STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1028

State of Minnesota,
Respondent,

vs.

Trayon Maurice Berry,
Appellant.

Filed May 13, 2008
Affirmed
Crippen, Judge*

Ramsey County District Court
File No. KX-98-2577

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

Susan Gaertner, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, 50 West Kellogg Blvd., Suite 315, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Ngoc Lan Nguyen, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Crippen, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

CRIPPEN, Judge

In this postconviction appeal, Trayon Berry seeks to withdraw his 1998 guilty plea or to modify his sentence for a conviction of third-degree criminal sexual conduct. At the time of his plea agreement, neither appellant's trial attorney nor the prosecutor informed him that he would be subject to a five-year conditional release term. He became aware of the conditional release requirement at his August 2002 probation violation hearing, when his probation was revoked and he received an 18-month executed sentence. Appellant argues that he did not understand that the term of conditional release would be added to his sentence until he was released from prison on supervised release. He asserts that imposition of that term violated his plea agreement. We affirm.

FACTS

From July 1997 to March 1998, appellant, then 19 years old, had consensual sexual relations with a 13-year-old girl that resulted in her becoming pregnant. For this conduct, appellant was charged in Ramsey County with third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(b) (1996). Appellant's plea petition states that he agrees to plead guilty in exchange for a stay of imposition of a guidelines disposition, which includes a stayed sentence and placement on probation. At appellant's September 1998 plea hearing, defense counsel informed the court that the state's offer was to "plea[d] as charged, a guidelines disposition, jail is now going to be a 30-day cap, and a stay of imposition if my client has no prior felony convictions." Later, defense counsel reiterated the plea agreement to appellant as follows:

> And you understand that we modified it slightly from originally what we had written down and now it is plea as charged, it will be a guidelines disposition with a criminal sexual conduct evaluation and compliance, with a stay of imposition, and a 30-day cap on jail if you have no prior felony convictions.

Appellant's presentence investigation report revealed that he had no prior felony convictions. The district court stayed imposition of sentence but ordered, among conditions of probation, that appellant successfully complete sex offender treatment.

In October 2002, appellant appeared at his third probation violation hearing for failure to complete sex offender treatment. The district court revoked appellant's probation, vacated the stay of imposition of sentence, and imposed an executed 18-month sentence. The sentence includes a minimum of 12 months incarceration and six months of supervised release. At this time, the state notified appellant for the first time that he was subject to a five-year period of conditional release under Minn. Stat. § 609.109, subd. 7(a) (1998).

In July 2006, appellant filed a pro se petition for postconviction relief. The state public defender filed a supplemental petition for postconviction relief in September. The public defender argued that the addition of the conditional release term to appellant's sentence breached his plea agreement, because he did not agree to it and because it was not mentioned to appellant during his plea discussions or at the initial sentencing hearing. Appellant sought to either modify his sentence or withdraw his plea. The postconviction court denied the petitions, and appellant seeks further review.

D E C I S I O N

This court reviews a postconviction court's decision under the abuse of discretion standard of review. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004), *cert. denied*, 543 U.S. 882, 125 S. Ct. 134 (2004). The "scope of review on appeal from a postconviction court's denial of relief is limited to determining whether the court abused its discretion, including whether there was sufficient evidence to support the court's conclusions." *James v. State*, 699 N.W.2d 723, 728 (Minn. 2005). This court gives de novo review to issues of law, including "[i]nterpretation and enforcement of plea agreements[.]" *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000).

After imposition of a sentence, a defendant may withdraw a guilty plea if withdrawal is "necessary to correct a manifest injustice," Minn. R. Crim. P. 15.05, subd. 1, and the burden is on the defendant to prove manifest injustice. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A defendant demonstrates manifest injustice if the guilty plea fails to meet the constitutional requirement of being accurate, voluntary, and intelligent. *Id.*

Here, we must reconcile appellant's constitutional guarantees relative to his plea agreement with the statutorily mandated term of conditional release required by Minnesota law. Under Minn. Stat. § 609.109, subd. 7(a) (1998), the district court was required to order a person convicted of third-degree criminal sexual conduct to be placed on conditional release for a five-year term. Conditional release typically runs concurrently "from the date the offender is released from prison after having served two-thirds of the executed sentence." *James*, 699 N.W.2d at 726 n.2.

Appellant likens his case to *Jumping Eagle*, in which the supreme court concluded that where a defendant received both a maximum sentence agreed to under a plea agreement and a term of conditional release, his sentence violated the plea agreement by including a term of conditional release that exceeded the "upper limit contemplated at the time he entered into the plea agreement." *James*, 699 N.W.2d at 730 (discussing*Jumping Eagle*, 620 N.W.2d at 43-44). Under those circumstances, the supreme court remanded the case to allow the defendant to either withdraw his plea or "modify his sentence so that the maximum period of incarceration, including the period of conditional release, does not exceed" the upper limit of the sentence he had agreed to in the plea. *Jumping Eagle*, 620 N.W.2d at 45; *James*, 699 N.W.2d at 730.

Several supreme court cases released in the years following *Jumping Eagle* have refined its ruling. In one of those cases, *Rhodes*, the supreme court ruled that where the defendant is put on notice of the state's intention to seek a term of conditional release before sentencing, in both the presentence investigation report and at the sentencing hearing, and the defendant fails to object to inclusion of the conditional release term in the sentence, the defendant is not later entitled to plea withdrawal. 675 N.W.2d at 327.

Respondent contends that appellant's case is not controlled by *Jumping Eagle* or its progeny because appellant's plea agreement did not include a specific term of imprisonment, and the district court stayed imposition of sentence provided that he not violate the terms of his probation. A case from this court, *State v. Christopherson*, 644 N.W.2d 507 (Minn. App. 2002), *review denied* (Minn. July 16, 2002), addresses a similar factual scenario. In *Christopherson*, imposition of the defendant's sentence was stayed,

and the court did not sentence the defendant at the time of the plea. *Id.* at 510. When the defendant later violated his probation and the court vacated the stay, the defendant was sentenced to a term of conditional release that was not required by law at the time of his plea hearing. *Id.* This court upheld imposition of the term of conditional release, because the plea agreement included only an agreement regarding disposition of the sentence, and not its duration; under these circumstances, this court concluded that *Jumping Eagle* did "not compel a conclusion that the imposition of the conditional release violated the terms of his plea agreement." *Id.* at 512. This principle also coincides with dicta in *State v. Wukawitz,* 662 N.W.2d 517, 522 n.3 (Minn. 2003), which "recognize[s] that some plea agreements contemplate recommendations by the parties without binding the court to a specific sentence. In such cases, the failure of the court to follow such recommendations does not violate due process."

We conclude that *Christopherson* is controlling here. The essence of appellant's plea agreement was that he avoided serving prison time. Although the plea petition references a "guidelines" disposition, this statement could refer to the fact that a first-time offender would be subject to a stayed sentence rather than an executed sentence, and not refer to the duration of a presumptive guidelines sentence. There was no mention made during the plea hearing, other than a reference to a "guidelines disposition." As in *Christopherson*, where "the only thing . . . bargained for was a disposition that would not include prison time," 644 N.W.2d at 511, appellant's imposition of a term of conditional release does not violate the terms of his plea agreement.

In these circumstances, it is also appropriate to note that appellant was on notice of the mandatory statutory requirement of a term of conditional release because the conditional release statute came into effect in 1992, six years before the criminal complaint was filed in this case. *See Rhodes,* 675 N.W.2d at 327. Appellant is presumed to have been informed of this law by counsel at each of his three probation violation hearings. *See State v. Calmes,* 632 N.W.2d 641, 648 (Minn. 2001) (stating citizens are presumed to know the law); *State ex rel. Rankin v. Tahash,* 276 Minn. 97, 101, 149 N.W.2d 12, 15 (1967) (stating that counsel is presumed to have explained to defendant consequences of pleading guilty).

For these reasons, we conclude that the postconviction court did not abuse its discretion in declining to allow appellant to withdraw his guilty plea or to modify his sentence because imposition of a term of conditional release did not violate appellant's plea agreement.

Affirmed.