STATE OF MINNESOTA
IN COURT OF APPEALS
A06-0432
A07-0647

State of Minnesota,
Respondent,

vs.

Rafael H. Bryson, petitioner,
Appellant.

Filed June 24, 2008
Reversed and remanded
Lansing, Judge

Ramsey County District Court
File No. K0-05-891

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

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

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

Considered and decided by Lansing, Presiding Judge; Toussaint, Chief Judge; and

Hudson, Judge.

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

LANSING, Judge

A postconviction court denied Rafael Bryson's petition for plea withdrawal. On appeal, Bryson argues that his plea was involuntary and unintelligent, that the prosecution's failure to disclose DNA-test results before Bryson pleaded guilty constitutes a manifest injustice, and that the district court improperly held that his motion for plea withdrawal was untimely. We conclude that the postconviction court did not abuse its discretion when it determined that Bryson's plea was voluntary and intelligent, but we agree with Bryson's argument that his plea-withdrawal motion was timely. Because the motion was timely and because the district court did not address whether it was a manifest injustice for the prosecution to fail to disclose DNA-test results before entry of Bryson's plea, we reverse and remand for further proceedings.

F A C T S

This appeal stems from Rafael Bryson's second-degree murder conviction for the fatal shooting of a twenty-six-year-old man near a convenience store in St. Paul. A few days after the shooting, the police received an anonymous call from a person who claimed to have information about the crime. The caller told police that Rafael Bryson had shot the decedent. After further investigation, the state charged Bryson with second-degree murder, and a jury trial was set for August 1, 2005.

The state moved for a trial continuance in July 2005. In a supporting affidavit, a prosecutor asserted that the state's case against Bryson was composed almost completely of testamentary evidence and claimed that Bryson had used threats and coercion to make

potential witnesses either change their account of the murder or refuse to testify. The state argued that, as a result of the compromised testimony, the court's denial of a continuance would have a critical impact by precluding the possibility of the state obtaining forensic evidence and thereby significantly reduce the likelihood of a successful prosecution.

The prosecution stated the continuance was necessary to allow time to obtain testing to collect any DNA evidence under the victim's fingernails, to determine whether any evidence of the decedent's DNA could be found on a stained shirt that was among clothing taken from Bryson, and whether that clothing contained gun-shot residue. The district court granted the continuance and rescheduled trial for October 2005.

A few weeks after the district court granted the continuance, the prosecution notified Bryson that the police had recovered a gun from the roof of a building that Bryson had run past when police were pursuing him; that, according to forensic testing, the marks on two bullet casings found near the decedent's body showed that the casings were fired by the gun found on the rooftop; that, according to forensic testing, the gun could not be eliminated as the gun that fired the three bullets removed from the decedent's body; and that, according to a laboratory report, gun-shot residue was found on the right sleeve and right pocket of the sweatshirt Bryson was allegedly wearing at the time of the shooting. After receiving this information, Bryson, on September 23, 2005, entered a guilty plea in exchange for a sentence of 280.5 months, which was a downward departure from the presumptive sentence of 386 months.

Bryson filed a notice of appeal in March 2006. At Bryson's request, we stayed the appeal and remanded the case to the district court for postconviction proceedings. In the district court, Bryson filed a postconviction motion for withdrawal of his guilty plea. The district court scheduled an evidentiary hearing. The day before the scheduled hearing, the prosecutor received reports summarizing additional forensic-test results. One of the reports indicated that Bryson's DNA was not found under the decedent's fingernails and that no blood was found on the stained shirt that allegedly belonged to Bryson. This report was dated August 17, 2005, more than a month before Bryson pleaded guilty, and had been prepared by the Bureau of Criminal Apprehension. The prosecutor immediately faxed the reports to Bryson's attorney.

At the plea-withdrawal hearing, the prosecutor told the district court judge that when he was preparing for the postconviction hearing he noticed that the results of the DNA tests were not in the file. He contacted the police department, and the department sent him a copy of the report that showed a date of August 17, 2005.

Following the hearing, the postconviction court denied Bryson's motion, holding that Bryson's request for plea withdrawal "is not timely" and his plea "has not resulted in manifest injustice." Bryson appealed the postconviction court's order. We reinstated the direct appeal and consolidated it with Bryson's appeal from the postconviction court's determination.

D E C I S I O N

Once a guilty plea has been entered, a defendant does not have an absolute right to withdraw it. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A postconviction court

may allow a defendant to withdraw a guilty plea after sentencing if the motion is timely and the defendant proves by a fair preponderance of the evidence that withdrawal is "necessary to correct a manifest injustice." Minn. Stat. § 590.04, subd. 3 (2006); Minn. R. Crim. P. 15.05, subd. 1; *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). Manifest injustice exists when a defendant can show that a guilty plea was not accurate, voluntary, and intelligent. *Perkins*, 559 N.W.2d at 688. We review a postconviction court's application of the manifest-injustice standard for an abuse of discretion. *Id*. at 685.

Bryson makes three arguments on appeal. First he argues that his plea was neither voluntary nor intelligent. Second, he argues that the prosecution's failure to disclose DNA-test results before Bryson pleaded guilty constitutes a manifest injustice. And, third, he argues that the district court improperly held that his motion to withdraw his plea was untimely. We address each of these arguments.

I

Bryson argues that his plea was neither intelligent nor voluntary because he has learning disabilities and did not have access to his medication, because his attorney did not inform him that he could not be convicted unless a jury reached a unanimous decision to convict, because he did not understand that if he pleaded guilty he would be unable to challenge the state's evidence and witness statements, because he was rushed into pleading guilty, and because he was improperly pressured by his attorney to plead guilty.

After hearing testimony on each of these claims at the plea-withdrawal hearing, the district court rejected Bryson's arguments. The record supports each of the district court's findings.

The record demonstrates that, despite Bryson's learning disabilities and his lack of medication, he was able to function at a normal level. Although Bryson had not had access to his medication since he was charged in March 2005, he demonstrated his mental capacity by obtaining his GED while awaiting trial. Furthermore, Bryson told the judge at the plea hearing that he had the capacity to understand what was going on and that he did not doubt himself. And, finally, the postconviction-court judge, who accepted Bryson's guilty plea and who conducted the plea-withdrawal hearing, observed that Bryson's appearance, demeanor, and testimony at the time of his postconviction hearing matched his appearance, demeanor, and testimony at the time of his plea: at both hearings Bryson was very lucid and reasoned and did not appear in any way to be confused.

The record also dispels Bryson's other arguments. In Bryson's plea petition, he acknowledged that, if he pleaded not guilty, the jury would have to reach a unanimous decision to convict; that if he pleaded guilty he "will not be able to object tomorrow or any other time to the evidence that the prosecutor has"; that he had sufficient time to discuss his case with his attorney; and that no one, including his attorney, had threatened him or made promises to him to obtain the guilty plea. Additionally, at Bryson's plea hearing, he told the district court judge that he was pleading guilty entirely of his own free will.

Because the record supports the district court's findings, the district court did not abuse its discretion when it held that Bryson's plea was intelligent and voluntary. *See Perkins*, 559 N.W.2d at 685 (stating that "scope of review is limited to the question of whether sufficient evidence exists to support the postconviction court's findings").

II

Bryson's second argument is that the prosecution's failure to disclose the DNA-test results before Bryson's guilty plea constitutes a manifest injustice requiring that he be allowed to withdraw his guilty plea. Bryson raised this issue in his postconviction petition, albeit in a more abbreviated form, and the postconviction court did not address it in its order.

The prosecution has a duty to disclose all material, exculpatory evidence. *See Pederson v. State*, 692 N.W.2d 452, 460 (Minn. 2005); *see also* Minn. R. Crim. P. 9.01, subd. 1(6) (providing that prosecutor must disclose exculpatory material within his "possession and control"). The DNA testing of the victim's fingernail clippings revealed no material that matched Bryson's DNA and no blood was found on Bryson's stained shirt. These test results could be considered exculpatory, as the record indicates there may have been a struggle before the shooting during which the victim sustained injuries.

The prosecutor stated at the postconviction hearing that the DNA-test reports were not in his file even as he prepared for the postconviction hearing. A call to the police department, however, turned up the reports. It is not clear from the record whether the test reports were at the BCA or at the police department from August 17, 2005, when

they were prepared, until November 2006, when they were finally disclosed to the defense.

The postconviction court made no findings on whether the DNA-test reports were in the "possession and control" of the prosecution when Bryson pleaded guilty, whether they are both material and exculpatory, or whether the failure to disclose them played a significant role in Bryson's guilty plea that would create a manifest injustice requiring withdrawal of the plea. We note that Bryson's attorney would apparently have been aware that the reports were outstanding at the time of the guilty plea. We also note that Bryson pleaded guilty shortly after the disclosure of the incriminating discovery of the gun, the forensic testing indicating it may have been the murder weapon, and the incriminating gunshot-residue test on Bryson's sweatshirt. But this court cannot determine from the record, without factual findings by the district court, whether the DNA-test results played a significant role in Bryson's decision to plead guilty given the totality of the information available at the time.

The state argues that this court can independently review the record and decide this claim even though it was not addressed by the postconviction court. *See Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). But we have reviewed the record, which is scant because the charges were resolved by a guilty plea, and we conclude the record is insufficient to decide the issue. As an appellate court, we lack the fact-finding authority of the district court. *See State v. Colvin*, 645 N.W.2d 449, 453 (Minn. 2002) (criticizing any appellate fact-finding).

When faced with similar allegations of a discovery violation and a similarly scant record, the supreme court has reversed a conviction based on a guilty plea for "manifest injustice" through the exercise of its supervisory powers. *Shorter v. State*, 511 N.W.2d 743, 747 (Minn. 1994). The supreme court has also employed its supervisory powers to reverse a conviction due to the prosecution's failure to disclose evidence even without a clear showing of prejudice. *State v. Kaiser*, 486 N.W.2d 384, 387 (Minn. 1992). We have generally declined to exercise supervisory powers when the power at issue is squarely within the supreme court's rulemaking powers. *See State v. Gilmartin*, 535 N.W.2d 650, 653 (Minn. App. 1995) (declining to exercise supervisory powers reserved for the supreme court), *review denied* (Minn. Sept. 20, 1995). At this juncture in the proceedings, however, we cannot determine whether a manifest injustice occurred or, if so, whether it resulted in prejudice. We decline to short-circuit the necessary factual development by assuming supervisory powers over an area which is governed by the supreme court in its rulemaking authority. *See* Minn. R. Crim. P. 9.01 (providing for disclosure in felony and misdemeanor prosecutions). Accordingly, we reverse and remand this issue to the postconviction court for factual development and determination.

III

Although the postconviction court did not address the issue of whether the state's failure to disclose the BCA's DNA report resulted in a manifest injustice, we recognize that the district court's denial of Bryson's postconviction motion could be affirmed solely on the basis that Bryson's motion to withdraw was untimely. *See* Minn. R. Crim. P. 15.05, subd. 1 (indicating that defendant must prove manifest injustice *and* motion must

be timely). Consequently, we must address Bryson's third argument—that the district court improperly held that Bryson's motion to withdraw his plea was untimely.

A motion to withdraw a guilty plea may be denied solely on the basis that it is untimely if the delay "is deliberate and inexcusable constituting an abuse of the judicial process." *James v. State*, 699 N.W.2d 723, 728 (Minn. 2005). Courts are particularly reluctant to deny a postconviction petition on untimeliness grounds when, as in this case, the defendant's claims have not been substantively reviewed. *Id.* at 727-28; *see also Stutelberg v. State*, 741 N.W.2d 867, 874 (Minn. 2007) (noting that "we have suggested that a [postconviction] petition cannot be barred as untimely where the petitioner has not been heard on appeal").

In reaching its conclusion that Bryson's plea-withdrawal motion was untimely, the district court emphasized that Bryson "first considered withdrawing his plea three or four days after the plea was entered on September 23, 2005" and that he did not file his petition for postconviction relief until "September 15, 2006, some ten and a half months after sentencing and just short of one year after the plea." While this statement is true, it ignores the fact that Bryson filed a notice of direct appeal on March 1, 2006, less than six months after entering his plea. Later, when he realized that it was necessary to establish a factual record to support his request to withdraw his guilty plea, he asked this court to stay the appeal and filed a petition for postconviction relief.

On these facts, we conclude that Bryson's motion to withdraw his guilty plea did not constitute an abuse of the judicial process and should not have been denied as untimely. *See James*, 699 N.W.2d at 727 (reversing appellate court's determination that

motion to withdraw guilty plea was untimely when it was filed more than three years after grounds for motion arose); *cf.* Minn. Stat. § 590.01, subd. 4(a) (2006) (setting forth general rule that "[n]o petition for postconviction relief may be filed more than two years after the later of: (1) the entry of judgment of conviction or sentence if no direct appeal is filed; or (2) an appellate court's disposition of petitioner's direct appeal").

Reversed and Remanded.