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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1068**

State of Minnesota,  
Respondent,

vs.

Lee Thomas Charette,  
Appellant.

**Filed June 8, 2010  
Affirmed  
Hudson, Judge**

Hennepin County District Court  
File No. 27-CR-08-13861

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Hudson, Judge; and Connolly, Judge.

**UNPUBLISHED OPINION**

**HUDSON, Judge**

Appellant challenges his sentence for second-degree burglary, arguing that the district court abused its discretion by sentencing him to 54 months in prison without

giving him the opportunity to withdraw his guilty plea. Because a prison term of up to 60 months was contemplated by the guilty plea to which appellant knowingly and voluntarily agreed, the district court did not abuse its discretion. We affirm.

### **FACTS**

Appellant Lee Charette was charged with second-degree burglary in violation of Minn. Stat. §§ 609.582, subd. 2(a) (Supp. 2007), 609.05 (2006). Appellant pleaded guilty on December 1, 2008. He was to return for sentencing on December 10, 2008, after he was allowed time to visit his ill sister. The plea agreement stated that appellant would receive a 34-month sentence if he complied with all of the conditions imposed by the district court, but that the sentence could extend up to 60 months if appellant did not comply with the conditions of release. Abstention from the use of alcohol or non-prescribed drugs was a condition of release set by the district court.

Appellant's attorney clarified at the plea hearing that appellant understood that he could receive up to 60 months if he did not comply with the conditions of his release pending sentencing. The district court asked appellant if he could state in his own words what would happen if he did not show up for sentencing or used alcohol or non-prescription drugs. Appellant replied that he understood that he would receive a 60-month sentence. The district court again told appellant that if he violated any of the conditions set during the hearing, he could face up to a 60-month sentence and stated that abstaining from the use of alcohol and non-prescription drugs was one of the conditions.

Appellant was released pending sentencing. On December 10, 2008, appellant appeared for sentencing, but the hearing was continued to December 17, 2008 because

appellant was found to be a donor match for his ill sister. The district court allowed appellant to continue on release under the same conditions. The district court reiterated that if appellant followed the conditions, he would receive a 34-month sentence, but that if any condition was violated, appellant would receive up to 60 months. The district court asked appellant what helped him to be successful in complying with the conditions. Appellant responded: "Just the fact that if I mess up I'm going to get 60 months." On December 17, 2008, appellant appeared again and the district court again delayed sentencing to allow appellant to participate in medical testing related to his sister's illness. The district court again noted that the same conditions applied to appellant's release. Sentencing was set for December 29, but the district court had a scheduling conflict and the hearing was continued.

On December 31, 2008, before the next sentencing date, a warrant was issued for appellant's arrest alleging that he violated the conditions of his release by consuming alcohol mixed with ecstasy. Appellant then failed to appear on January 7, 2009, after multiple contacts from his probation officer. Appellant was later arrested in February 2009 and appeared for sentencing on March 16, 2009. The state asked for the 60-month sentence. Appellant requested a lesser sentence in light of the fact that he had met the conditions for the majority of the time he was on release and had appeared for sentencing numerous times previously. The district court sentenced appellant to 54 months, noting that appellant had "made strides" but "didn't go far enough." This appeal follows.

## DECISION

Appellant argues that the district court abused its discretion by sentencing him to 54 months instead of 34 months and that he should be allowed to withdraw his guilty plea. Appellant argues that the state did not fulfill the promise of the plea bargain and that his plea was therefore not voluntary or intelligent.<sup>1</sup> This court reviews the district court's decision to deny the withdrawal of a guilty plea for abuse of discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

“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). After sentencing, a defendant may only withdraw a guilty plea to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if the guilty plea is not voluntary, intelligent, and accurate. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). The plea must be accurate to protect the defendant from pleading to a more serious offense than he could be convicted of at trial. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A voluntary plea requires that the plea is not in response to improper inducements or pressures. *Id.* An intelligent plea requires that the defendant understands the charges being made, the rights being waived, and the consequences of the plea. *Id.*

Appellant argues that the plea was not voluntary because the state improperly induced him to agree to the plea by promising him a 34-month sentence and instead sentencing him to 54 months. “[W]hen a plea rests in any significant degree on a

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<sup>1</sup> Appellant also filed a pro se supplemental brief. The pro se brief makes no discernible new arguments and reiterates appellant's desire to withdraw his guilty plea by citing to facts outside of the record.

promise or agreement of the prosecutor, so that it can 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, specific performance of the agreement, or allowing the plea to be withdrawn. *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000). But here, the plea agreement specifically stated that appellant would face up to 60 months if he did not comply with the conditions set by the district court. The promise of the plea agreement was that appellant would receive 34 months only if he complied with all conditions set by the court. The district court discussed this contingency with appellant multiple times and at multiple hearings. Appellant clearly and repeatedly stated that he understood that he could face up to a 60-month sentence if he did not comply with the conditions placed upon him. Although the sentence imposed was greater than 34 months, it was still in accordance with the plea agreement. Therefore, the plea was voluntary.

Appellant also argues that the plea was not intelligently made because he was not aware of the consequences of the guilty plea and that a contingent plea agreement is a “sham.” A defendant must be aware of the direct consequences that flow from the guilty plea. *Alanis*, 583 N.W.2d at 578. But the record is clear that appellant understood that if he did not comply with the conditions set by the district court, he would face up to 60 months in prison. Appellant stated clearly on the record that he knew that if he used alcohol or non-prescription drugs he would receive “60 months.” Contingent plea

agreements have been upheld by this court. *See, e.g., State v. Hamacher*, 511 N.W.2d 458, 460 (Minn. App. 1994). Appellant's plea was intelligently made.

Because appellant's guilty plea was accurate, voluntary, and intelligently made, no manifest injustice supports withdrawal of appellant's guilty plea.

**Affirmed.**