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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1067**

State of Minnesota,
Respondent,

vs.

Jacquet Deon Munn,
Appellant

**Filed April 21, 2014
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-10-16612

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth R. Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Worke, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Following this court's remand, the district court denied appellant's motion to withdraw his guilty plea and imposed concurrent sentences for firearm and criminal-

sexual-conduct offenses. Appellant argues that the district court failed to consider his plea-withdrawal motion under the fair-and-just standard; alternatively, the district court should have imposed consecutive sentences. We affirm.

FACTS

Appellant Jacquet Deon Munn was charged with two counts of first-degree criminal sexual conduct, third-degree criminal sexual conduct, prohibited person in possession of a firearm, and second-degree assault. On December 22, 2010, Munn pleaded guilty to third-degree criminal sexual conduct and prohibited person in possession of a firearm, and the state dismissed the other counts. The parties agreed to a 240-month sentence; 180 months in prison for the offense of third-degree criminal sexual conduct and a consecutive 60 months for the offense of prohibited person in possession.

On January 20, 2011, a presentence investigation (PSI) was conducted. The report outlined the possible presumptive sentences. Sentenced concurrently, the presumptive sentence for prohibited person in possession of a firearm with six criminal-history points was 60 months in prison, and 180 months in prison for third-degree criminal sexual conduct with eight criminal-history points—a total of 180 months. Sentenced consecutively, the presumptive sentence for prohibited person in possession of a firearm with six criminal-history points was 60 months in prison, and 48 months in prison for third-degree criminal sexual conduct with zero criminal-history points—a total of 108 months. The PSI noted:

[Munn] indicated that he was satisfied with his plea negotiated sentence, but felt the prison terms should be concurrent versus consecutive. During his prison term, he

plans to take advantage of any programs offered him, specifically sex offender treatment, as he does not want to risk civil commitment.

....
While [Munn] has admitted to the charges against him and accepts his sentence as fair, he still does not believe he should be serving his time consecutively. Even so, he recognizes the seriousness of his actions and the risks he takes should he not cooperate with prison programming. To this end, he intends to take advantage of all programs offered him, especially sex offender treatment, as he fears civil commitment if he does not.¹

The district court sentenced Munn to 240 months in prison—60 months for the offense of prohibited person in possession of a firearm and a consecutive 180 months for the offense of third-degree criminal sexual conduct.

Munn appealed his sentence. *See State v. Munn*, No. A11-0852, 2012 WL 2077264, at *1 (Minn. App. June 11, 2012). This court reversed and remanded Munn’s sentence after determining that the district court failed to use a zero criminal-history score when calculating the second of the consecutive sentences. *Id.* at *1-2. This court determined that Munn’s sentence “was a de facto departure from the sentencing guidelines[,]” with no reason stated for the departure. *Id.* at *2. This court stated that, “[w]hile it appear[ed] that the district court intended to honor the plea agreement by imposing the total sentence of 240 months, a plea agreement cannot of itself form the basis for a sentencing departure.” *Id.*

¹ Included in Munn’s criminal history, are the offenses of third-degree criminal sexual conduct and attempted third-degree criminal sexual conduct, committed against two victims in 1994.

Munn had also filed a pro se supplemental brief, arguing that he should be permitted to withdraw his plea because there was a mutual mistake regarding his criminal-history score. *Id.* This court declined to reach the issue because it remanded the case to the district court. *Id.* This court stated:

If Munn persists in seeking leave to withdraw his pleas on remand, the district court may determine to grant such a motion; otherwise, the district court must resentence Munn according to the sentencing guidelines.

....
If Munn is resentenced on remand, the appropriate sentence is the presumptive guidelines sentence, which requires use of a zero criminal-history score when calculating the duration of a permissive-consecutive sentence.

Id. at *3.

Munn then moved to withdraw his guilty plea, and the district court held a hearing.

Counsel who represented Munn during the plea hearing testified that:

[t]he thing that Mr. Munn was interested in, and the thing that all of us agreed on one hundred percent was that he would do 240 months. That's what he knew. That's what he agreed to. He had no cares whatsoever in my view as to how that was arrived at. It was his decision to take a sentence that got his 20 years. And that's what we all thought on this thing. So, was he somehow mistaken as to what was going on? I don't think a single bit It's just that the case under these very complicated sentencing guidelines didn't comport with the way they were supposed to go so they sent it back. But there was no disagreement or misunderstanding by Mr. Munn as to what he was going to get out of this. He knew he'd get 240 months.

....
It was exactly the sentence that he expected to get.

On March 18, 2013, the district court determined that, “to preserve the finality of [Munn’s] convictions” it would review Munn’s plea-withdrawal motion for a manifest injustice. The district court stated:

Munn readily admits he pleaded guilty for a 240 month sentence in exchange for the State’s promise to refrain from seeking a dangerous sex offender indictment that would call for a mandatory life sentence without possibility of release. [Munn] did not plead guilty for a 240 month sentence to avoid a sentence lower than 240 months. By requiring [Munn’s] guilty pleas to stand, but with a lower sentence, [Munn] will not be deprived of any benefit that was promised to him by the State.

The district court concluded that the parties’ mistake regarding the sentencing guidelines neither induced Munn’s guilty pleas nor invalidated them.

The district court noted that at the outset, the state considered presenting the case to a grand jury for an indictment charging Munn as a dangerous sex offender, and if convicted as such, he was subject to life imprisonment without the possibility of release. The district court determined that Munn did not bargain for consecutive sentences, and that he would have accepted a 180-month sentence; thus, the court chose to sentence concurrently “[i]n order to effectuate the parties’ plea agreement consistent with the sentencing guidelines.” The district court resentenced Munn to 60 months for the prohibited-person-in-possession offense and to a concurrent 180 months for the third-degree criminal-sexual-conduct offense. The district court noted that if it had sentenced Munn consecutively, it would have used a zero criminal-history score, but the court chose to impose concurrent sentences. This appeal followed.

DECISION

Plea withdrawal

Munn argues² that the district court should have allowed him to withdraw his guilty plea. Initially, he asserts that the district court used the incorrect standard in evaluating his claim; he suggests that the district court erred when it considered his claim under the manifest-injustice standard, rather than the fair-and-just standard.

“A criminal defendant has no absolute right to withdraw a guilty plea once entered.” *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). Under the Minnesota Rules of Criminal Procedure, a criminal defendant may seek to withdraw a guilty plea in two circumstances. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A district court must permit plea withdrawal at any time when “necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs when a guilty plea is invalid. *Theis*, 742 N.W.2d at 646. A valid guilty plea is voluntary, accurate, and intelligent. *Perkins*, 559 N.W.2d at 688. We review the validity of a guilty plea under the manifest-injustice standard de novo, as a question of law. *See State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

A district court also has discretion to permit plea withdrawal before sentencing if the defendant proves that “it is fair and just to do so.” Minn. R. Crim. P. 15.05, subd. 2. “Although this standard is less demanding than the manifest injustice standard, it does not allow a defendant to withdraw a guilty plea for simply any reason.” *Theis*, 742 N.W.2d at 646 (quotation omitted). The district court’s decision to permit plea withdrawal under

² Munn raises identical issues in his pro se supplemental brief.

the fair-and-just standard “will be reversed only in the rare case in which the appellate court can fairly conclude that the [district] court abused its discretion.” *State v. Kaiser*, 469 N.W.2d 316, 320 (Minn. 1991)(quotation omitted).

This court reversed and remanded for resentencing, because Munn’s sentence was a departure from the sentencing guidelines and the district court did not provide a reason for departing. *Munn*, 2012 WL 2077264, at *2. This court did not vacate Munn’s sentence, nor did this court reverse Munn’s convictions; therefore, Munn’s underlying convictions are not at issue because his original appeal dealt only with correcting his sentence. Because Munn was sentenced and his sentence merely required correction, the district court appropriately evaluated Munn’s motion to withdraw his guilty plea under the manifest-injustice standard. *See Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002) (stating that public policy favors the finality of convictions).

Munn presents three reasons for plea withdrawal. First, he argues that he was not aware that he could face civil commitment as a consequence of his conviction. But his awareness and fear of the possibility of civil commitment is mentioned at least two times in the PSI. Further, civil-commitment consequences have been determined to be collateral consequences of a guilty plea. *See Sames v. State*, 805 N.W.2d 565, 568 (Minn. App. 2011) (stating that ignorance of a collateral consequence does not entitle a defendant to withdraw a guilty plea).

Second, Munn argues there was a mutual mistake in his criminal-history score that formed the fundamental basis of the plea agreement. A mutual mistake regarding a defendant’s criminal-history score provides a basis for plea withdrawal. *State v. DeZeler*,

427 N.W.2d 231, 235 (Minn. 1988). Munn relies on *DeZeler* to support his argument that the mutual mistake in his criminal-history score rendered the agreement “null and void.” But in *DeZeler*, the mistake as to the defendant’s criminal-history score resulted in the defendant pleading guilty believing that he would receive a stayed sentence, rather than an executed sentence. *Id.* Here, Munn sought and received a particular sentence. His attorney even testified that Munn understood the agreement and agreed to a 240-month sentence.

Munn also argues that the parties were “mistaken as to [Munn’s] criminal history score if the court imposed consecutive sentences.” While it is appropriate to permit plea withdrawal when a defendant agrees to plead guilty anticipating one sentence and actually receives a longer sentence, on remand Munn received a shorter sentence than he bargained for. Munn has not shown that it is manifestly unjust for him to receive 180 months in prison instead of the 240 months that he bargained for in his plea agreement.

Lastly, Munn argues that he should be permitted to withdraw his plea because the district court “depart[ed] without sufficient grounds and the departure materially alter[ed] the plea agreement.” This court reviewed this issue in the first appeal and ordered the district court to address it on remand. Further, even though this court determined that the district court erred in departing from the presumptive sentence, it is incorrect to suggest that the departure “materially *alter[ed]* the plea agreement.” (Emphasis added.) In fact, this court stated that the “district court intended to *honor* the plea agreement by imposing the total sentence of 240 months.” *Munn*, 2012 WL 2077264, at *2 (emphasis added). Therefore, Munn has failed to show that he should be

allowed to withdraw his plea because the district court imposed a sentence intending to abide by the parties' agreement, rather than to materially alter it.

Sentence

Munn also argues that the district court on remand was required to impose the presumptive consecutive sentences because the imposition of concurrent sentences exceeded the scope of the remand.

“A [district] court’s duty on remand is to execute the mandate of the remanding court strictly according to its terms.” *Duffey v. Duffey*, 432 N.W.2d 473, 476 (Minn. App. 1988). When the district court receives no specific directions as to how to proceed in fulfilling the remanding court’s order, the district court has discretion to proceed in any manner not inconsistent with the remand order. *John Wright & Assocs., Inc. v. City of Red Wing*, 256 Minn. 101, 102, 97 N.W.2d 432, 434 (1959).

Munn argues that “[t]he scope of the remand was limited to either plea withdrawal or resentencing the third-degree criminal sexual conduct consecutively with a zero criminal-history score.” That assertion is incorrect because the district court was directed to “resentence Munn according to the sentencing guidelines,” “which requires use of a zero criminal-history score *when* calculating the duration of a permissive-consecutive sentence.” *Munn*, 2012 WL 2077264, at *3 (emphasis added).

The district court concluded that Munn did not bargain for consecutive sentences and determined that “[i]n order to effectuate the parties’ plea agreement consistent with the sentencing guidelines, the [c]ourt will sentence concurrently.” The district court noted that if it had sentenced Munn consecutively, it would have used a zero criminal-

history score, but chose to impose concurrent sentences. The district court sentenced Munn according to the sentencing guidelines. The decision to sentence Munn to concurrent sentences was within the scope of the remand because this court stated that a zero criminal-history score was required when calculating permissive consecutive sentences, but the district court did not calculate permissive consecutive sentences.

On remand a district court may not impose a more severe sentence than that originally imposed. *State v. Holmes*, 281 Minn. 294, 296, 161 N.W.2d 650, 652 (1968). This court will reverse a district court's decision regarding sentencing only for a clear abuse of discretion. *State v. Lattimer*, 624 N.W.2d 284, 290 (Minn. App. 2001), *review denied* (Minn. May 15, 2001), *abrogated on other grounds by State v. Colby*, 657 N.W.2d 897, 899 (Minn. App. 2003).

Munn asserts that the “plea agreement was for consecutive sentences.” But the PSI demonstrates that the only problem that Munn had with his sentences was that they would be consecutive; “[h]e indicated that he was satisfied with his plea negotiated sentence, but felt the prison terms *should be concurrent versus consecutive*,” and “admitted to the charges against him and accepts his sentence as fair, *[but did] not believe he should be serving his time consecutively*.” (Emphasis added.) The district court did not abuse its discretion because it followed the remand instructions and sentenced Munn according to the sentencing guidelines, and the remand sentence is not more severe than the original sentence.

Affirmed.