STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1800

Nathan B. Freeman, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed November 10, 2008
Affirmed
Hudson, Judge

Rice County District Court
File No. 66-CV-06-1289

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

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

G. Paul Beaumaster, Rice County Attorney, Benjamin Bejar, Assistant County Attorney, 218 Northwest Third Street, Faribault, Minnesota 55021 (for respondent)

Considered and decided by Hudson, Presiding Judge; Kalitowski, 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

HUDSON, Judge

In this postconviction appeal seeking relief from his second-degree criminal sexual conduct conviction and sentence, appellant argues that (1) the district court erred in denying his petition to modify his ten-year conditional release term or, alternatively, to withdraw his guilty plea because the inclusion of the conditional release term in appellant's sentence breached his plea agreement; and (2) the district court erred in denying his petition to withdraw his guilty plea because the commencement of civil commitment proceedings by the county breached his plea agreement. Because appellant had notice of the conditional release term at sentencing, and because the possibility of civil commitment is, at most, a collateral consequence of a guilty plea, we affirm.

FACTS

In June of 2002, appellant Nathan B. Freeman was arrested for sexually assaulting a nine-year-old girl. Appellant pleaded guilty on October 31, 2002, to second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(a) (2000). This plea agreement was in exchange for a promise that if the sentence exceeded 36 months, appellant could withdraw his plea.

The district court found a sufficient factual basis to support the plea agreement and ordered a presentence investigation report ("PSI"), as well as a psychosexual evaluation. The report summarized the plea agreement and noted that the defendant could be sentenced as a repeat sex offender from a minimum mandatory term of 36 months to a

maximum of 25 years.[1] In addition, on the sentencing guidelines worksheet, the following phrase appeared just below the presumptive duration of commitment: "Conditional Release Statutes Apply if Prison Sentence is Executed: 10 Years."

On January 2, 2003, appellant was sentenced in accordance with his plea agreement. At that time, the court pronounced: "[I]t is the sentence of this Court . . . that you be committed to the Commissioner of Corrections for a period of 36 months. And upon your release, *you'll be on probation* for another additional 10 years after you are released." (Emphasis added.) Neither appellant nor his counsel objected to the inclusion of the ten-year "probation" term in the sentence.

Three months before appellant's supervised release date, the Rice County Attorney commenced civil commitment proceedings against appellant. By an April 2005 court order, appellant was indefinitely committed as a sexual psychopathic personality and a sexually dangerous person pursuant to Minn. Stat. § 253B.02, subd. 18(b), (c) (2004).[2] Appellant was still under this commitment at the time of the May 18, 2007 postconviction hearing.

At the postconviction hearing, appellant argued that the addition of the ten-year conditional release term and his subsequent civil commitment breached his plea

[1] Because the offense severity level was incorrectly set at 7, a prior sentencing guidelines worksheet erroneously stated that the presumptive duration of commitment would be 60 months. This was corrected before sentencing in a later guidelines worksheet that correctly listed the presumptive duration of commitment as 36 months (in accordance with the accurate severity level of 6 as well as the plea agreement).

[2] Appellant appealed his commitment. On October 11, 2005, this court affirmed the commitment. *In re Commitment of Freeman*, No. A05-976, 2005 WL 2496001 (Minn. App. Oct. 11, 2005).

agreement. With respect to the conditional release period, appellant's guilty-plea counsel acknowledged that he showed the sentencing guidelines worksheet to appellant and discussed it with him (and that it was his practice to do so in every case), but counsel also stated that he did not recall discussing the issue of conditional release with appellant. Appellant's counsel also testified that, at the time the plea occurred, it was not his general practice to discuss the possibility of civil commitment with his clients and that he was "relatively certain" he did not discuss it with appellant. Appellant also testified and contended that no one ever explained to him what the term "conditional release" meant, and, had he known, he would not have pleaded guilty. Finally, the postconviction court clarified that at the time of sentencing the district court used the word "probation" instead of "conditional release."

On August 17, 2007, the district court denied the postconviction petition in its entirety. This appeal follows.

D E C I S I O N

In reviewing a postconviction court's denial of relief, issues of law are reviewed de novo and issues of fact are reviewed for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007); *cf. Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003) (holding that courts "extend a broad review of both questions of law and fact" when reviewing a denial of postconviction relief) (quotation omitted). While "[d]etermining what the parties agreed to in a plea bargain is a factual inquiry" resolved by the postconviction court, the "interpretation and enforcement of plea agreements

involve issues of law" subject to de novo review. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004).

"A criminal defendant does not have an absolute right to withdraw a guilty plea once it is entered." *Id.* Rather, a guilty plea may only be withdrawn where "withdrawal is necessary to correct a manifest injustice." *Id.* (quoting Minn. R. Crim. P. 15.05, subd. 1). A manifest injustice exists if, among other things, the defendant entered into the plea agreement without knowledge that the sentence imposed actually could be imposed. *Id.* (citing ABA Standards for Criminal Justice, Pleas of Guilty (1999)). A manifest injustice also exists where a "guilty plea [was] not accurate, voluntary, and intelligent." *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A guilty plea is not accurate, voluntary, and intelligent if the defendant does not understand the charges, the rights waived, or the consequences of the plea. *State v. Brown*, 606 N.W.2d 670, 675 (Minn. 2000).

I

Appellant argues that he was not informed that a conditional release term would be part of his sentence, and, therefore, a manifest injustice occurred because his plea was not voluntary or intelligent. Accordingly, appellant argues that he should be permitted to withdraw his guilty plea or have his sentence modified. We see no merit in appellant's argument.

A five- or ten-year term of conditional release must be imposed upon persons convicted of certain sex crimes. Minn. Stat. § 609.109, subd. 7(a) (2000) (repealed 2005). A conditional release term for the statutorily enumerated offenses is mandatory

and nonwaivable. *State v. Humes*, 581 N.W.2d 317, 319-20 (Minn. 1998). The offense to which appellant pleaded guilty is one for which a conditional release term is required.

In support of his position, however, appellant cites *State v. Wukawitz*, 662 N.W.2d 517 (Minn. 2003); *State v. Henthorne*, 637 N.W.2d 852 (Minn. App. 2002), *review denied* (Minn. Mar. 27, 2002); *State v. Jumping Eagle*, 620 N.W.2d 42 (Minn. 2000); and *State v. Garcia*, 582 N.W.2d 879 (Minn. 1998), and stresses that in those cases guilty-plea withdrawals were permitted when the conditional release term was not mentioned at the sentencing hearing or included in the initial plea agreement. But those cases are distinguishable because in each, the conditional release term was later "added to" the sentence. *See also Rhodes*, 675 N.W.2d at 327 (explaining that a plea agreement is violated when the conditional release term is not mentioned at the sentencing hearing or included in the initial sentence). Here, the district court imposed the statutorily prescribed ten-year conditional release term at the sentencing hearing. Although the court used the word "probation" instead of "conditional release" to describe the additional term, appellant was already on notice of the conditional release term because it was included in bold text in both the erroneous and the corrected sentencing guidelines worksheets, which appellant admitted to reviewing with his attorney.

Appellant also argues that the district court effectively rejected his plea agreement when it added the conditional release term, and, therefore, he should be permitted to withdraw his guilty plea. Appellant cites, among other authorities, *State v. Tyska*, 448 N.W.2d 546 (Minn. App. 1989), where we held that the trial court's decision to depart upward from the sentencing guidelines amounted to rejection of the plea agreement and

entitled the defendant to withdraw his guilty plea. But *Tyska*, too, is distinguishable. In *Tyska*, the state expressly promised on the record to refrain from an upward durational departure. 448 N.W.2d at 547. At the sentencing hearing, the district court nonetheless departed upward by 69 months. *Id*. at 548. This court found that the departure, combined with the denial of the defendant's motion to withdraw his guilty plea, constituted reversible error. *Id*. at 550. Here, there was no promise to refrain from imposing the conditional release term. Rather, the court imposed the conditional release term but simply used the incorrect terminology in doing so.

Alternatively, appellant argues that because the state asserts that it would be prejudiced by plea withdrawal, this court should modify appellant's conditional release term. Appellant cites *State v. Wukawitz* to bolster this argument. 662 N.W.2d at 529. But *Wukawitz* does not further appellant's cause. The court in *Wukawitz* did, in fact, allow a shortened conditional release term in lieu of a guilty plea withdrawal because withdrawal of the plea would unduly prejudice the state. But the court limited its holding "to those situations where the original sentence did not include conditional release and the imposition of such a term after the fact would violate the plea agreement." *Id*. at 529. Here, the original sentence *did* include the conditional release term.

II

Appellant argues that, because he was not told of the possibility of subsequent civil commitment proceedings, his later civil commitment violated the plea agreement. For a guilty plea to be intelligent, the defendant must be aware of the consequences of pleading guilty. *Alanis*, 583 N.W.2d at 577. But at the time of the plea agreement and

sentencing, there was no way of knowing if appellant would later be civilly committed. This court has held that, "[s]ince the two matters are separate, there is nothing in the criminal plea bargain to suggest the individual will not later be subject to civil commitment proceedings." *In re Blodgett*, 490 N.W.2d 638, 647 (Minn. App. 1992), *aff'd*, 510 N.W.2d 910 (Minn. 1994).

Moreover, it is not clear that appellant's civil commitment was a "consequence" of the plea; although the fact that appellant was in prison for this offense almost certainly ensured he would be reviewed for commitment before his release. But even if the civil commitment was a consequence of the plea, this court has indicated that it is above all concerned with the direct consequences, those which flow "definitely, immediately, and automatically from the guilty plea." *Alanis*, 583 N.W.2d at 578. Ignorance of a collateral consequence does not entitle a criminal defendant to withdraw a guilty plea. *Id*.

Furthermore, this court has stated that consequences that are not punitive in nature are therefore collateral. *Kaiser v. State*, 621 N.W.2d 49, 54 (Minn. App. 2001), *aff'd*, 641 N.W.2d 900 (Minn. 2002). Rather than punishment, a "compelling function of involuntary civil commitment is rehabilitation." *County of Hennepin v. Levine*, 345 N.W.2d 217, 219 (Minn. 1984). On this record, appellant's civil commitment was, at most, a collateral consequence of his guilty plea, and ignorance of that consequence does not entitle appellant to withdraw his guilty plea.

Appellant had notice of the mandatory conditional release period by virtue of the sentencing guidelines worksheets, as well as the district court's pronouncement at sentencing. In addition, the possibility of civil commitment is, at most, a collateral

consequence of a guilty plea. We therefore conclude that the postconviction court did not err in refusing to allow appellant to withdraw his guilty plea.

Affirmed.

Dated: _____ _____
Judge Natalie E. Hudson