STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2023

Rajni Nattle Shaw,
petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 11, 2009
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. 27-CR-03-028398

Rajni Nattle Shaw, OID #200288, 970 Pickett Street N, Bayport, MN 55003 (pro se appellant)

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

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

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Klaphake, Judge.

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

KLAPHAKE, Judge

Appellant Rajni Nattle Shaw challenges the denial of his petition for postconviction relief seeking to withdraw his guilty plea to aiding and abetting second-degree murder or, in the alternative, to reduce his sentence. Because the record supports the district court's conclusion that the plea was accurate, voluntary, and intelligent, and was supported by the factual record, we affirm.

D E C I S I O N

A petitioner seeking a postconviction remedy must establish facts that show, by a preponderance of evidence, entitlement to relief. Minn. Stat. § 590.04, subd. 3 (2008). This court reviews the denial of a postconviction petition under an abuse-of-discretion standard. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). A reviewing court will consider only whether a postconviction court's conclusions are supported by sufficient evidence. *Shoen v. State*, 648 N.W.2d 228, 231 (Minn. 2002).

Withdrawal of Guilty Plea

A defendant does not have an absolute right to withdraw a guilty plea. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A defendant may withdraw a guilty plea if withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists when a defendant can show that a guilty plea was not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). Appellant has the burden to establish facts warranting the reopening of his case. *Id*.

Appellant seeks to withdraw his guilty plea, arguing that he was induced to enter the plea agreement with the promise of a maximum 152-month sentence. At the time he entered his plea, appellant understood that the plea agreement was for nine years in custody. But appellant was also told by the prosecutor and the district court that nine years in custody would amount to a total sentence of 152 months. This was a miscalculation, because nine years in custody would require a total sentence of 162 months, not 152 months. Generally, "an unqualified promise which is a part of a plea arrangement must be honored or else the guilty plea may be withdrawn." *Kochevar v. State*, 281 N.W.2d 680, 687 (Minn. 1979); *see State v. Kunshier*, 410 N.W.2d 377, 379-80 (Minn. App. 1987) (holding that court cannot depart from an agreed-upon sentence without giving the defendant the right to withdraw the guilty plea), *review denied* (Minn. Oct. 21, 1987); *see also State v. Kortkamp*, 560 N.W.2d 93, 95 (Minn. App. 1997) (allowing withdrawal of plea where state failed to keep promise to recommend a certain sentence because of defendant's post-plea behavior).

The postconviction court denied appellant's petition for relief to withdraw his guilty plea, finding that during the sentencing hearing held a few weeks after the plea was entered, appellant (1) had sufficient time to discuss his case with his attorney, who fully informed him about all sentencing issues; (2) acknowledged that he was aware that the prosecutor had miscalculated the total sentence as 152 months, rather than 162 months; (3) acknowledged that the original plea agreement was for nine years in custody assuming good behavior, and this did not change with the corrected calculation of 162 months; (4) acknowledged that he had a right and opportunity to withdraw this plea and

proceed to trial; and (5) agreed on the record to proceed with the plea agreement as corrected, for a total sentence of 162 months, based upon nine years in custody. In essence, the court found that appellant waived his right to withdraw his plea.

Whether a plea is knowing, voluntary, and intelligent is a question of fact and will not be disturbed "if . . . supported by reasonable evidence in the record." *Sykes v. State*, 578 N.W.2d 807, 812 (Minn. App. 1998), *review denied* (Minn. July 16, 1998). The record supports each of the postconviction court's findings. During both the plea and sentencing hearings, appellant acknowledged that he was to receive nine years in custody—that aspect of his plea did not change. And during the sentencing hearing, appellant ratified the initial plan with the correction of the miscalculated sentence, choosing to proceed with the corrected sentence rather than withdraw his plea.

Appellant also argues that he was coerced into accepting the plea agreement because the district court "threaten[ed]" that he could receive a sentence of 400 months if convicted of the other counts charged, including second-degree intentional murder. But appellant did not argue that a 400-month sentence was inaccurate for second-degree intentional murder. The record does not support a finding that such a statement amounts to coercion. *See State v. Abdisalan*, 661 N.W.2d 691, 694 (Minn. App. 2003) (holding that appellant not coerced into plea agreement when he was fully advised of the consequences of his guilty plea), *review denied* (Minn. Aug. 19, 2003).

Based on a review of the record and transcript of the plea and sentencing hearing, we conclude there is ample support for the postconviction court's conclusion that appellant knew and understood his rights under the law and knowingly, voluntarily, and

intelligently continued with the corrected plea agreement and sentencing. We conclude that the postconviction court did not abuse its discretion in ruling that appellant failed to establish the presence of a manifest injustice in his plea arrangement to warrant withdrawal of his guilty plea.

Factual Basis

Appellant argues that the factual basis for his plea delineated by his admissions at the plea hearing was legally insufficient because it did not establish that he committed a felony-level assault as a predicate to unintentional felony murder. Minn. Stat. § 609.19, subd. 2(1) (2002).

An accurate plea ensures that the defendant does not plead guilty to a more serious offense than he or she could be convicted of at trial. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983) (requiring a proper factual basis for a guilty plea to be accurate). *See State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). Usually, to establish a factual basis, the defendant will explain in his own words the circumstances surrounding the crime. *Trott*, 338 N.W.2d at 251.

First-degree assault occurs under Minn. Stat. § 609.221, subd.1 (2002) if the defendant assaults another—intends to inflict bodily harm—and the level of harm inflicted is great bodily harm. *See* Minn. Stat. § 609.02, subd. 8 (2002) (great bodily harm means bodily injury which creates a high probability of death). The only intent required is that the defendant intended to assault the victim and inflict bodily harm. *State v. Vance*, 734 N.W.2d 650, 656-57 (Minn. 2007) (holding the offense severity level of an assault is determined by the resultant injury to the victim, not by the harm intended).

Thus, it is not necessary for the plea colloquy to show appellant *intended to inflict* great bodily harm, but only that he intended to inflict bodily harm and the resulting harm was great bodily harm.

Appellant admitted that after watching other people beat the victim unconscious, he "kicked [the victim] several times [in] the head . . . when he was still unconscious." He also admitted that the victim died as a result of the confrontation. This evidence provides a factual basis for the underlying charge of felony assault and the plea of aiding and abetting second-degree unintentional murder. Accordingly, the district court did not err in finding that there was a sufficient factual basis for appellant's guilty plea and that appellant failed to establish facts entitling him to relief. Minn. Stat. § 590.04, subd. 3 (2008).

Other Issues

In his pro se brief, appellant refers to several general issues of law without providing relevant argument as to how the law applies to the facts of his case. He also claims that he was denied effective assistance of counsel regarding failure to challenge the indictment for second-degree murder or failure to argue for the lesser-included offence of manslaughter. However, appellant presents no argument or facts that would entitle him to relief on this issue. Generally, pro se claims must be supported by law and argument to be considered. *State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008). Accordingly, we decline to address the additional pro se issues.

Affirmed.