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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-88**

State of Minnesota,
Respondent,

vs.

Carl Joseph Matusovic,
Appellant.

**Filed January 3, 2012
Affirmed
Collins, Judge***

Hennepin County District Court
File No. 27-CR-08-25935

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, Jennifer L. Lauermann, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and
Collins, Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant Carl Matusovic challenges the district court's denial of his postconviction petition to withdraw his guilty plea to attempted second-degree criminal sexual conduct, arguing that his guilty plea was induced by an unfulfilled and unfulfillable promise, and is thus invalid. Because we conclude that the promise at issue was fulfilled, we affirm.

FACTS

After a jury trial in November 2008, Matusovic was convicted of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(a) (2002). In February 2010, we reversed Matusovic's conviction and remanded for a new trial, due to improper admission of *Spreigl* evidence. Matusovic and respondent State of Minnesota subsequently reached a plea agreement. On August 26, 2010, Matusovic pleaded guilty to attempted second-degree criminal sexual conduct. The state recommended an executed sentence of 27 1/2 months which, crediting time served, provided for Matusovic's immediate release after sentencing, subject to 10 years on conditional release and lifetime registration as a predatory offender. On September 16, 2010, the district court sentenced Matusovic in accordance with the plea agreement, and granted his immediate release.

The terms of Matusovic's release required him to contact the Department of Corrections (DOC) within 24 hours. Before doing so, Matusovic bought a car and rented an apartment. When he contacted the DOC, Matusovic was informed that the DOC

intended to return him to custody while it established the conditional-release plan. It was indefinite how long this would take; according to Matusovic, the DOC indicated it could be up to 60 days, but the probation officer stated that it “could be as limited as a few days up to possibly a week or two.” After learning that he would be returned to custody, Matusovic moved to withdraw his guilty plea. The district court ordered a stay of Matusovic’s sentence pending a hearing on September 20, 2010. At that hearing, Matusovic argued that he could lose his apartment and new belongings, including his car, if he was not permitted to withdraw his guilty plea. Observing that even if Matusovic was permitted to withdraw his guilty plea he would be returned to custody, the district court reinstated the September 16 sentence, and Matusovic was returned to custody on authority of the DOC and detained for eight days. This appeal followed.

D E C I S I O N

While “[d]etermining what the parties agreed to in a plea bargain is a factual inquiry” resolved by the postconviction court, the “interpretation and enforcement of plea agreements involve issues of law that we review de novo.” *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). Here, the terms of the plea agreement are not in dispute; rather, the parties dispute whether the guilty plea is valid.¹ “Assessing the validity of a plea

¹ For the first time on appeal, the state contends that Matusovic sought the wrong remedy for his incarceration, in the wrong forum, arguing that Matusovic should have contested his detention by seeking habeas corpus relief in the county where he was incarcerated. This court will generally not consider matters not argued to, considered, and decided by the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Moreover, “[i]nducement of a guilty plea by promises that cannot be fulfilled invalidates the plea; possible remedies include requiring specific performance of the agreement, altering the

presents a question of law that we review de novo.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). If a guilty plea is valid, this court will reverse the district court’s determination of whether to permit its withdrawal only if the district court abused its 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). But, before or after sentencing, the district court must permit a defendant to withdraw a guilty plea “upon timely motion and proof to the satisfaction of the [district] court that withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid.” *Raleigh*, 778 N.W.2d at 94. A valid guilty plea is one that is accurate, voluntary, and intelligent. *Id.* A defendant bears the burden of showing that a guilty plea was invalid. *Id.*

Matusovic argues that his guilty plea was not voluntary, and is thus invalid, because it was induced by an unfulfilled and unfulfillable promise—the promise of his release after sentencing. A guilty plea is involuntary when it rests “in any significant degree” on an unfulfilled or unfulfillable promise. *James v. State*, 699 N.W.2d 723, 728-29 (Minn. 2005).

I.

Matusovic argues that the promise of release after sentencing induced his guilty plea. In seeking to withdraw his guilty plea, Matusovic argued to the district court, and

sentence, or allowing the plea to be withdrawn.” *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000).

repeats on appeal, that he rented an apartment and bought a car in reliance on the plea agreement.² Matusovic's immediate rental of an apartment and purchase of a car establish that his release after sentencing could "be said to be part of the inducement or consideration" for his guilty plea and thus must be fulfilled for the guilty plea to be valid. *See id.* (quotation omitted).

II.

Matusovic's guilty plea is invalid if the promise of release after sentencing is unfulfilled or unfulfillable. *Id.* at 728-29. A promise is unfulfilled when a defendant is ultimately sentenced to a period of incarceration "in excess of the upper limit contemplated" at the time of the plea agreement or sentencing. *Id.* at 730. The defendant's guilty plea in *James* was induced by an unfulfillable promise. *Id.* The *James* court reasoned:

[The defendant] was not made aware of the applicable mandatory 10-year conditional release term at the time he entered his plea of guilty or when he was sentenced. [The defendant] agreed to plead guilty to fourth-degree criminal sexual conduct in exchange for a 36-month sentence with execution stayed and placement on 10 years' supervised release. The longest possible period of incarceration contemplated by [the defendant]'s plea agreement was 36 months. With the addition of the mandatory conditional

² For the first time on appeal, in his reply brief, Matusovic contends that the record demonstrates that "a critical part of the plea bargain was avoiding 'incarceration' so as to avoid another risk level review by the [End of Confinement Review Committee]" as this would likely result in a higher community notification risk level. Again, we will generally not consider matters not argued to, considered, and decided by the district court. *Roby*, 547 N.W.2d at 357. Additionally, issues not raised or argued in appellant's principal brief cannot be revived in a reply brief. *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). Therefore, Matusovic's contention regarding possible ECRC action is outside the scope of this review.

release term, [defendant]’s longest possible period of incarceration increased from 36 months to 156 months. . . . [This] resulted in a sentence that was in excess of the upper limit contemplated at the time he entered into the plea agreement.

Id. Unlike the defendant in *James*, Matusovic was aware that a ten-year conditional release period was a consequence of his guilty plea. Therefore, Matusovic’s short-term incarceration authorized by the DOC did not result in a sentence that was “in excess of the upper limit contemplated at the time he entered into the plea agreement.” *See id.* Moreover, it is undisputed that the district court released Matusovic after sentencing, as provided by his plea agreement.³ Accordingly, the plea agreement does not contain an unfulfilled or unfulfillable promise; Matusovic’s guilty plea is voluntary, and thus valid.

In addition, although an intelligent guilty plea requires that a defendant be informed of the direct consequences of the guilty plea, it does not require that the defendant be informed of all collateral consequences. *Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998). Direct consequences are those “which flow definitely, immediately, and automatically from the guilty plea.” *Id.* Under Minnesota law, “[t]he conditions of release [for sex offenders] may include successful completion of treatment and aftercare in a program approved by the [DOC], satisfaction of the release conditions specified in

³ For the first time on appeal, in his reply brief, Matusovic contends “immediately after [his] sentencing, the district court filed a Warrant of Commitment that unequivocally commanded the sheriff to convey [him] to the [DOC] at St. Cloud, Minnesota and commanded the [DOC] to receive [him] into its custody and safekeeping.” Again, we will generally not consider matters not argued to, considered, and decided by the district court, and issues not raised or argued in appellant’s brief cannot be revived in a reply brief. *Roby*, 547 N.W.2d at 357; *McIntire*, 458 N.W.2d at 717 n.2. Moreover, the Warrant of Commitment found in the record is not signed or stamped and it is undisputed that Matusovic was immediately released after sentencing.

section 244.05, subdivision 6 [regarding intensive supervised release], and *any other conditions the [DOC] considers appropriate.*” Minn. Stat. § 609.3455, subd. 8(b) (2010) (emphasis added). This language gives the DOC broad discretion regarding the conditions of release. Matusovic acknowledges that offenders are not always incarcerated while the DOC establishes their conditional release plans. Thus, Matusovic’s immediate release and his ten-year conditional release period flowed directly from his guilty plea, but the DOC’s requirement that he temporarily return to custody is a collateral consequence. The district court’s failure to warn Matusovic of this collateral consequence of his guilty plea does not render his guilty plea unintelligent or invalid.

Matusovic’s guilty plea is accurate, voluntary, and intelligent. Therefore, it is valid and he is not entitled to withdraw his guilty plea. Minn. R. Crim. P. 15.05, subd. 1; *Raleigh*, 778 N.W.2d at 94. And we do not see that the district court abused its discretion when it determined that plea withdrawal was not necessary to correct a manifest injustice.

Affirmed.