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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0315**

Sally Soberg, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 26, 2008
Affirmed
Klaphake, Judge**

Clay County District Court
File No. KS-05-1441

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

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Heidi M. Fisher Davies, Clay County Courthouse, 807 11th Street North, P.O. Box 280, Moorhead, MN 56561 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Sally M. Soberg appeals from a postconviction order denying her petition to withdraw her guilty plea to a second-degree controlled substance offense

under Minn. Stat. § 152.022, subd. 1(1) (2006). She claims that her guilty plea was not knowing and intelligent because her plea was induced by “undue pressure and fear” and ignorance regarding “other options for negotiations, including requests for downward departures.” She claims that her “fear and mistaken beliefs were a direct result of conversations with her defense attorney,” who “told her that if she went to trial, she would lose and go to prison for 86 months.” Finally, appellant claims that the postconviction court improperly weighed her nine-month delay in filing the postconviction petition because the petition was timely. Because the underlying record does not provide evidentiary support for appellant’s claims and the postconviction court did not err in considering her delay in seeking the plea withdrawal as a factor in denying her petition, we conclude that the postconviction court did not abuse its discretion in denying appellant’s petition, and affirm.

D E C I S I O N

A district court must allow a defendant to withdraw a plea of guilty upon a timely motion and proof that “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice occurs when a plea is not accurate, voluntary, and intelligent; a plea is voluntary if it is not made in response to improper pressures, inducements, or promises. *James v. State*, 699 N.W.2d 723, 727-28 (Minn. 2005); *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

A criminal defendant has the burden to establish facts warranting the reopening of her case. *King v. State*, 562 N.W.2d 791, 794 (Minn. 1997). Here, the record, which included both the plea and sentencing hearing transcripts, does not provide evidence to

support appellant's claims. At the plea hearing, appellant answered affirmatively that she was satisfied with her attorney's representation, that no one had made any threats or promises to induce her guilty plea, and that she was aware that the plea agreement included a 48-month prison sentence and no possibility to seek a downward durational departure from the presumptive sentence. As it pertained to appellant's charge and 48-month sentence, the court specifically explored the reduction of appellant's initial charge from first-degree controlled substance offense to a second-degree offense, as well as appellant's failure to obtain a further reduction in the charge by not cooperating in a police investigation. The court was satisfied that appellant was aware of and fully understood her rights before accepting her plea.

At sentencing, the district court imposed a 48-month executed sentence, in conformance with the sentencing guidelines and appellant's plea agreement. Appellant contends that the court was "under the belief that a request for a downward departure would be made." This claim is not supported by the sentencing transcript, in which the court, in response to a request by appellant's attorney to reduce the sentence to the lowest end of the presumptive sentencing guidelines range, noted that it was bound to follow the guidelines and her plea agreement in imposing a sentence. Nothing in the sentencing transcript indicates that the court believed that appellant would be making a request for a downward durational departure.

Further, the postconviction court, while it denied appellant's petition on the basis that the record failed to provide any support for her claims, also concluded that the timeliness of her claim, nine months after sentencing, or approximately one-third of the

time she would actually serve in prison, was a factor that weighed against her claim. “[T]he timeliness of a petition to withdraw a guilty plea is a relevant consideration in determining whether that relief should be granted.” *James*, 699 N.W.2d at 728. Thus, the postconviction court did not err in considering any delay in appellant’s seeking withdrawal of her plea.

On these facts, appellant has not met her burden to show that her plea was other than knowing and voluntary. For this reason, and because the postconviction court did not abuse its discretion in denying appellant’s petition, we affirm. *See Woodruff v. State*, 608 N.W.2d 881, 884 (Minn. 2000) (ruling appellate review of postconviction court’s denial of petition for postconviction relief is under abuse-of-discretion standard of review).

Affirmed.