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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1485**

State of Minnesota,
Respondent,

vs.

Jeremy Shane Zimmerman,
Appellant.

**Filed May 25, 2010
Affirmed
Halbrooks, Judge**

Carver County District Court
File No. 10-CR-08-917

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

James W. Keeler, Jr., Carver County Attorney, Mark A. Metz, Assistant County Attorney, Chaska, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Cathryn Middlebrook, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his motion to withdraw his guilty plea. Because the plea agreement was enforced according to its terms, the district court did not abuse its discretion when it denied appellant's motion. We affirm.

FACTS

In October 2008, appellant Jeremy Shane Zimmerman was charged with false imprisonment and fourth-degree criminal sexual conduct when he tried to force himself on an acquaintance while riding in her car. In April 2009, appellant signed a petition to plead guilty to the false-imprisonment charge and an added charge of fifth-degree criminal sexual conduct. In exchange for his plea, respondent State of Minnesota dropped the fourth-degree criminal-sexual-conduct charge and agreed to a stayed sentence of 30 months.

The plea petition did not contain any terms or conditions of release pending sentencing. But at the guilty-plea hearing, appellant was advised on the record that, among other things, he was required to remain law-abiding until his sentencing date. Despite being advised of the presentencing conditions of release, appellant was subsequently arrested for alleged controlled-substance crimes before his sentencing date. Because of appellant's failure to comply with the terms of his release pending sentencing, the state asked the district court to sentence appellant to 30 months in prison, rather than staying his sentence as agreed to in the plea petition. Appellant objected and moved to withdraw his guilty plea, arguing that the state was revoking its promised end of the plea

bargain. The state argued that it was not revoking the plea bargain but rather was attempting to enforce the bargain, which it described as contingent on appellant's ability to remain law-abiding pending sentencing. The district court concluded that the plea bargain included a contingency that appellant remain law-abiding and that the state was not revoking its promise. The district court denied appellant's motion to withdraw his guilty plea and sentenced him to 30 months in prison. This appeal follows.

D E C I S I O N

Appellant argues that his plea was neither voluntary nor intelligent and that the district court abused its discretion by denying his motion to withdraw the plea. "A defendant does not have an absolute right to withdraw a valid guilty plea." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). The district court's decision to deny the withdrawal of a guilty plea is reviewed for abuse of discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). Prior to sentencing, the district court may allow a defendant to withdraw a guilty plea in its discretion if it "is fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2. After sentencing, a defendant may only withdraw a guilty plea to correct a manifest injustice. *Id.*, subd. 1. A valid guilty plea must be voluntary, intelligent, and accurate. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). The voluntary-plea requirement ensures that the plea is not in response to improper inducements or pressures. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). An intelligent plea ensures that the defendant understands the charges being made, the rights being waived, and the consequences of the plea. *Id.*

Appellant argues that the state revoked the plea agreement when it requested an executed sentence rather than a stayed sentence and therefore the plea was not voluntary. “[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *State v. Spaeth*, 552 N.W.2d 187, 194 (Minn. 1996) (quoting *Santobello v. New York*, 404 U.S. 257, 262, 92 S. Ct. 495, 499 (1971)). Inducing a guilty plea by a promise that cannot be fulfilled invalidates the plea and may be remedied by altering the sentence, ordering specific performance of the agreement, or allowing the plea to be withdrawn. *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000).

The state argues that it did not revoke the plea agreement; instead, the plea was contingent on appellant’s presentence behavior. Contingent plea agreements have been upheld by this court. *See, e.g., State v. Hamacher*, 511 N.W.2d 458, 459–60 (Minn. App. 1994). Appellant relies primarily on *State v. Kunshier*, 410 N.W.2d 377 (Minn. App. 1987), *review denied* (Minn. Oct. 21, 1987), to support his argument that the district court abused its discretion by denying his motion to withdraw his guilty plea. In *Kunshier*, this court reversed the district court’s denial of a defendant’s motion to withdraw his guilty plea. 410 N.W.2d at 380. This court concluded that the district court was required to allow such a withdrawal when it rejected the plea agreement at sentencing. *Id.* at 379. Although *Kunshier* appears factually similar—the defendant’s guilty plea was accepted, he failed to comply with presentencing conditions of release, and he was ultimately sentenced to a longer term than he agreed to in the plea because of his interim conduct—*Kunshier* is distinguishable because there is no indication that Kunshier was ever

informed that his negotiated sentence was contingent on complying with presentence conditions of release. *Id.* at 378.

Appellant also argues that his plea was not intelligent because he did not understand the consequences of the plea when he signed the petition, as it did not contain all of the terms of the bargain. Although the plea petition did not state that appellant's stayed sentence was contingent on his compliance with presentencing conditions of release, the presentencing conditions of release were discussed several times at the plea hearing. We have upheld plea agreements when the entire agreement was not contained in the written petition and some of the terms were instead agreed to on the record at the guilty-plea hearing. *Hamacher*, 511 N.W.2d at 460. In *Hamacher*, the defendant sought to withdraw his guilty plea after the court declined to stay the execution of his sentence. *Id.* at 459-60. His petition stated that he would receive a stayed sentence if the district court concluded that it was in the best interest of the victim's family. *Id.* at 459. When the district court could not reach this conclusion and executed Hamacher's sentence, Hamacher argued that he should be able to withdraw his plea. *Id.* at 460. In its discretion, the district court denied Hamacher's request, and Hamacher appealed.

We concluded that although the petition was ambiguous, "[t]he plea agreement as explained on the record at the guilty plea hearing did not promise Hamacher . . . a chance to withdraw his guilty plea if the sentence were executed." *Id.* Under the reasoning in *Hamacher*, appellant's guilty-plea agreement includes terms contained in the petition as well as terms agreed to at the guilty-plea hearing.

Accordingly, if the colloquy at the guilty-plea hearing clearly established a contingent plea agreement, there was no manifest injustice when the state requested an executed sentence of 30 months, and the district court did not abuse its discretion when it denied appellant's motion to withdraw his plea. At the hearing, appellant was told by the prosecutor, "if you violate conditions that the Court sets meaning if . . . you fail to remain law abiding . . . all deals are off, [and] you could be sentenced to the 30 months in prison at sentencing." The prosecutor went on to clarify that the "[a]greement is if you comply, you come back and you cooperate that you're going to get a year in all likelihood if the Court goes along with this agreement. If you don't comply with the conditions of release . . . you're probably looking at 30 months in prison." The district court then clarified the deal by telling appellant, "You mess up between now and the time we come in for sentencing and the sentence may vary from what you're agreeing to, that's not going to be the basis for you to withdraw your plea. You understand that?" And appellant responded, "Yes." We conclude that this colloquy created a firm understanding that if appellant violated the conditions of his release before sentencing then he would be sentenced to 30 months in prison and this would not constitute a basis to withdraw his plea.

Because a contingent plea agreement was established at the guilty-plea hearing and because the contingency failed when appellant was arrested for controlled-substance charges, the imposition of a 30-month executed sentence was merely an application of the terms of the negotiated plea agreement, not a revocation of it. Because the state did not revoke its end of the bargain, appellant's guilty plea was voluntary and intelligently made

and therefore valid. Accordingly, the district court did not abuse its discretion when it denied appellant's motion to withdraw his guilty plea.

Affirmed.