STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2182
A08-1176

State of Minnesota,
Respondent,

vs.

Willie Dillon,
Appellant,

and

Willie Dermok Dillon, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 30, 2009
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. CR-06-84444

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, C-2000 Government Center, 300 South 6th Street, Minneapolis, MN 55487 (for respondent)

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

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Muehlberg, Judge.*

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

HALBROOKS, Judge

In these consolidated direct and postconviction appeals, appellant argues that the district court erred by denying his plea-withdrawal request when he presented evidence that his plea was not intelligently made because the agreement did not include the mandatory lifetime conditional-release term. Because appellant was informed of the conditional-release term in the presentencing investigation (PSI) report and at sentencing and failed to object to the imposition of the term, we affirm.

FACTS

In December 2006, appellant Willie Dermok Dillon was charged with committing first- and second-degree criminal sexual conduct against his daughter, who was then six years old. In July 2007, appellant agreed to plead guilty to the first-degree count and to follow the conditions of probation; the state agreed to recommend a sentence of 144 months[1] and to dismiss the second-degree count.

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

[1] This was a downward durational departure from the guidelines sentencing range of 153 to 216 months.

At the plea hearing, appellant testified that his attorney had reviewed the petition with him because he has "some difficulty in reading and writing."[2] When appellant stated that he did not understand the plea agreement, the district court explained it to him. No term of conditional-release was mentioned at the plea hearing. The district court ordered a PSI. The PSI included the statement: "Please note that when [appellant] is released from prison [he] will register as a predatory offender and he will be placed on conditional release for the rest of his life."[3]

At the sentencing hearing, appellant's attorney stated that appellant had "expressed his desire to withdraw his guilty plea, that he told me that it's also reflected in the PSI."[4] The district court denied appellant's request to withdraw his guilty plea and stated its reasons on the record. The district court then sentenced appellant to the recommended sentence of 144 months, twice mentioning that appellant "will be on conditional release the rest of [his] life."[5] The district court explained that the terms and

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[2] Appellant's plea petition indicates that he has a tenth-grade education.

[3] Although the district court file that we received does not include the PSI, the district court quoted it in its order, and appellant does not dispute that the PSI mentioned the lifetime conditional-release term.

[4] The PSI indicated that appellant did not think that the state "had a case." As a result, appellant indicated that he wanted to withdraw his plea.

[5] When a defendant is convicted of first-degree criminal sexual conduct and "has a previous or prior sex offense conviction," a mandatory lifetime conditional-release term is added to any period of incarceration. Minn. Stat. § 609.3455, subd. 7(b) (2006). Appellant was convicted of second-degree criminal sexual conduct in 1994. This conviction is "a previous or prior sex offense conviction" within the meaning of Minn. Stat. § 609.3455, subd. 7(b). *See id.*, subd. 1(h) (2006).

conditions of appellant's sentence would be presented to him in writing and that appellant's attorney would review them with appellant.

The district court asked appellant if he had any questions about his sentence. Appellant gave a rambling statement in which he complained, among other things, that his sentence "was too much time" because the state had "no evidence," just "words against words." When the state objected to appellant's comments about the victim and the victim's mother, the district court stopped appellant and clarified that it was asking appellant if he had any questions about the sentence that had been imposed. Appellant stated, "It's too harsh, man. Twelve years, man, that's too harsh, man." Neither appellant nor his attorney objected to the conditional-release term.

Appellant then signed a document captioned "terms and conditions of sentence," which provided that he "will be on conditional release conditions for life." Directly above appellant's signature, the document provided that appellant had read and understood the conditions of his sentence.

On November 19, 2007, appellant filed a notice of appeal. On April 7, 2008, this court granted appellant's motion to stay his direct appeal and to remand to the district court for postconviction proceedings.

Appellant petitioned for postconviction relief on May 5, 2008. Citing *State v. Wukawitz*, 662 N.W.2d 517, 526–29 (Minn. 2003), appellant requested to withdraw his plea or have his sentence modified on the ground that his plea was not intelligently made because he was not told at the plea hearing that he was subject to a lifetime conditional-

release term. Relying on *State v. Rhodes*, 675 N.W.2d 323 (Minn. 2004), the district court denied appellant's postconviction petition.

Appellant challenged the denial of his postconviction petition and also moved this court to reinstate his direct appeal and consolidate it with his postconviction appeal. This court dissolved the stay of appellant's direct appeal and consolidated it with his postconviction appeal.

D E C I S I O N

Appellant argues that he is entitled to withdraw his guilty plea or to have his sentence modified because his plea was not intelligently made. A defendant does not have an unbridled right to withdraw his guilty plea. *Rhodes*, 675 N.W.2d at 326. Withdrawal of a guilty plea after sentencing is permitted only 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.*

If the addition of a mandatory conditional-release term after sentencing and without prior notice would exceed the maximum length of an executed sentence set forth in a plea agreement, the addition of the term violates the plea agreement. *Rhodes*, 675

N.W.2d at 326–27. If the plea agreement is violated by the addition of the conditional-release term, two remedies are available: (1) withdrawal of the guilty plea if the state will not be unduly prejudiced or (2) modification of the sentence to conform to the plea agreement. *Wukawitz*, 662 N.W.2d at 526, 528–29. 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." *Rhodes*, 675 N.W.2d at 326.

Appellant argues that his case is comparable to *Wukawitz*; *State v. Jumping Eagle*, 620 N.W.2d 42 (Minn. 2000); *State v. Brown*, 606 N.W.2d 670 (Minn. 2000); and *State v. Garcia*, 582 N.W.2d 879 (Minn. 1998). But these cases are distinguishable. In *Wukawitz*, *Jumping Eagle*, and *Garcia*, the conditional-release term was not imposed until after sentencing. *Wukawitz*, 662 N.W.2d at 520; *Jumping Eagle*, 620 N.W.2d at 43; *Garcia*, 582 N.W.2d at 880–81. Here, appellant's conditional-release term was included in the PSI, mentioned several times during the sentencing hearing, imposed upon him in open court without objection, and acknowledged by appellant in writing. And it is unclear how *Brown*, in which the supreme court denied relief, is favorable to him. *See Brown*, 606 N.W.2d at 675.

Appellant makes several arguments, unsupported by citation to legal authority, that his case is distinguishable from *Rhodes*. *Rhodes* involved a first-degree criminal-sexual-conduct defendant whose plea petition did not include a mandatory conditional-release term. 675 N.W.2d at 324–25. Nor was the conditional-release term discussed at the plea hearing. *Id.* at 325. But the term was mentioned in the PSI and at the sentencing

hearing. *Id.* at 325–26. The district court stated that the defendant was subject to the conditional-release term when it pronounced sentence, and neither the defendant nor his attorney objected to the term nor mentioned it when given the opportunity to speak. *Id.* The supreme court denied the *Rhodes* defendant relief, distinguishing previous caselaw—including *Wukawitz*—by noting that "in each of those cases, the conditional release term *was not mentioned at the sentencing hearing or included in the initial sentence*." *Id.* at 326–27 (emphasis added). The supreme court also rejected the defendant's argument that his plea was not intelligent because he did not know about the mandatory conditional-release term when he entered his guilty plea. *Id.* at 327. The supreme court specifically noted that "the postconviction court could infer from Rhodes' failure to object to the presentence investigation's recommendation, the state's request at the sentencing hearing and the court's imposition of the sentence, that Rhodes understood from the beginning that the conditional release term would be a mandatory addition to his plea bargain." *Id.*

Appellant's first attempt to distinguish his case from *Rhodes* is as follows: "[T]he difference between appellant's regular supervised release term and the conditional release term was significant. Appellant's supervised release period went from 4 years to life based on the addition of conditional release to his sentence." Appellant cites to no legal authority supporting his contention that appellate courts are to consider the length of the conditional-release term when deciding whether addition of the term violates a plea agreement. We note that *Garcia* involved a conditional-release term of ten years, and *Rhodes* and *Wukawitz* involved terms of five years. *Rhodes*, 675 N.W.2d at 325; *Wukawitz*, 662 N.W.2d at 520; *Garcia*, 582 N.W.2d at 881. But the supreme court has

never included the length of the conditional-release term as a factor in the analysis; nor has it cautioned that a term of "significant" length might alter its analysis.

Appellant's second argument regarding *Rhodes* is that the PSI did not put him on notice due to his trouble with reading and writing. But the transcript of the sentencing hearing indicates that appellant was familiar with the content of the PSI. As the district court noted when it denied appellant's postconviction petition:

> [A]lthough the court is aware of [appellant's] limited ability to read and write and finds it relevant, the court sees no reason to distinguish between his ability to understand that the PSI included a reference to his desire to withdraw his guilty plea but not a reference to the lifetime conditional release period.

Appellant's third argument regarding *Rhodes* is that he objected to the imposition of the conditional-release term at sentencing when he stated, "[I]t was too much time you all tried to give me," and, "It's too harsh, man. Twelve years, man, that's too harsh, man." But appellant did not mention the lifetime conditional-release term; he was clearly referring to the period of incarceration. Appellant claims that when he questioned the severity of the sentence, he did so "while not yet knowing that the sentence included a lifetime conditional release term." This assertion is contradicted by the record. The district court twice stated that appellant "will be on conditional release the rest of [his] life" before appellant made any objection to the length of his sentence.

Appellant appears to make a fourth argument involving information about supervised release provided to him at his plea hearing. But appellant does not explain how this distinguishes his case from *Rhodes*.

Appellant also argues that the criminal complaint failed to put him on notice of the conditional-release term. Again, appellant does not explain how this makes his case distinguishable from *Rhodes*.

Appellant's final argument regarding *Rhodes* is that its holding "should be limited in scope and not be given broad application." But "the task of extending existing law falls to the supreme court or the legislature," not to this court. *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987).

We conclude that the facts here best align with those of *Rhodes*, not the other cases cited by appellant. Like the *Rhodes* defendant, appellant was informed of the conditional-release term in the PSI and at sentencing. Furthermore, appellant and his counsel failed to object to the imposition of the term. From these facts, we infer that appellant understood that the conditional-release term would be a mandatory addition to his plea bargain. *See Rhodes*, 675 N.W.2d at 327. Appellant is therefore not entitled to withdraw his guilty plea or to have his sentence modified.

Affirmed.