STATE OF MINNESOTA
IN COURT OF APPEALS
A11-150

David John Petrik, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 15, 2011
Affirmed
Connolly, Judge

Norman County District Court
File No. 54-CR-07-323

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

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

Susan Rantala Nelson, Norman County Attorney, Ada, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Shumaker, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellant argues that the district court abused its discretion by denying his petition for postconviction relief. Appellant argues that his plea was the involuntary result of

improper pressures exerted upon him by the district court, jail staff, and his own attorney. In his pro se brief, he also alleges ineffective assistance of counsel. Because appellant has failed to show that his plea was not made knowingly, intelligently, and voluntarily, and has not demonstrated that he was deprived of the effective assistance of counsel, we affirm.

FACTS

On June 25, 2007, appellant David Petrik was charged with ten counts relating to criminal sexual conduct and solicitation of a child to engage in sexual conduct for paying his adopted son to masturbate in front of him. After his arraignment on June 26, appellant was released with certain conditions imposed by the district court. These conditions included no contact with the victim, and supervised visits only with his other three children. On July 12, the conditions were amended to prohibit any contact between appellant and the other three children. Within a week, this condition was amended to again allow supervised visits. On April 11, 2008, the conditions were amended yet again to allow appellant to move back in with his wife and three children (the victim having been placed in foster care). On January 6, 2009, six days prior to the start of appellant's twice-rescheduled trial, appellant was arrested for violating the conditions of his release by indirectly contacting the victim when he and his wife had a third party deliver Christmas presents from them to the victim. Appellant then remained in custody pending trial. During his pre-trial detention, appellant alleges his attorney strenuously advised appellant to accept a plea agreement offered by the state. Appellant also alleges that he was denied access to his anti-depression medication while in custody.

Appellant pleaded guilty to six counts of soliciting a child to engage in sexual conduct on January 12, 2009, the date his trial was scheduled to begin, admitting to paying his adopted son to masturbate in front of him. The record indicates that appellant answered "Yes" when asked "[Y]ou're doing this voluntarily and of your own free will, is that correct?" and "No" when asked "[H]as anyone, a police officer, a judge, a prosecutor, any person in authority made any promises or threats against you to get you to plead guilty?", "Has anyone made any promises to get you to plead guilty?" and "Has anyone threatened any family member of yours to get you to plead guilty?" Following sentencing, he petitioned the district court for postconviction relief, seeking to have his sentence reduced and corrected to the maximum allowed under statute and to withdraw his guilty plea on the basis that it was invalid. Without a hearing, the district court corrected appellant's sentence, but refused to let appellant withdraw his guilty plea. This appeal follows.

D E C I S I O N

This court reviews a district court's denial of a motion to withdraw a guilty plea for an abuse of discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998); *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). A criminal defendant does not have an absolute right to withdraw a guilty plea. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). After sentencing, a defendant may withdraw a guilty plea only if withdrawal "is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice occurs when a guilty plea is not accurate, voluntary, and intelligent (i.e., is not valid). *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). The voluntariness

requirement is necessary to ensure that the guilty plea is not the result of improper pressures or inducements. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). The district court may rule on a petition for postconviction relief without a hearing if "the petition and the file and the records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2010). Argumentative assertions without factual support are insufficient support for a request for a hearing on a petition for postconviction relief. *Arredondo v. State*, 754 N.W.2d 566, 570 (Minn. 2008). This court reviews "a district court's decision to deny a withdrawal motion for abuse of discretion, reversing only in the rare case." *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010) (quotation omitted).

Appellant argues that his guilty plea was the involuntary result of improper pressures exerted upon him by the district court, jail staff, and his own attorney.

1. The District Court

Appellant argues that the conditions of release imposed by the district court were improper pressures designed to induce his guilty plea because they kept appellant away from his family. But the conditions were not improper in light of the nature of appellant's offenses and the fact that he had three minor children. *See* Minn. R. Crim. P. 6.02, subd. 1(d) (authorizing the district court to impose any conditions "necessary") *and* subd. 2 (directing the district court to consider "the nature and circumstances of the offense charged," "the victim's safety," "the safety of any other person" and "the community safety" when determining the conditions of release). Furthermore, the record

shows that the district court altered the conditions multiple times to accommodate appellant and only revoked appellant's release when he violated the conditions.

Appellant also argues that his continued detention following a violation of the conditions of his release was an improper pressure designed to induce his guilty plea because it kept him away from his family and may have hindered his ability to aid in his own defense. But appellant's detention following his violation of the conditions of his release was the result of his own failure to abide by those conditions. Furthermore, he was not hindered in aiding in his own defense: he was able to and did communicate with his lawyer via fax and in person, and he himself testified that he had sufficient time to discuss the case with his attorney. Neither the district court's pretrial detention of appellant nor the conditions imposed on his release constituted an improper pressure on appellant to plead guilty.

2. Jail Staff

Appellant argues that the county jail staff improperly pressured him into an involuntary guilty plea by withholding his medication during his six-day pretrial detention. But he offers no proof that the jail staff denied him his anti-depression medication. Furthermore, he testified:

> THE COURT: And as you sit here today are you under the influence of drugs or alcohol?
> APPELLANT: No.
> THE COURT: Are you under the care of a mental health professional?
> APPELLANT: No.
> THE COURT: Are you under the care of a medical doctor?
> APPELLANT: Yes.

> THE COURT: And do you take any medication that would impair your judgment?
> APPELLANT: No.
> THE COURT: Is there anything about your physical or mental state that would impair your judgment to make such a decision today to come forward and offer a plea of guilty . . . ?
> APPELLANT: No.

Despite numerous opportunities during the plea hearing to allege that his medication was withheld, appellant failed to do so. The district court did not abuse its discretion by refusing to permit the withdrawal of appellant's guilty plea on the basis that jail staff improperly pressured him.

3. Appellant's Attorney

Appellant argues that his attorney improperly pressured him in three principal ways. First, he claims his attorney misinformed him by stating that the presumptive sentence for solicitation of a minor to engage in a sexual act was 39 months, when in fact it was 36 months.[1] The difference between 36 months and 39 months is less than ten percent; appellant does not explain why the minimal three-month difference would have affected his decision to plead guilty.

Second, appellant argues that he was improperly pressured when his attorney said appellant would need additional money to go to trial. But appellant's attorney was merely reminding appellant of the limits of their fee agreement, which did not include trial services, and specifically stated that additional fees would be necessary if appellant went to trial. Appellant's attorney was fulfilling his professional obligation to advise his

[1] Appellant's sentence was corrected when he sought postconviction relief, and he does not challenge his sentence on appeal

client of the limits of their contractual relationship, not improperly pressuring appellant to plead guilty.

Third, appellant argues that his attorney improperly pressured him to plead guilty by minimizing the defenses appellant offered for possible use at trial, which led appellant to believe that the defenses would be ineffective at trial. But the transcript indicates that appellant's attorney thought appellant's suggested defenses would be more successful as mitigating factors at sentencing. He so advised appellant, who agreed.

> APPELLANT'S COUNSEL: Now, you and I have discussed this case on a number of occasions and discussed possible defenses and other facts on a number of occasions, correct?
> APPELLANT: Correct.
> APPELLANT'S COUNSEL: Okay. And we have some information that we'd like to present to the court at some appropriate point and time, correct?
> APPELLANT: Correct.
> APPELLANT'S COUNSEL: But I've advised you that that information in my opinion would not rise to the level of a defense, it would not excuse or justify your conduct, correct?
> APPELLANT: Correct.
> APPELLANT'S COUNSEL: And do you understand that that's the situation?
> APPELLANT: Yes.
> APPELLANT'S COUNSEL: Do you acknowledge that?
> APPELLANT: Yes, I do.
> APPELLANT'S COUNSEL: But that I've told you that there might be some information that might help mitigate your conduct in the eyes of the Court, correct?
> APPELLANT: Correct.
> APPELLANT'S COUNSEL: And it's [sic] our intent to present that information to the Court at the appropriate time of sentencing?
> APPELLANT: Correct.
> APPELLANT'S COUNSEL: All right. But you understand that we don't have any legal defenses, we don't have any excuses or justification to the conduct which is the subject of these six criminal charges?

APPELLANT: Correct.

Consequently, the district court did not abuse its discretion in denying appellant's postconviction relief petition to withdraw his plea because of improper pressure exerted upon appellant by his own attorney.

4. Ineffective Assistance of Counsel

In his pro se supplemental brief, appellant argues that he should be allowed to withdraw his guilty plea because he received ineffective assistance of counsel. Appellant's arguments in this regard are made for the first time on appeal and thus should not be considered. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Moreover, the transcript of appellant's testimony belies this assertion.

> THE COURT: Do you believe that [your counsel] is well versed in the law that affects your case?
> THE APPELLANT: Yes.
> THE COURT: And do you believe that he's apprised as to the facts that affect your case?
> THE APPELLANT: Yes.
> THE COURT: And are you satisfied that [your counsel] is fully informed in relation to this matter?
> THE APPELLANT: Yes.
> THE COURT: And do you believe that he's represented your interest and fully advised and counseled you in this matter?
> THE APPELLANT: Yes.

None of the particular instances of ineffective assistance of counsel that appellant alleges has merit. Appellant has failed to demonstrate that his plea was not made knowingly, intelligently, and voluntarily, either because he was pressured to plead guilty or because he was denied the effective assistance of counsel. Consequently, the district court did not

abuse its discretion by denying his postconviction petition to withdraw his guilty plea without a hearing.

Affirmed.