STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1326

Billie Dale Wooten, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 9, 2009
Affirmed
Johnson, Judge

Otter Tail County District Court
File No. 56-K9-03-001603

Lawrence Hammerling, Chief Appellate Public Defender, James R. Peterson, 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 55101-2134; and

David J. Hauser, Otter Tail County Attorney, Heather L. Brandborg, Assistant County Attorney, 121 West Junius Avenue, Suite 320, Fergus Falls, MN 56537 (for respondent)

Considered and decided by Johnson, Presiding Judge; Halbrooks, Judge; and Ross, Judge.

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

JOHNSON, Judge

Billie Dale Wooten pleaded guilty to felony driving while impaired (DWI). He later petitioned for post-conviction relief, challenging the district court's imposition of a five-year term of conditional release. The district court denied Wooten's petition. We affirm.

FACTS

In February 2004, Wooten pleaded guilty to first-degree DWI in connection with an August 22, 2003, incident. As part of the plea agreement, the parties agreed that the presumptive sentence of 36 months should be stayed pursuant to "the standard set of conditions" for such a case.

At the sentencing hearing in April 2004, the state asked the district court to include in its sentencing order a term providing that, if the sentence were to be executed, Wooten would, upon his release, be subject to a five-year term of conditional release, as provided in Minn. Stat. § 169A.276, subd. 1(d) (2002). The district court imposed a 36-month prison sentence but stayed its execution. The district court informed Wooten that if he were to violate any of the conditions of probation, "there will be a five-year conditional-release period for this sentence under which you will be on supervised probation if I have to execute any portion of this sentence during the period of your supervised probation."

In October 2005, the district court revoked the stay and executed the prison sentence because Wooten had twice violated the conditions of his probation. In August 2007, Wooten was released from prison and began serving the five-year term of conditional release. But he later violated the terms of his conditional release and, consequently, was re-incarcerated.

In March 2008, Wooten petitioned for post-conviction relief, challenging the five-year term of conditional release. He sought to withdraw his plea or, in the alternative, to obtain a modification of his sentence. In June 2008, the district court issued an order denying the petition. Wooten appeals.

D E C I S I O N

Wooten argues that the district court erred by refusing to allow him to withdraw his guilty plea or to obtain a modification of his sentence. This court reviews a district court's denial of postconviction relief for an abuse of discretion. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001).

The supreme court repeatedly has held that a defendant is entitled to postconviction relief if a district court imposed a sentence that is contrary to an essential term of a plea agreement, thereby causing a promise within the plea agreement to be unfulfilled and the plea to be invalid. *See, e.g.*, *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). This principle often is the basis of relief in cases in which a district court imposed a term of conditional release in addition to a prison sentence specified in a plea agreement, thereby causing the total length of the sentence to be served to exceed the

sentence specified in the plea agreement. *See, e.g.*, *State v. Wukawitz*, 662 N.W.2d 517, 526 (Minn. 2003); *State v. Jumping Eagle*, 620 N.W.2d 42, 44 (Minn. 2000); *State v. Garcia*, 582 N.W.2d 879, 881-82 (Minn. 1998). But if a defendant has notice of a conditional-release term at sentencing and does not object, there is no basis for relief. *State v. Rhodes*, 675 N.W.2d 323, 326-27 (Minn. 2004).

Wooten's appeal is governed by *Rhodes*. In that case, a term of conditional release was not mentioned in the plea agreement but was mentioned in the presentence investigation report, mentioned by the prosecutor at sentencing, mentioned by the district court at the sentencing hearing, and included in the judgment. 675 N.W.2d at 325. The supreme court reasoned that the defendant had notice of the conditional-release term because it was mandatory, having been enacted into law "years before Rhodes entered his plea." *Id.* at 327. The supreme court further noted that Rhodes did not object when the conditional-release term was raised at the sentencing hearing. *Id.*

Here, Wooten's five-year term of conditional release was not expressly made part of his plea agreement, although it appears to have been contemplated by the parties at that time. At the plea hearing, the prosecutor stated that the presumptive sentence should be stayed and urged the court to impose "the standard set of conditions that would normally follow a driving while under the influence case." In any event, the conditional-release term was expressly discussed at the sentencing hearing, and neither Wooten nor his counsel objected. Furthermore, Wooten is deemed to have had notice of the conditional-release term because the statutory requirement had been in effect for more than a year at

the time he entered his plea. *See id.*; *State v. Calmes*, 632 N.W.2d 641, 648 (Minn. 2001) (stating that "citizens are presumed to know the law").

Therefore, the district court did not err by denying Wooten's petition for post-conviction relief.

Affirmed.