarding his post-traumatic stress disorder. In particular, appellant argues that an expert witness should have been called on his behalf. Because this evidence was not adequately

presented, and no expert witness was called, appellant wished to withdraw his guilty plea. A hearing was held, and the district court issued an order denying appellant's motion to withdraw his guilty plea. This appeal follows.

D E C I S I O N

Appellant argues that because his attorney did not present sufficient evidence regarding his post-traumatic stress disorder at sentencing, his guilty plea was not made intelligently. Therefore, according to appellant, the district court abused its discretion in refusing to allow him to withdraw his plea to correct a manifest injustice.

A criminal defendant does not have an absolute right to withdraw a guilty plea. *Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002). A petitioner seeking postconviction relief bears the burden of establishing facts that show, by a preponderance of the evidence, entitlement to relief. Minn. Stat. § 590.04, subd. 3 (2006). A postconviction court shall allow a defendant to withdraw a guilty plea *after* sentencing if the motion is timely and withdrawal is “necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. “Manifest injustice occurs if a guilty plea is not accurate, voluntary, and intelligent.” *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). “The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). “The decisions of a postconviction court will not be disturbed unless the court abused its discretion.” *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). Likewise, a reviewing court will reverse the district court's denial of a request to permit withdrawal of a guilty

plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

Appellant argues that his attorney promised to present evidence of his post-traumatic stress disorder at the sentencing hearing, including subpoenaing doctors to appear. The only indication of this promise is contained in appellant's affidavit submitted to the postconviction court. Uncorroborated testimony is not sufficient to sustain appellant's burden of proof. *State v. Knight*, 292 Minn. 419, 422, 192 N.W.2d 829, 831 (1971). Moreover, appellant's petition to enter a plea of guilty, states that "No one—including my attorney . . . has made any promises to me . . . in order to obtain a plea of guilty from me." Appellant acknowledged at the plea hearing that he had reviewed the petition with his attorney. Therefore, the plea was voluntarily and intelligently made and allowing for its withdrawal was not necessary to correct a manifest injustice.

Furthermore, evidence of the appellant's post-traumatic stress disorder was indeed presented at the sentencing hearing by both appellant and appellant's counsel. The district court acknowledged that "substantial information concerning [appellant's disorder]" was received at the hearing. In fact, after hearing this information, the district court imposed only the mandatory minimum sentence required under Minn. Stat. § 169A.275, subd. 2 (2006). Thus, any failure to present additional post-traumatic stress disorder evidence was harmless because the sentence imposed could not have been any

lower under the law. The district court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea.

Affirmed.