STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1303

State of Minnesota,
Respondent,

vs.

Daniel Lee Thurmer,
Appellant.

Filed August 5, 2008
Affirmed
Kalitowski, Judge

Carver County District Court
File No. CR-04-363

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

James W. Keeler, Jr., Carver County Attorney, Martha E. Mattheis, Assistant County Attorney, Carver County Justice Center, 604 East Fourth Street, Chaska, MN 55318 (for respondent)

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

Considered and decided by Peterson, Presiding Judge; Kalitowski, Judge; and Halbrooks, Judge.

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

KALITOWSKI, Judge

Pursuant to a plea agreement in which he agreed to be sentenced based on the presentence investigation report, appellant Daniel Lee Thurmer pleaded guilty to first-degree DWI and driving after cancellation in 2004. Appellant was subsequently sentenced to the presumptive 36-month term, but his sentence was stayed for seven years and he was placed on supervised probation. In 2007, while incarcerated on an unrelated offense, appellant requested execution of his sentence. The district court executed the sentence and informed appellant that he would be subject to five years of conditional release following his release from incarceration. Appellant now challenges the imposition of the conditional-release term, arguing that, because it was not included in the presentence investigation report from which his sentence was to derive, he is entitled to either withdraw his plea or have his sentence modified to conform to the recommended sentence. We affirm.

D E C I S I O N

Appellant argues that because the presentence investigation report on which his sentence was based did not refer to the imposition of a conditional-release period, he should be allowed to either withdraw his guilty plea or have his sentence modified to conform to the recommended sentence. We disagree.

The interpretation and enforcement of a plea agreement present issues of law, which we review de novo. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). Under Minnesota law, "[a] criminal defendant does not have an absolute right to withdraw a

guilty plea once it is entered." *Id.* (citing *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997)). A criminal defendant shall be allowed to withdraw a guilty plea "upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A guilty plea is valid when it is "(a) accurate, (b) voluntary, and (c) intelligent (that is, knowing and understanding)." *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) (citing *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983)). "A manifest injustice occurs when a guilty plea is not accurate, voluntary, and intelligent." *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998) (citing *Perkins*, 559 N.W.2d at 688).

Appellant relies on the cases of *State v. Wukawitz*, 662 N.W.2d 517 (Minn. 2003), and *State v. Jumping Eagle*, 620 N.W.2d 42 (Minn. 2000), to support his argument that he was provided inadequate notice of the imposition of the conditional-release term when entering into the plea agreement. Although *Wukawitz* and *Jumping Eagle* addressed this issue in the context of a criminal-sexual-conduct offense, the statutes governing the conditional release of sex offenders and DWI offenders are nearly identical. *Compare* Minn. Stat. § 609.3455, subd. 6 (2006) (sex offenders), *with* Minn. Stat. § 169A.276, subd. 1(d) (2006) (DWI offenders).

In *Wukawitz*, the district court added a mandatory conditional-release term two years after the defendant pleaded guilty. 662 N.W.2d at 520. In *Jumping Eagle*, the mandatory conditional-release term was not imposed until the defendant's probation was revoked more than five years after sentencing. 620 N.W.2d at 43. The mandatory conditional-release term was not discussed at either defendant's plea negotiations nor at

their plea or sentencing hearings. *Wukawitz*, 662 N.W.2d at 520; *Jumping Eagle*, 620 N.W.2d at 43. In both cases, the defendant moved to withdraw his guilty plea, arguing that imposition of the conditional-release term violated the plea agreement. *Wukawitz*, 662 N.W.2d at 520; *Jumping Eagle*, 620 N.W.2d at 43. The Minnesota Supreme Court concluded that because the defendant received both the maximum sentence agreed to under the plea agreement plus a term of conditional release, his sentence violated the plea agreement. *Wukawitz*, 662 N.W.2d at 526; *Jumping Eagle*, 620 N.W.2d at 44.

We conclude that *Wukawitz* and *Jumping Eagle* are distinguishable from appellant's case. First, unlike the defendants in those cases, the record here indicates that appellant had notice that a conditional-release term would be imposed if his sentence were executed. The Minnesota Supreme Court has recognized that where a defendant is put on notice of the state's intention to seek a term of conditional release before sentencing and the defendant fails to object to inclusion of the conditional-release term in the sentence, the defendant is not later entitled to a plea withdrawal. *Rhodes*, 675 N.W.2d at 327.

Here, the record indicates that despite his claim at the sentencing hearing that he had not heard about conditional release, appellant had notice of the existence of the conditional-release term. The plea petition stated that "for felony driving while impaired offenses . . . a mandatory period of conditional release will follow any executed prison sentence that is imposed," and the sentencing worksheet stated: "Conditional Release Statutes Apply if Prison Sentence is Executed: 5 Years." Thus, we conclude that appellant's failure to object to the imposition of the conditional-release term at sentencing

negates his contention that his plea was not intelligent and that imposition of the term violated the plea agreement.

In addition, unlike the defendants in *Wukawitz* and *Jumping Eagle*, appellant was not induced to plead guilty by a limit on prison time. 662 N.W.2d at 521; 620 N.W.2d at 44. Appellant admits that when he pleaded guilty, "there had not been any specific promises made with regards to sentencing." Moreover, we agree with respondent's argument that this case is similar to *State v. Christopherson*. 644 N.W.2d 507 (Minn. App. 2002), *review denied* (Minn. July 16, 2002). In *Christopherson*, imposition of the defendant's sentence was stayed. *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.* We noted that "had Christopherson complied with the conditions imposed at the time of the plea, he would never have been subject to a conditional release." *Id.* And we rejected Christopherson's argument that he should be allowed to withdraw his guilty plea because "to adopt his position would be to adopt a rule that requires any court taking a plea to state on the record all possible consequences of any future violation of terms of probation." *Id.* Similarly here, appellant would not have been subject to a conditional-release term if, following incarceration for an unrelated offense, he had not asked the district court to execute his sentence.

In conclusion, the district court properly determined that appellant is not entitled to withdraw his guilty plea or to a modification of his sentence.

Affirmed.