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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0520**

State of Minnesota,
Respondent,

vs.

Michael Helmer,
Appellant.

**Filed May 12, 2009
Affirmed
Peterson, Judge**

Stearns County District Court
File No. K7-07-187

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

Jan F. Petersen, St. Cloud City Attorney, Kirsten A. Lucken, Assistant City Attorney, 400 Second Street South, St. Cloud, MN 56301 (for respondent)

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

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Appellant challenges the denial of his motion to withdraw his guilty plea, arguing that the district court erred by failing to hold a plenary evidentiary hearing. We affirm.

FACTS

On June 22, 2007, appellant Michael Helmer pleaded guilty to one count of driving after cancellation in violation of Minn. Stat. § 171.24, subd. 5 (2006), and one count of failing to stop after an accident in violation of Minn. Stat. § 169.09, subd. 2 (2006). Approximately three months after being sentenced, appellant moved to withdraw his plea, alleging that his plea was not made knowingly, intelligently, and voluntarily, and that he had received ineffective assistance of counsel. In support of his motion, appellant submitted an affidavit detailing the factual basis for his claims.

The district court held a hearing on the plea-withdrawal motion on November 29, 2007. Although the transcript of the plea hearing had not yet been prepared, defense counsel stated that he was not focusing on what transpired at that hearing, but rather on interactions between appellant and his original attorney. Defense counsel, however, did not attempt to call appellant, his previous attorney, or any other witnesses, and did not attempt to introduce any additional evidence at the hearing. In light of the delayed transcript, the district court advised defense counsel that he would have an opportunity to submit oral or written argument and to request a further hearing. Defense counsel later raised additional grounds supporting withdrawal based on the transcript, but he did not request a further hearing or oral argument. After considering the evidence set forth in

appellant's affidavit and the transcript of the plea hearing, the district court denied appellant's motion to withdraw his plea. This appeal followed.

DECISION

On appeal, we will reverse the district court's denial of a defendant's motion to withdraw a guilty plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). A district court must allow a defendant to withdraw a guilty plea if it finds "that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Appellant argues that the district court erred by denying his motion without first holding a plenary evidentiary hearing on the underlying factual basis supporting withdrawal.

Appellant submitted an affidavit detailing his reasons supporting plea withdrawal. And although his motion unambiguously contemplated the possibility of presenting additional testimony, appellant did not attempt to do so. Instead, defense counsel submitted and argued the motion based on appellant's affidavit, the transcript from the plea hearing, and other material already contained in the record. The district court advised defense counsel that he would have the "opportunity to submit oral—or written argument" after receiving the delayed transcript, and would need to specifically request a further hearing if he wanted one. Absent such a request, the district court did not abuse its discretion in denying the motion for plea withdrawal on the evidence before it. *See* Minn. Stat. § 590.04 (2008); *Ferguson v. State*, 645 N.W.2d 437, 446 (Minn. 2002) (indicating that burden is on petitioner to request hearing); *see also Black v. State*, 725

N.W.2d 772, 775 (Minn. App. 2007) (applying postconviction hearing statute to postconviction motion to withdraw plea).

Affirmed.