STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1581

Dan Jonny Harris, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed March 31, 2014
Affirmed
Connolly, Judge

Sherburne County District Court
File No. 71-CR-11-879

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, Matthew Frank, Assistant Attorney General, St. Paul, Minnesota; and

Kathleen A. Heaney, Sherburne County Attorney, Leah Emmans, Assistant County Attorney, Elk River, Minnesota (for respondent)

Considered and decided by Chutich, Presiding Judge; Connolly, Judge; and Smith, Judge.

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

CONNOLLY, Judge

Appellant challenges the denial of his postconviction petition to withdraw his 2011 guilty plea to first-degree burglary of an occupied building, arguing that the plea was not accurate or intelligent. Because the district court did not abuse its discretion in denying appellant's petition, we affirm.

FACTS

In June 2011, appellant Dan Harris was charged with first-degree burglary in violation of Minn. Stat. § 609.582, subd. 1(c) (assault) (2010), a level 8 offense. At a hearing in August 2011, he pleaded guilty to first-degree burglary in violation of Minn. Stat. § 609.582, subd. 1(a) (occupied building) (2010), a level 6 offense, and agreed to a 71-month prison sentence.

In March 2013, appellant filed a petition for postconviction relief, seeking to withdraw his guilty plea. His petition was denied, and he argues that the denial was an abuse of the district court's discretion.

D E C I S I O N

This court will reverse the district court's determination of whether to permit withdrawal of a guilty plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). "At any time the [district] court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P.

15.05, subd. 1. A manifest injustice occurs when a plea is not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997).

Appellant argues first that his plea was not accurate because he was charged with violation of Minn. Stat. § 609.582, subd. 1(c) (providing that assault is a disjunctive element of first-degree burglary) but he pleaded guilty to violation of Minn. Stat. § 609.582, subd. 1(a) (providing that occupancy of the building entered is a disjunctive element of first-degree burglary). But "[w]ith the consent of the prosecutor and the defendant, the defendant may enter a guilty plea to a different offense than that charged in the original . . . complaint." Minn. R. Crim. P. 15.08. Appellant does not argue that either he or the prosecutor did not consent to his pleading guilty to a different offense. Moreover, the petition shows that appellant asked to plead guilty to the different offense, and the hearing transcript reflects that appellant said: (1) he wanted to plead guilty to the different offense, (2) he had read the petition line-by-line and discussed it with his attorneys, (3) he signed the petition, and (4) he was guilty of the different offense because he broke into his ex-wife's house without her permission while she was present in the house and took a TV without her permission.

Minn. R. Crim. P. 15.08 also provides that, if the different offense is a felony, "a new complaint must be signed by the prosecutor and filed in the district court." In this case, no new complaint identifying the different offense was signed by the prosecutor or

filed with the district court.[1] Appellant argues that his plea was not accurate because he "could not plead guilty to an offense he was not charged with." But this argument places form over substance: neither the petition nor the transcript shows any doubt on the part of appellant, the prosecutor, or the district court as to what offense was the subject of appellant's guilty plea, and nothing in Minn. R. Crim. P. 15.08 indicates that a plea is inaccurate and may be withdrawn for the prosecutor's failure to sign or file an amended complaint.

Appellant also argues that his plea "was not intelligent because he received inaccurate information regarding the consequences of his guilty plea." Specifically, he says that his attorney and the prosecutor promised him that, if he pleaded guilty to a violation of first-degree burglary (occupied dwelling) in violation of Minn. Stat. § 609.582, subd. 1(a), the allegations of assaultive behavior would be removed from the complaint and he would be eligible for the Challenge Incarceration Program (CIP) that would give him an early release. In support of this argument, appellant cites the transcript, which he says "shows the prosecutor and [a]ppellant's attorney made a last minute deal to agree to amend the complaint in order to encourage appellant to enter a guilty plea." But the transcript shows that no one mentioned the CIP on the record, does not indicate any last-minute deal, and does indicate that appellant agreed to a prison sentence of 71 months and asked to be sentenced in accord with that agreement. Appellant provides no proof of any promise made to him or any deal between his

[1] An amended complaint was filed, but it did not add the charge to which appellant pleaded guilty; it added a different charge, violation of Minn. Stat. § 609.2247 (2010), domestic assault by strangulation.

attorney and the prosecutor, and the petition he signed said that "[n]o one—including my attorney, any . . . prosecutor [or] judge, or any other person—has made any promises to me . . . in order to obtain a plea of guilty from me."

The postconviction court concluded that appellant's claim of having been promised that the allegations of assaultive behavior would be deleted "is not credible. Both the plea transcript and the plea petition indicate that the plea agreement called for the State to amend the charge from a . . . level 8 offense to a level 6 offense, with an executed sentence of 71 months, in return for [appellant's] plea of guilty."

The district court properly exercised its discretion in denying appellant's motion to withdraw his guilty plea.

Affirmed.