STATE OF MINNESOTA
IN COURT OF APPEALS
A09-981

Rafael Hafiz Bryson a/k/a Rafael Hafinz Bryson,
petitioner,
Appellant

vs.

State of Minnesota,
Respondent.

Filed March 30, 2010
Affirmed
Worke, Judge

Ramsey County District Court
File No. 62-KO-05-891

David W. Merchant, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, James R. Peterson, Assistant Public Defender, Ellen Ahrens (certified student attorney), St. Paul, Minnesota (for appellant)

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

Susan Gaertner, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Collins, Judge.*

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

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

WORKE, Judge

Appellant challenges the district court's denial of his postconviction petition to withdraw his guilty plea, arguing that the state's failure to disclose DNA evidence in its possession prior to the entry of his plea constituted a manifest injustice. We affirm.

D E C I S I O N

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 postconviction court may allow a defendant to withdraw a guilty plea after sentencing if the petition is timely and withdrawal is "necessary to correct a manifest injustice." *Id.* The petitioner bears the burden to demonstrate that a plea withdrawal is warranted by a preponderance of the evidence. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). A postconviction court's application of the manifest-injustice standard is reviewed for an abuse of discretion. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997).

This is the second appeal stemming from appellant Rafael Hafiz Bryson's postconviction petition to withdraw his guilty plea to second-degree-murder. The district court denied appellant's initial petition for two reasons: it was untimely, and appellant failed to demonstrate that the state's nondisclosure of DNA-test results constituted a manifest injustice. We reversed the district court because the petition was timely and the district court failed to make findings of fact pertaining to the issue of manifest injustice. *State v. Bryson*, Nos. A06-0432, A07-0647, 2008 WL 2492229, at *1 (Minn. App. June 24, 2008). On remand, the district court again denied appellant's petition on the grounds

that appellant failed to demonstrate a manifest injustice. Appellant argues that the district court abused its discretion because it concluded that no manifest injustice occurred by misapplying the test for an unconstitutional withholding of evidence by a prosecutor set forth in *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963).[1]

In a criminal case, the state has a duty to disclose any evidence within its possession or control that "tends to negate or reduce the guilt of the accused as to the offense charged." Minn. R. Crim. P. 9.01, subd. 1(6). To establish an actionable *Brady* violation, appellant must demonstrate that (1) the evidence is "favorable to the accused, either because it is exculpatory or it is impeaching," (2) the state "either willfully or inadvertently" suppressed it, and (3) the failure to disclose was prejudicial. *Pederson v. State*, 692 N.W.2d 452, 459 (Minn. 2005) (citing *Strickler v. Greene*, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 1948 (1999)). We need only to address the third *Brady* requirement in this matter.

In order to establish the third element, appellant must demonstrate materiality and prejudice. *See Walen v. State*, 777 N.W.2d 213, 216 (Minn. 2010) (interpreting the third element of the *Brady* test as requiring that the "evidence must be material—in other words, the absence of the evidence must have caused prejudice to the defendant").

[1] Appellant also asserts that the district court erred on remand by concluding that his petition was untimely when we already determined that it should not have been denied as untimely. *Bryson*, 2008 WL 2492229, at *5. While the district court addressed the issue of timeliness of the petition, the court's disagreement with our assessment was more editorial in nature and did not constitute a conclusion of law justifying the denial of appellant's petition to withdraw his guilty plea. Accordingly, we do not address this issue.

"Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Pederson*, 692 N.W.2d at 460 (quotation omitted). "A reasonable probability is one that is sufficient to undermine confidence in the outcome." *Id.* (quotation omitted).

Here, there is no reasonable probability that appellant would have decided not to plead guilty if the state had disclosed the DNA-test results. First, the test results were ultimately inconclusive: neither the lack of any foreign DNA under the victim's fingernails nor the absence of the victim's blood on appellant's shirt tends to prove or disprove appellant's guilt. Second, appellant was aware that the test results would be forthcoming and still decided to plead guilty. Third, despite the inconclusiveness of the DNA results, appellant was aware of the incriminating evidence that the state intended to introduce at trial, including: at least three witnesses testifying to appellant's guilt, gunshot residue found on appellant's shirt, and a gun discovered in the area where appellant fled from police prior to his apprehension that matched the bullet casings found at the scene of the crime.

Finally, appellant accepted a *substantial* reduction in sentencing in exchange for his guilty plea, receiving a 280.5-month sentence instead of the presumptive 386-month sentence. We have declined to permit withdrawal of a guilty plea originally "motivated by the defendant's desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged." *State v. Doughman,* 340 N.W.2d 348, 353 (Minn. App. 1983) (quoting *Brady v. United States*, 397 U.S. 742, 751,

90 S. Ct. 1463, 1470 (1970)), *review denied* (Minn. Mar. 15, 1984); *see also State v. Tuttle*, 504 N.W.2d 252, 257 (Minn. App. 1993) (concluding when a reduction in sentencing is an essential part of plea negotiations, there is no basis to withdraw a plea if it is entered in accordance with the agreement). Faced with additional incriminating evidence possessed by the state and a considerable reduction in sentencing, it is unlikely that the inconclusive DNA-test results would have dissuaded appellant from pleading guilty. Consequently, appellant fails to establish prejudice incurred by the prosecutor's failure to disclose DNA evidence. Because appellant fails to demonstrate a *Brady* violation and advances no additional argument establishing manifest injustice, the district court did not abuse its discretion by denying appellant's postconviction petition to withdraw his guilty plea.

Affirmed.