

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0756**

Dexter Stanton, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 7, 2009
Affirmed
Stauber, Judge**

Stearns County District Court
File No. 73K406003618

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

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

Janelle Kendall, Stearns County Attorney, Administration Center, Room 448, 705 Courthouse Square, St. Cloud, MN 56303 (for respondent)

Considered and decided by Larkin, Presiding Judge; Stauber, Judge; and Randall,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from the denial of his petition for postconviction relief, appellant argues that the district court abused its discretion in denying his request to withdraw his guilty plea when the state made an unqualified promise as part of the plea agreement to return appellant's vehicle and then failed to honor the promise. Because there is no evidence in the record to support appellant's claim that the return of the vehicle was part of his plea agreement, we affirm.

FACTS

In July 2006, appellant Dexter Stanton was charged with two counts of first-degree driving while impaired (DWI) and one count of driving while cancelled as inimical to public safety. Appellant subsequently pleaded guilty to one count of first-degree DWI. Based on the terms of the plea agreement, the remaining counts were dismissed, and appellant was sentenced to an executed sentence of 51 months. In January 2008, appellant filed a petition for postconviction relief on the basis that he should be allowed to withdraw his guilty plea due to an unqualified promise by the state to return the vehicle he was driving when he was stopped for DWI. The district court denied appellant's petition. This appeal followed.

DECISION

On appeal from a postconviction court's denial of relief, this court reviews issues of law de novo and issues of fact for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). The reviewing court will not disturb the postconviction

court's findings of fact unless they are clearly erroneous and will reverse its decision only if there has been an abuse of discretion. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001).

“[A] defendant does not have an absolute right to withdraw a guilty plea” once it has been entered. *Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002). A district court may permit a defendant to withdraw a guilty plea after sentencing when it “is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists when a defendant can show that his guilty plea was “not accurate, voluntary, and intelligent.” *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). This court will reverse the district court's determination of whether to permit withdrawal of a guilty plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

Appellant argues that his guilty plea was involuntary because it was induced by a promise that the state failed to honor. Specifically, appellant argues that, as part of his plea agreement, the state agreed that the vehicle driven by appellant when he was stopped for DWI would be returned to him. Appellant argues that because the vehicle was never returned to him, the district court erred in refusing to allow him to withdraw his guilty plea.

The voluntariness requirement insures that the defendant is not pleading guilty because of improper pressures. *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). Promises that cannot be fulfilled may constitute an improper inducement to plead guilty, thereby requiring that the defendant be allowed to withdraw his guilty plea. *State v.*

Jumping Eagle, 620 N.W.2d 42, 43 (Minn. 2000). “Determining what the parties agreed to in a plea bargain is a factual inquiry for the postconviction court to resolve.” *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004).

Here, the postconviction court found that there was no evidence in the record to support appellant’s claim that the return of the vehicle was part of the plea agreement. We conclude that this finding is supported by the record. Nothing in the plea transcript or appellant’s plea petition identifies the return of the vehicle as part of the plea agreement. Moreover, the state submitted an affidavit of the assistant county attorney who prosecuted appellant’s case that stated that the return of the vehicle was not part of appellant’s plea agreement. Appellant failed to offer an affidavit of his trial counsel supporting his claim. Accordingly, on this record, the district court did not abuse its discretion in denying appellant’s request to withdraw his guilty plea.

Appellant further argues in his pro se supplemental brief that the return of the vehicle was part of the plea agreement. To support his claim, appellant attached a letter from the Public Defender’s Office addressing his claim to his pro se supplemental order. But this letter was not part of the record below and, therefore, we decline to consider it. *State v. Larson*, 520 N.W.2d 456, 464 (Minn. App. 1994), *review denied* (Minn. Oct. 14, 1994) (stating that an appellate court may not base its decision on matters outside the record on appeal, and matters not produced and received in evidence below may not be considered). But even if we were to consider the letter, it does not support appellant’s claim. The letter explains that the agreement regarding the vehicle being returned as part of the plea agreement was “condition[ed] upon [appellant’s] cooperation with the PSI

process and cooperating by attending [appellant's] sentencing. Neither of these two conditions[s] occurred and as a result [appellant] was sentenced without the benefit of the agreement regarding the vehicle.” As the letter indicates, appellant failed to meet the requirements necessary for the vehicle to be returned to him. Although the letter indicates that appellant had a reasonable belief that there was an agreement to have his car returned, appellant cannot establish that a withdrawal of his guilty plea was necessary to correct a manifest injustice. Accordingly, the district court did not abuse its discretion in denying appellant's petition for postconviction relief.

Affirmed.