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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-854**

Paris Cedrell Neal, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed January 23, 2012  
Affirmed  
Stoneburner, Judge**

Hennepin County District Court  
File No. 27CR0841124

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

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

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

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

**UNPUBLISHED OPINION**

**STONEBURNER**, Judge

Appellant challenges denial of his petition for postconviction relief seeking  
reversal of his sentence based on his argument that the district court was excessively

involved in plea negotiations. Because the district court had no involvement in appellant's plea negotiations, we affirm.

### **FACTS**

In August 2008, appellant Paris Cedrell Neal was arrested and charged with first-degree aggravated robbery in violation of Minn. Stat. §§ 609.245 and 609.11 (2008). Under a plea agreement based on Neal's willingness to cooperate with law enforcement on unrelated matters, Neal pleaded guilty to an amended charge of theft of a motor vehicle in violation of Minn. Stat. § 609. 52, subd. 2(17) (2008). The plea agreement did not make any reference to sentencing, and the parties agree that sentencing was left to the sole discretion of the district court. At the plea hearing, the state noted that the middle-of-the-box presumptive sentence, given Neal's criminal-history points, was 24 months. The district court accepted Neal's plea and scheduled a sentencing hearing before a different judge

At the sentencing hearing, the prosecutor noted that Neal had entered a "straight plea," and the parties asked to be allowed to approach the bench to discuss sentencing arguments. At the recorded bench conference, the prosecutor noted Neal's cooperation with law enforcement and law enforcement's strenuous request for the state to allow Neal to be released on a probationary sentence so that he could continue to help the police. The prosecutor told the district court that the state would not agree to a probationary sentence but was prepared to argue for only an executed 21-month sentence which, because Neal had substantial jail credit, would result in his serving very little time in prison. Defense counsel pointed out that "ultimately the sentence that [Neal] is to receive

is at the Court's discretion, it's not simply what the County Attorney's Office is going to agree to." Defense counsel opined that Neal had committed "an exaggerated auto theft" but said that Neal would agree to cooperate with whatever terms of probation the district court would impose. The district court inquired whether Neal would be willing to waive a sentencing jury and let the district court decide whether to impose an upward departure "for time hanging" if the district court were to give him a probationary sentence. The district court stated: "I am willing to consider the probationary sentence but only with an upward departure." The district court indicated that it was contemplating an upward departure to 42 months.

Defense counsel had a discussion with Neal off the record after which Neal, on the record, entered a waiver of his right to a sentencing jury. Neal does not dispute the validity of the waiver. The state ensured that the record reflected that it was asking for an executed sentence but discussed appropriate probation conditions if the court "were to go ahead with what sounds like could be a probationary sentence." There was a discussion on the record with a probation agent about appropriate terms of probation and probation's "low tolerance" for any future argument from Neal that his cooperation with the law enforcement should excuse compliance with the terms of probation.

Neal then admitted, on the record, that because he drove the stolen automobile while the owner was on the hood, creating a substantial risk of bodily injury to the owner, he created a greater risk of bodily injury to a person than is normally present in auto theft. Neal acknowledged that his admission constituted a basis for an upward durational departure. Based on Neal's admission, the district court concluded that there was a basis

for an upward durational departure. Neal does not challenge the existence of grounds for the upward departure. The district court sentenced him to 42 months, stayed for five years with conditions.

In March 2010, Neal admitted violating the terms of probation, and his sentence was executed. Neal then petitioned for postconviction relief, arguing that his sentence should be reversed and he should be resentenced to a guidelines sentence because the district court had improperly inserted itself into plea negotiations, resulting in an amended plea agreement that violated the original plea agreement. The postconviction court denied the petition, finding that there was “no indication that the [sentencing court] violated an agreement” between the parties; the sentencing court made no “direct and unequivocal promise” to Neal; and the record fails to show any agreement between Neal and the court. This appeal followed.

## **D E C I S I O N**

### **I. Standard of Review**

In reviewing a postconviction court’s decision to grant or deny relief, issues of law are reviewed de novo and issues of fact are reviewed for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007); *Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003) (noting also that appellate courts “extend a broad review of both questions of law and fact” when reviewing postconviction proceedings). Appellate courts “review a postconviction court’s findings to determine whether there is sufficient evidentiary support in the record.” *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). The

decisions of a postconviction court will not be disturbed unless the court abused its discretion.” *Id.* (citation omitted).

## **II. The postconviction court did not abuse its discretion in denying the petition.**

“[T]he case law is clear that a district court should not usurp the responsibility of counsel or become excessively involved in plea negotiations and may not improperly inject itself into plea negotiations.” *State v. Anyanwu*, 681 N.W.2d 411, 414 (Minn. App. 2004). And “the law is clear that a guilty plea is per se invalid when the district court impermissibly injects itself into plea negotiations.” *Id.* (holding that by promising a particular sentence in advance of a plea, the district court abandoned its independent role and became an advocate, entitling Anyanwu to the opportunity to withdraw his plea). “When a district court rejects a plea agreement, the defendant is automatically entitled to withdraw his plea if one has been entered.” *Melde v. State*, 778 N.W.2d 376, 379 (Minn. App. 2010) (stating that “[t]he district court’s role after a plea agreement has been rejected is . . . the same as before a plea was entered, and the court may not negotiate with the defendant or offer to impose a particular sentence that has not been agreed to by the defendant and the prosecutor”). But in this case, the record plainly shows that the district court did not have any role in plea negotiations: Neal’s plea was entered and accepted before any discussions about sentencing occurred.

Neal argues the district court’s post-plea discussion of sentencing options with him constituted injecting itself into plea negotiations and resulted in an amended plea agreement negotiated between himself and the district court. We disagree. Neal entered a plea of guilty to the amended charge, and the plea agreement did not contain any

conditions on sentencing. Neal's argument that the plea agreement implicitly capped his sentence at the presumptive guideline sentence such that the district court was precluded by the plea agreement from considering a durational departure is without merit. The sentencing court neither violated nor amended the plea agreement that Neal made with the state. The district court did not induce Neal to plead guilty by promising a specific sentence. The district court did not usurp the responsibilities of counsel, because it did not participate in the plea negotiations; it merely exercised its discretion, acknowledged in the plea negotiation, to sentence Neal after considering the arguments of both parties and discussing sentencing options with Neal. The postconviction court did not err in concluding that the sentencing court did not impermissibly inject itself into plea negotiations.

Neal argues that the postconviction court erred when it determined that the district court did not make an express sentencing promise to Neal and therefore did not become excessively involved in plea negotiations. The postconviction court cited *Hannibal*, in which this court interpreted *Anyanwu* as requiring a direct and unequivocal promise by the district court to the defendant. *State v. Hannibal*, 786 N.W.2d 314, 318 (Minn. App. 2010). Neal argues that this is an "insincere reading" of *Anyanwu*, because it precludes from the category of "impermissible participation" any improper involvement by the district court that does not result in a direct promise by the district court to the defendant. But Neal's premise is flawed because the cases cited involve the district court's promise of a sentence in advance of entry of a plea: this case involves a district court discussing sentencing options after entry and acceptance of a valid plea that did not restrict the

sentencing court's discretion. The district court exercised its sentencing authority and obtained a voluntary and intelligent waiver of rights and admission to an aggravating factor to achieve the sentence that the district court deemed appropriate under the circumstances of the case. Neal was not coerced into waiving a *Blakely* hearing. The sentence did not modify or violate Neal's plea agreement. The postconviction court's findings that the district court did not become impermissibly involved in plea negotiations and did not promise a specific sentence to induce Neal's plea are not clearly erroneous. And the postconviction court did not abuse its discretion in denying Neal's petition for postconviction relief.

**Affirmed.**