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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0324**

Kitwana Ramadhani Manenoh, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 20, 2009
Affirmed
Minge, Judge**

Hennepin County District Court
File No. 27-CR-05-050094, 27-CR-05-011268

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth Johnston, Assistant County Attorney, C-2000 Government Center, 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 Johnson, Presiding Judge; Minge, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges the district court's denial of his postconviction relief petition attempting to withdraw his guilty pleas on the basis that they were not knowing and intelligent. We affirm.

FACTS

In 2005, appellant Kitwana Ramadhani Manenoh was charged with two counts of felony theft and one count of felony receiving stolen property for two separate, alleged offenses. A plea agreement was reached in 2006, and the charges were amended to gross misdemeanors in exchange for appellant's pleas of guilty. Appellant was sentenced to concurrent sentences of 364 days, with 244 days stayed and credit for 61 days served. Appellant's defense attorney, in reviewing the plea petition, stated:

Q[defense attorney]: Lastly, where the petition is concerned, we discussed [statement] No. 27 because of your citizenship status or lack thereof, and I explained that conviction of crimes sometimes result in deportation or denial of becoming a citizen of the US. You understand that, correct?

A[appellant]: Yes.

Q: But I have been able to offer you some assurance that the way this agreement has been crafted is there should be no immigration consequences or impact for you. Do you understand that?

A: Yes.

Q: If you need anything further or more definitive you would have to contact an immigration lawyer. Do you understand that?

A: Yes.

The district court accepted appellant's plea petition, but expressed concern stating: "But we understand that despite your efforts to craft the agreement to minimize – avoid immigration consequences, if there are immigration consequences that would not justify a withdrawal of the guilty plea." After a brief discussion between the prosecutor, defense attorney, and the district court, the defense attorney addressed the appellant and stated, "[t]here will be no taking pleas back once you do this. Do you understand that? Or at least not because of any immigration reasons. Do you understand that?" Appellant replied, "Yes, I do." The defense and prosecution then placed on the record the factual basis for the pleas, the agreed-upon sentence, and the credit for time served. The district court concluded the proceeding by stating, "I hope [the defense attorney] has successfully avoided any deportation consequences for you, but I don't know if he has or not."

Appellant has been in custody subject to an immigration hold since the date of his sentencing hearing. This appeal follows.

DECISION

In reviewing a postconviction court's denial of relief, issues of law are reviewed de novo, and issues of facts are reviewed for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). A postconviction court's decision will not be disturbed absent an abuse of discretion. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001).

A criminal defendant bears the burden of establishing grounds for withdrawal of a 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. “A manifest injustice exists if the plea is not accurate, voluntary and intelligent.” *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004).

Appellant claims that his plea was not voluntary or intelligent because he relied on misinformation from his public defender regarding the immigration consequences of his pleas. The district court concluded that petitioner’s pleas were neither involuntary nor unintelligent. We address the challenges to the voluntariness and intelligence of the pleas.

1. Voluntary

The voluntariness requirement protects the defendant by ensuring that a plea of guilty is “not in response to improper pressures or inducements.” *Alanis*, 583 N.W.2d at 577. If a defendant is induced to plead guilty because of a promise that could not be fulfilled, the plea is invalid under the voluntariness requirement. *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000) (holding a defendant’s plea involuntary because the agreed upon maximum sentence did not include the mandatory conditional-release term, which had the effect of increasing a defendant’s sentence beyond that of his court-accepted plea agreement). However, an unachieved, “unwarranted hope” does not constitute a manifest injustice which mandates plea withdrawal. *State v. Ford*, 397 N.W.2d 875, 883 (Minn. 1986).

The record supports the district court’s determination that, though appellant was informed that the pleas should not result in immigration consequences, appellant was advised that he could not withdraw his pleas if immigration consequences arose. Further,

appellant was told that he should contact an immigration attorney if he wanted a definitive answer. Appellant and his attorney may have honestly believed that the pleas would not result in immigration consequences, but the defense attorney and the district court made it clear that this was not a guarantee and that if immigration consequences arose they would not provide a basis for a withdrawal of the pleas. At most, the transcript reflects that appellant's attorney gave him *some assurance* that his pleas *should* not result in immigration consequences. Because appellant was not promised that the pleas would not result in immigration consequences, the district court did not abuse its discretion in determining that the pleas were voluntary.

2. *Intelligent*

The requirement that the plea be intelligent ensures the defendant “understands the charges, his or her rights under the law, and the consequences of pleading guilty.” *Alanis*, 583 N.W.2d at 577. In analyzing the intelligence requirement, the court is concerned with the direct, and not collateral, consequences of a plea of guilty. *Id.* at 578. Direct consequences “are those which flow definitely, immediately, and automatically from the guilty plea” and do not include deportation consequences because Minnesota courts have no control over immigration and deportation consequences. *Id.* at 578-79. However, this court has held that unforeseen collateral consequences may, under certain circumstances, provide a basis for the withdrawal of a plea. *See State v. Lopez*, 379 N.W.2d 633, 636-37 (Minn. App. 1986), *review denied* (Minn. Feb. 14, 1986).

The district court evaluated whether the collateral immigration consequences should provide a basis for appellant's guilty pleas under the three factors articulated in

Lopez. *Id.* at 637. Specifically, the court considered: (1) the strength of the defendant's reason for the requested withdraw, including whether the defendant asserts innocence; (2) any prejudice to the state as a result of the defendant's untimely request for trial; and (3) whether the defendant's misunderstanding was the result of misleading statements made by the state. *See id.*

The district court concluded that the first and third factors weighed against the appellant, finding that appellant was not claiming innocence and the state did nothing to mislead the appellant. The second factor was held not to weigh in favor of either party because the prosecution had not demonstrated any prejudice from the two-year delay. The district court's conclusions are supported by the record. We note that at no time does appellant claim innocence and that any misunderstanding on the part of the appellant was not based on statements by the state. A review of the record demonstrates that the district court did not abuse its discretion in determining that the pleas were voluntary. Under the *Alanis* and *Lopez* analysis, the collateral consequences in this case do not provide a basis for appellant's withdrawal of his pleas.

Affirmed.

Dated: