**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-909**

Wyatt Robert Atchison, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 12, 2010**
**Affirmed**
**Johnson, Judge**

Anoka County District Court
File No. 02-K8-05-001934

Marie L. Wolf, Interim Chief Appellate Public Defender, Cathryn Y. Middlebrook, Assistant Public Defender, St. Paul, MN (for appellant)

Lori Swanson, Attorney General, St. Paul, MN; and

Robert M.A. Johnson, Anoka County Attorney, Kathryn M. Timm, Assistant County Attorney, Anoka, MN (for respondent)

Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and Johnson, Judge.

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

**JOHNSON**, Judge

In 2005, Wyatt Robert Atchison pleaded guilty to first-degree refusal to submit to chemical testing after being arrested on suspicion of driving while impaired (DWI). The district court sentenced him to 36 months of imprisonment but stayed execution of the sentence. In 2007, the district court executed the sentence because Atchison violated the conditions of his probation. In 2009, Atchison filed a postconviction petition to challenge the district court's imposition of a five-year term of conditional release that will follow his discharge from prison. The district court denied the petition. We affirm.

## FACTS

On February 27, 2005, in the city of East Bethel, an Anoka County deputy sheriff observed Atchison drive a vehicle while a bystander informed the deputy that Atchison was intoxicated and did not have a valid driver's license. The deputy stopped Atchison and observed indicia of intoxication. A preliminary breath test suggested an alcohol concentration of .226. Atchison refused to submit to a chemical test to allow a more conclusive determination of his alcohol concentration.

The state charged Atchison with first-degree DWI in violation of Minn. Stat. §§ 169A.20, subd. 1(1), .24, subd. 1(1) (2004); first-degree refusal to submit to chemical testing in violation of Minn. Stat. §§ 169A.20, subd. 2, .24, subd. 1(1) (2004); and operating a vehicle with a canceled license in violation of Minn. Stat. § 171.24, subd. 5 (2004).

In April 2005, Atchison pleaded guilty to the refusal charge pursuant to a plea agreement that provided for, among other things, a stayed sentence of 36 months of imprisonment and a five-year term of conditional release. The state dismissed the two remaining charges. At a combined hearing for both the guilty plea and sentencing, the prosecutor requested that the district court "tell the defendant that if, for some reason, his sentence is executed and he goes to prison, he would be subject to the five year conditional release condition under the statute." The district court complied with the request by informing Atchison that if the sentence is executed,

> you can after having served 24 months, have up to five years of time added to your time in prison in the state prison system if you violate certain terms and conditions of your release and that by state statute, . . . the stay of execution will be for a period of 7 years from today [and] you will be on probation for that conditional term to an accrual of five years.

Consistent with the plea agreement, the district court imposed a 36-month sentence and stayed its execution. But in September 2007, the district court revoked the stay and executed the prison sentence after finding that Atchison had violated the conditions of his probation.

In January 2009, Atchison petitioned for postconviction relief. His petition challenged the district court's imposition of the five-year term of conditional release. He argued that the term of conditional release was not part of his plea agreement and that he was not aware of the term of conditional release until he was in prison. Atchison requested that the district court vacate the term of conditional release. In March 2009, the district court issued a two-page order denying the petition on the ground that "there

are three separate occasions wherein the conditional release term was explained to Mr. Atchison." Atchison appeals.

**D E C I S I O N**

Atchison argues that the district court erred by denying his postconviction petition. He contends that his plea agreement was not knowingly and understandingly made and that he did not understand the consequences of the guilty plea because he did not understand that he would be subject to a five-year term of conditional release following any term of imprisonment. On appeal, he seeks reversal so that he may either withdraw his guilty plea or obtain a modification of his sentence. In the district court, however, Atchison sought only modification of his sentence, not plea withdrawal. Atchison may not seek an appellate remedy that would allow him to withdraw his guilty plea because he did not seek that remedy in the district court. *See Azure v. State*, 700 N.W.2d 443, 447 (Minn. 2005) (holding that issue may not be raised for first time on appeal from postconviction ruling); *Carey v. State*, 765 N.W.2d 396, 399 n.1 (Minn. App. 2009) (holding that postconviction petitioner may not seek sentence modification because he sought only plea withdrawal in district court), *review denied* (Minn. Aug. 11, 2009). Thus, we will confine our review to the question whether Atchison is entitled to a modification of his sentence as a remedy for an invalid plea.

To be valid, a guilty plea "must be accurate, voluntary, and intelligent." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). Atchison contends that his guilty plea does not satisfy the requirement that the plea be intelligent. The requirement of an intelligent plea is intended to ensure "that 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). "When reviewing the decision of a postconviction court, we review questions of law de novo, but our review of questions of fact is limited to whether there is sufficient evidence in the record to support the findings of the postconviction court." *Sanchez-Diaz v. State*, 758 N.W.2d 843, 846 (Minn. 2008).

As stated above, the district court denied Atchison's postconviction petition because it rejected Atchison's allegation that a term of conditional release was not part of his plea agreement and that he was not aware of the term of conditional release when he pleaded guilty. Atchison's allegations are inconsistent with the district court record. The plea petition that Atchison signed expressly provides for a five-year term of conditional release. In paragraph 20, the petition lists, in legible handwriting, certain negotiated terms of the agreement, including the count to which Atchison would plead guilty, the dismissal of the other counts, the length of the prison sentence, the fact that the prison sentence would be stayed, and 40 days of credit for time served. Also included in that paragraph is the phrase, "5 yr Cond Release." At the plea and sentencing hearing, Atchison affirmatively stated that he had reviewed the plea petition and understood its terms. If "the record includes a copy of the petition to enter a plea of guilty which defendant had signed and which he admitted reading and understanding" it is "proper to conclude that defendant entered his plea voluntarily and intelligently." *State v. Propotnik*, 299 Minn. 56, 58, 216 N.W.2d 637, 638 (1974).

In addition, the five-year term of conditional release was discussed at Atchison's plea and sentencing hearing. When summarizing the terms of the plea agreement,

Atchison's attorney stated, "I have already discussed with him the five year conditional release and the difficult concept but I think we have got it. And that only applies if his prison sentence is ever executed." Also, when imposing sentence, the district court expressly referred to the five-year term of conditional release.

Furthermore, Atchison's argument is inconsistent with *State v. Rhodes*, 675 N.W.2d 323 (Minn. 2004). In that case, the appellant sought to prove that his guilty plea was invalid because a five-year term of conditional release was not part of his plea agreement. *Id.* at 325-26. The supreme court rejected the argument on the ground that Rhodes had notice of the conditional-release term because the statute providing for it was enacted into law "years before Rhodes entered his plea," *id.* at 327, and because the supreme court had "recognized the mandatory nature of conditional release terms" in two prior opinions. *Id.* The supreme court further reasoned that Rhodes did not object to the term of conditional release, despite the fact that it was mentioned in the presentence investigation report, mentioned by the prosecutor at sentencing, mentioned by the district court at sentencing, and included in the judgment. *Id.* at 325, 327.

Atchison's argument for reversal is no stronger than Rhodes's argument and, in fact, is weaker. Unlike *Rhodes*, a term of conditional release was an express term of Atchison's written plea petition, and his own attorney expressly referred to it before Atchison entered his plea. In other respects, this case is like *Rhodes*. Atchison, like Rhodes, did not object to the term of conditional release when it was mentioned by the district court at the time of imposing sentence. *See id.* at 327. And Atchison, like Rhodes, is deemed to have had notice of the term of conditional release because it was

required by law. *See id.*; *State v. Calmes*, 632 N.W.2d 641, 648 (Minn. 2001) (stating that "citizens are presumed to know the law"). Atchison attempts to distinguish *Rhodes* on the ground that the district court did not make a sufficiently thorough inquiry into whether he understood his plea agreement. But this difference, if there is a difference, is inconsequential in light of the supreme court's reasoning in *Rhodes*, which presumes awareness of a term of conditional release, and the numerous opportunities Atchison had to learn of the term of conditional release and to object or reconsider his decision to plead guilty.

In sum, the evidence supports the district court's conclusion that Atchison's guilty plea is not invalid. The district court record shows that the term of conditional release was part of Atchison's plea agreement and that Atchison was aware of the term of conditional release when he pleaded guilty. Thus, the district court did not err by denying Atchison's postconviction petition.

**Affirmed**.