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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1985**

State of Minnesota,
Respondent,

vs.

Matthew Lyngen,
Appellant.

**Filed October 21, 2008
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 02042961

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

Michael O. Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County Attorney, C-2000 Government Center, 300 South 6th Street, Minneapolis, MN 55487 (for respondent)

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

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his postconviction petition to withdraw his guilty plea, arguing that his plea was not made knowingly, intelligently, and voluntarily. We affirm.

FACTS

On February 8, 2002, Brooklyn Center police responded to a report of abuse of an eight-year-old boy. The parents of the boy informed police that their son said that he had been abused by his uncle, appellant Matthew Lyngen, while appellant lived with the family. The boy's therapist reported to Officer Peggy Broberg that the boy told her that appellant squeezed his penis. Appellant later admitted to Officer Broberg that he grabbed and played with the boy's penis on four occasions for approximately 30 seconds each time.

Appellant was charged with second-degree criminal sexual conduct in violation of Minn. Stat. §§ 609.101, subd. 2; .109, subd. 7; .343, subds. 1(a), 2 (2002). Appellant originally pleaded guilty on August 26, 2003 to the charged offense. In exchange for his plea, the state agreed not to charge appellant with a second count of criminal sexual conduct involving his niece. Appellant received a stay of imposition of a 21-month sentence and was ordered to serve 4–12 months in the workhouse with the possibility of release after four months to attend treatment. He was also placed on probation for ten years and ordered to register as a sex-offender, provide a DNA sample, and comply with

other terms provided by the court. If his probation was revoked, appellant was subject to the imposition of a five-year conditional-release term.

On October 29, 2003, for reasons that are not discernible from our record, appellant withdrew his guilty plea. On April 26, 2004, as the trial was about to begin, appellant again pleaded guilty. In exchange for this guilty plea, appellant received a stay of imposition of a 21-month sentence and was ordered to serve 240 days in the workhouse with a possible release after 120 days to attend treatment. He was also placed on probation for ten years and required to comply with all sex-offender assessments and recommendations and to successfully complete a mental-health treatment program for sex offenders. In the event that appellant's probation was revoked, a five-year conditional-release term was to be added to his prison sentence.

Appellant was subsequently arrested for violation of the terms of his probation. The district court reinstated appellant's probation on March 21, 2005, but restructured it with new conditions, including court-ordered treatment at the Safety Center. Appellant did not seek to withdraw his plea at the hearing. Appellant's probation was modified a second time on August 23, 2006, due to his lack of progress and poor attitude at the Safety Center. At that time, appellant was ordered to participate in the Alpha Human Services residential treatment program.

The district court issued a second arrest and detention order on January 9, 2007, following allegations that appellant was terminated from the Alpha Human Services program. During his appearance in district court on January 22, 2007, appellant's attorney informed the district court that it was appellant's position that he had been

coerced into pleading guilty on April 26, 2004. The district court held an evidentiary hearing and concluded that appellant had intentionally and inexcusably violated the terms of his probation. Because the district court determined that the need for appellant's confinement outweighed the policies favoring probation, the district court revoked appellant's probation and committed him to the Commissioner of Corrections for 21 months, with 291 days of jail credit, to be followed by a five-year conditional-release period.

Appellant petitioned for postconviction relief on July 12, 2007, seeking to withdraw his guilty plea on the ground that it was not knowing, voluntary, and intelligent. The district court denied appellant's postconviction petition on the ground that it was untimely. This appeal follows.

DECISION

A person convicted of a crime may challenge the conviction, sentence, or disposition by filing a petition for postconviction relief. Minn. Stat. § 590.01 (2006). We review a postconviction proceeding for an abuse of discretion. The district court's factual findings are reviewed to determine if there is sufficient evidence to sustain them; legal issues are reviewed de novo. *Schleicher v. State*, 718 N.W.2d 440, 444–45 (Minn. 2006). A party seeking postconviction relief bears the burden of proving the facts alleged in the petition by a fair preponderance of the evidence. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997).

A criminal defendant has no absolute right to withdraw a guilty plea. *Id.* Instead, a defendant may only withdraw his guilty plea after sentencing “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. The question of timeliness depends on several factors, including (1) the district court’s interests in preserving the finality of convictions; (2) the defendant’s diligence in pursuing withdrawal of the plea; and (3) the possible prejudice to the state. *State v. Byron*, 683 N.W.2d 317, 321 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). The state bears the burden of demonstrating prejudice. *Id.*

The district court concluded that appellant “was not diligent in seeking withdrawal” of his guilty plea and that the state “would be prejudiced because essential evidence and witnesses may no longer be available for a successful trial.” We agree. Appellant was sentenced on June 2, 2004. Appellant petitioned for postconviction relief to withdraw his guilty plea on July 12, 2007, more than three years after his sentencing. During that three-year period, appellant had multiple opportunities to raise his claim of coercion.

An arrest and detention order for appellant was issued on January 21, 2005, following his probation violations. He appeared before the district court on March 21, 2005, at which time his probation was reinstated with new conditions. Appellant admitted the probation violations on the record but did not seek to withdraw his guilty plea. His probation was then modified a second time on August 23, 2006, following his lack of progress and poor attitude regarding treatment. Again, appellant failed to raise an argument that his plea was coerced.

A second arrest and detention order was issued following appellant's continued probation violations and failure to complete court-ordered treatment. He subsequently appeared in district court on January 22, 2007, represented by the same public defender who had previously represented him. At this appearance, appellant's attorney stated that appellant alleged that counsel "participated in coercing [appellant] to plead guilty and that's one of the reasons why [appellant] didn't want to complete treatment." Discussion of appellant's alternatives concerning legal representation followed, with appellant ultimately deciding to have the same attorney continue to represent him at the hearing.

Appellant waited more than three years to assert that his plea was not knowing, voluntary, and intelligent, raising it when the five-year conditional-release period was imposed after numerous probation violations. The passage of time makes it difficult for the state to present its case; some witnesses may no longer be available, prejudicing the prosecution. We also agree with the district court that it has an interest in preserving the finality of appellant's conviction and, accordingly, conclude that appellant's postconviction petition is untimely. *Black v. State*, 725 N.W.2d 772, 776 (Minn. App. 2007); *Byron*, 683 N.W.2d at 321.

Although the district court did not address the issue, the state argues and we agree that withdrawal of appellant's guilty plea is not necessary to avoid a manifest injustice. A plea may be withdrawn as a manifest injustice if it is not made accurately, voluntarily, and intelligently. *Perkins*, 559 N.W.2d at 688. Ensuring an accurate plea protects a defendant from pleading to an offense more serious than he could have been convicted of following a trial. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A plea is made

voluntarily when it is not entered into as a result of improper pressure or inducement. *Id.* When a defendant understands the charges, his or her rights, and the consequences of pleading guilty, such a plea is made intelligently. *Id.*

According to the affidavit that appellant submitted in support of his postconviction petition, he lied while testifying about the factual basis underlying his offense and was coerced into pleading guilty because he felt that he had no other choice. But appellant testified to the facts alleged in the complaint when he entered his first guilty plea that he withdrew on October 29, 2003. Six months later, appellant entered another guilty plea with a similar plea agreement. Appellant signed a four-page agreement associated with his April 26, 2004 guilty plea in which he affirmed that no one had threatened or promised him anything to induce his plea and that he wished to enter the plea. In addition, appellant continued to allow the same public defender to represent him over a three-year period until he petitioned for postconviction relief, alleging coercion.

In light of the record supporting appellant's understanding of his guilty plea and the lengthy delay in his claim that he was coerced to enter a guilty plea, appellant's argument is not compelling. *See State v. Struzan*, 548 Minn. 547, 548, 214 N.W.2d 342, 343 (1974) (holding that a court has no obligation to believe a later claim of innocence when the plea was made knowingly, intelligently and voluntarily). In addition to the claims raised by appellant's counsel, appellant has submitted a pro se supplemental brief. We have reviewed the statements contained in his supplemental brief and conclude that they fail to raise any dispositive argument that would compel a different decision. The

district court's decision to deny appellant's postconviction petition was not an abuse of discretion.

Affirmed.