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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1570**

State of Minnesota,
Respondent,

vs.

Curtis Allen Anderson,
Appellant.

**Filed August 5, 2008
Affirmed
Klaphake, Judge**

Dakota County District Court
File No. K4-06-390

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

Vance B. Grannis, III, Dakota County Attorney's Office, 1560 W. Highway 55, Hastings,
MN 55033 (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 Minge, Presiding Judge; Klaphake, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Curtis Anderson challenges the postconviction court's denial of his petition to withdraw a guilty plea. Because the postconviction court did not abuse its discretion in finding that appellant's guilty plea was accurate, voluntary, and intelligent, we affirm.

DECISION

A petitioner seeking a postconviction remedy must establish facts that show, by a preponderance of evidence, entitlement to relief. Minn. Stat. § 590.04, subd. 3 (2006). Denial of a petition without a hearing is appropriate if the record conclusively shows that the petitioner is not entitled to relief. Minn. Stat. § 590.04, subd. 1 (2006). This court reviews the denial of a postconviction petition under an abuse-of-discretion standard. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005).

A defendant does not have an absolute right to withdraw a guilty plea. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A defendant may withdraw a guilty plea if withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists when a defendant can show that a guilty plea was not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). A guilty plea is intelligent only if the criminal defendant is aware of his rights under the law and the direct consequences of pleading guilty. *Alanis*, 583 N.W.2d at 577. Appellant has the burden to establish facts warranting the reopening of his case. *Id.*

Appellant argues his plea was not knowing, voluntary, and intelligent because he had a genuine misapprehension about his legal position at the time he entered his plea—he claims his defense attorney failed to inform him of his right to contest the constitutionality of the search and failed to challenge the search. Appellant claims that had he been so informed, he would not have pled guilty.

The postconviction court denied appellant's motion to withdraw finding that, during the plea process, appellant (1) acknowledged that he had sufficient time to discuss his case with his attorney and was satisfied that his attorney fully informed him as to the facts of his case; (2) stated he was aware that the prosecutor had physical evidence seized as a result of a search; (3) recognized that he had a right to a pretrial hearing before a judge to determine whether or not the evidence so obtained could be used against him if he went to trial; and (4) specifically waived his right to a pretrial hearing and acknowledged he would not be able to object to this evidence on a later occasion. The record supports each of the postconviction court's findings.

While appellant claims that he was not informed by his defense counsel that he had the right to contest the search, he explicitly acknowledged this very fact in his petition to enter a plea of guilty; he initialed this section of the petition and signed the document. Appellant further confirmed the details of the written petition during the plea hearing on January 3, 2007, admitted going through the petition with his attorney, and orally stated that he understood his constitutional rights and that he waived those rights. Finally, in a handwritten motion to withdraw the plea agreement dated March 5, 2007, appellant wrote "Defendant's . . . Public Defender Thomas Blackmore, *didn't want to*

argue the issues on probable cause for the stop of an illegal search and seizures.” (Emphasis added.) This claim differs markedly from his assertion here, that his counsel *did not inform* him of his right to object to the search. Appellant does not argue that he misunderstood the petition he signed, does not argue ineffective assistance of counsel in this appeal, and has not established any other basis for reversing the postconviction court’s order.

Based on a review of the record and transcript of the plea hearing, there is ample support for the postconviction court’s conclusion that appellant knew and understood his rights under the law and knowingly, voluntarily, and intelligently waived his right to challenge the search. Thus, we conclude the postconviction court did not err in concluding that appellant failed to establish the presence of a manifest injustice in his plea arrangement and in determining that withdrawal of his guilty plea was not required.

Affirmed.