STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0262

Robert Floyd Phillips, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed February 17, 2009
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-CR-04-022001

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

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)

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

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

HALBROOKS, Judge

Appellant challenges the district court's denial of his postconviction petition on the grounds that the addition of a five-year conditional-release period after sentencing violated the terms of his plea agreement and that he should be allowed to withdraw his guilty plea. Because the district court advised appellant of the conditional-release period at the sentencing hearing, appellant is not entitled to relief. Accordingly, we affirm.

FACTS

On April 30, 2004, pursuant to a plea agreement, appellant Robert Floyd Phillips pleaded guilty to first-degree driving while impaired (DWI), in violation of Minn. Stat. § 169A.24, subd. 1(1) (2002). The plea agreement called for a downward durational departure from the presumptive guidelines sentence of 54 months to a sentence in the range of 27 to 36 months. The district court sentenced appellant to 33 months.

Minn. Stat. § 169A.276, subd. 1(d) (2002), provides that "when the court commits a person to the custody of the commissioner of corrections under this subdivision, it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years." At the sentencing hearing on May 24, 2004, the following exchange occurred between the prosecutor and the district court:

> Prosecutor: Additionally there will be five years of conditional release?
>
> District Court: That's correct. Once you [appellant] are released on this, because of the type of case this is, you will be on conditional release for an additional period of five years. We do monitor these because it's a felony DWI and

> we keep you on a shorter chain. Take advantage of the chemical dependency treatment programs while you are inside.

There was no objection from appellant or his counsel to the conditional-release term.

The conditional-release term was not included in the written sentencing order. On May 28, 2004, the department of corrections requested an amended order from the district court that imposed the five-year conditional-release term. The district court then issued an amended writ of commitment, including the term.

On November 2, 2007, appellant petitioned for postconviction relief, challenging the addition of the conditional-release term and seeking to withdraw his guilty plea. The district court denied appellant's petition, finding that a district court may at any time correct a clerical error or omission in an order and that appellant was advised of the conditional-release period at the sentencing hearing. This appeal follows.

D E C I S I O N

Appellate courts "will reverse a decision of a postconviction court only if that court abused its discretion." *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). "But interpretation and enforcement of plea agreements involve issues of law that we review de novo." *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004).

A defendant does not have an unbridled right to withdraw his guilty plea. *Id.* Withdrawal of a guilty plea is only allowed when the request is timely made and "withdrawal is necessary to correct a manifest injustice." *Id.* (quoting Minn. R. Crim. P. 15.05, subd. 1). "A manifest injustice exists if the plea is not accurate, voluntary and intelligent." *Id.* A plea is intelligent when the defendant "understands the charges, his or

her rights under the law, and the consequences of pleading guilty." *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A plea is voluntary when it is made without "improper pressures or inducements." *Id.* "The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial." *Id.*

When a defendant is convicted of first-degree DWI, he is subject to a mandatory five-year conditional-release period following his release from prison. Minn. Stat. § 169A.276, subd. 1(d). In the context of a criminal-sexual-conduct offense, the supreme court has held that there is no manifest injustice requiring plea withdrawal when a defendant is on notice at the time of the plea and sentencing that a conditional-release term was mandatory, the mandatory nature of the requirement had been previously recognized by the supreme court, and the defendant did not object to the term at sentencing. *Rhodes*, 675 N.W.2d at 326-27 (citing *State v. Wukawitz*, 662 N.W.2d 517, 523–25, 529 (Minn. 2003); *State v. Jumping Eagle*, 620 N.W.2d 42, 44 (Minn. 2000); *State v. Garcia*, 582 N.W.2d 879, 881 (Minn. 1998); *State v. Humes*, 581 N.W.2d 317, 319 (Minn. 1998)).[1] If the plea agreement is violated, the remedy is either withdrawal of the guilty plea, if the state will not be unduly prejudiced, or modification of the

[1] *Rhodes*, *Wukawitz*, *Jumping Eagle*, *Garcia*, and *Humes* are a series of Minnesota Supreme Court cases that addressed conditional-release periods in the context of criminal-sexual-conduct offenses. The statutes imposing conditional-release periods for criminal-sexual-conduct convictions and for felony DWI convictions are almost exactly the same. *Compare* Minn. Stat. § 169A.276, subd. 1(d) (DWI statute), *with* Minn. Stat. § 609.109, subd. 7 (2002) (sex-offender statute). Because of this, we apply the *Rhodes* line of cases to this case.

conditional-release period to fit within the plea agreement. *Wukawitz*, 662 N.W.2d at 526–29.

In *Rhodes*, the supreme court held that the defendant's plea agreement was not violated because he had notice of the conditional-release period from its inclusion in the presentence-investigation report and at the sentencing hearing. 675 N.W.2d at 327. The supreme court distinguished its previous cases by the fact that in the earlier cases, "the conditional release term was not mentioned at the sentencing hearing or included in the initial sentence." *Id.* (citing *Wukawitz*, 662 N.W.2d at 529 ("Our holding is limited 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.")).

Here, the district court stated at the sentencing hearing that a five-year conditional-release period would be in effect after appellant was released from prison. No objection was made by appellant or his counsel.

While appellant urges us to limit the scope of *Rhodes*, we decline to do so. "[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). Because the district court did not abuse its discretion when it denied appellant's postconviction petition, we affirm.

Affirmed.