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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2020**

Paul Martin Hippler, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 28, 2008
Affirmed
Stauber, Judge**

Ramsey County District Court
File No. KX03814

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Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, Ramsey County Government Center West, Suite 315, 50 West Kellogg Boulevard, St. Paul, MN 55102 (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Shumaker, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In 2003, appellant pleaded guilty to third-degree criminal sexual conduct under an agreement by which he was to receive a downward dispositional departure and to be placed on probation. Appellant subsequently failed to appear at the scheduled sentencing hearing, and appellant was later sentenced to the presumptive 33-month term, followed by a five-year conditional-release period. Appellant did not file a direct appeal from his conviction or sentence, but in 2007, he filed a petition for postconviction relief challenging the imposition of the conditional-release period. On appeal from the denial of his petition, appellant argues that (1) the district court erred in denying his petition when the five years of conditional release were not part of his earlier plea agreement and (2) the imposition of the five-year conditional-release period violated his constitutional rights under *Blakely*. We affirm.

DECISION

On review of a postconviction decision, this court determines whether there is sufficient evidence to support the district court's postconviction findings. *White v. State*, 711 N.W.2d 106, 109 (Minn. 2006). The court's postconviction decision will not be overturned unless the court has abused its discretion. *Id.* A postconviction court's legal determinations are reviewed de novo, but its factual findings will not be set aside unless they are clearly erroneous. *Schleicher v. State*, 718 N.W.2d 440, 445 (Minn. 2006); *Doppler v. State*, 660 N.W.2d 797, 801 (Minn. 2003).

I. Plea agreement

Appellant argues that the postconviction court erred in denying his petition for relief because his guilty plea was invalid and he should have been allowed to withdraw his plea. A defendant does not have an absolute right to withdraw a guilty plea. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). But rule 15.05 of the Minnesota Rules of Criminal Procedure provides that a district court must permit a defendant to withdraw a guilty plea after sentencing upon a showing that withdrawal is necessary to correct “manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists when a defendant can show that a guilty plea was not accurate, voluntary, or intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). If a guilty plea is not “accurate, voluntary, and intelligent,” the plea is invalid. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

Appellant argues that his plea was not knowingly and understandingly made because his plea agreement did not include the five-year conditional-release term, and there was no explanation of the meaning of this sentencing provision at his sentencing. Thus, appellant argues that his guilty plea was invalid and he should be allowed to withdraw his plea.

We disagree. It is undisputed that appellant pleaded guilty to third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subds. 1(b), 2 (2002).

Minnesota law provides that:

Notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the sentencing guidelines, when a court sentences a person to

prison for a violation of section . . . 609.344 . . . , the court shall provide that after the person has completed the sentence imposed, the commissioner of corrections shall place the person on conditional release. *If the person was convicted for a violation of section . . . 609.344 . . . , the person shall be placed on conditional release for five years, minus the time the person served on supervised release.*

Minn. Stat. § 609.109, subd. 7(a) (2002) (emphasis added).¹ Imposition of a conditional-release term on the statutorily specified offenses is mandatory and nonwaivable. *See* Minn. Sent. Guidelines cmt. II.E.05 (2002); *State v. Humes*, 581 N.W.2d 317, 319 (Minn. 1998) (noting that conditional release is mandatory under statute). Because appellant was convicted of third-degree criminal sexual conduct under section 609.344, the imposition of the five-year conditional-release period was mandatory.

Also, the Minnesota Supreme Court recently held that a plea by a defendant whose plea agreement does not mention a mandatory conditional-release period and who is not advised about the conditional-release period at the plea hearing will be deemed intelligent if the defendant (1) is on notice at the plea and sentencing hearings that a conditional-release period is a mandatory component of a sex-offender's sentence and (2) fails to object at sentencing to the addition of the conditional-release period to his negotiated plea. *State v. Rhodes*, 675 N.W.2d 323, 327 (Minn. 2004) (upholding addition of period of conditional release to negotiated plea at sentencing, even though plea agreement did not mention conditional-release period and defendant was not informed about it at the

¹ Minn. Stat. § 609.109, subd. 7(a), replaced Minn. Stat. § 609.346, subd. 5, as the statutory provision mandating the conditional-release term.

plea hearing, where defendant was on notice at plea and sentencing hearings that period of conditional release for sex offenders was mandatory and failed to object).

Here, like the defendant in *Rhodes*, appellant was on notice at the time of the 2003 plea hearing that a period of supervised release for sex offenders was mandatory because appellant was presumed to know the law in effect at the time of his plea. *See State v. Calmes*, 632 N.W.2d 641, 648 (Minn. 2001) (stating that citizens are presumed to know the law); *State ex rel. Rankin v. Tahash*, 276 Minn. 97, 101, 149 N.W.2d 12, 15 (1967) (stating that counsel is presumed to have explained to defendant consequences of pleading guilty). Appellant was also present at the sentencing hearing where the district court advised him that: “I . . . also indicated that in addition to the executed sentence here, you are subject to a five-year conditional-release period on top of that.” Neither appellant nor his attorney inquired about or objected to the conditional-release term, nor did appellant appeal his sentence. Thus, under *Rhodes*, appellant’s claim that his plea was not intelligent fails because (1) he is deemed to have been aware of the law since it was enhanced several years before he entered his plea and (2) he failed to object to the imposition of the conditional-release term at sentencing.

Moreover, the record reflects that at the plea hearing, appellant was advised by his attorney of the five-year conditional-release period. Specifically, the following exchange took place on the record:

COUNSEL: And criminal sexual conduct does carry with it some unique features. Do you understand that?

APPELLANT: Mm-hmm.

COUNSEL: One of them is that whatever sentence this Court imposes will include a five-year conditional release period should your sentence ever be executed?

APPELLANT: Yes.

COUNSEL: And you understand that if you were released on that five-year conditional release part of this sentence that if you were to violate that conditional release you could serve the balance of that five years in prison?

APPELLANT: Yes.

When asked whether he had any questions about his plea agreement, appellant answered: “No.” The district court further advised appellant that “you should be aware that if you fail to cooperate with the probation department in the completion of your presentence investigation or if you fail to return to court for your sentencing then I won’t be bound by the agreement that you’ve reach here today.” Therefore, the record reflects that appellant was advised of the conditional-release period and how it applied to his plea agreement, and the district court did not err in concluding that appellant’s plea was accurate, voluntary, and intelligent.

II. *Blakely* issues

Appellant also contends that the five-year conditional-release period constitutes an upward departure. Thus, appellant argues that his sentence is unconstitutional under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), because a jury is required to find the factors permitting the district court to sentence him to an upward departure.

Blakely followed *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000), in which the United States Supreme Court held that any facts, other than the fact of a prior conviction, that increase the penalty for an offense beyond the statutory maximum

must be submitted to a jury and proved beyond a reasonable doubt. *Apprendi*, 530 U.S. at 490, 120 S. Ct. at 2362. The *Blakely* decision modified *Apprendi* by concluding that “the relevant ‘statutory maximum’ is not the maximum sentence a judge may impose after finding additional facts, but the maximum [a judge] may impose *without* any additional findings.” *Blakely*, 542 U.S. at 303-04, 124 S. Ct. at 2537. The Minnesota Supreme Court has concluded that *Blakely* applies to sentences imposed under the Minnesota Sentencing Guidelines. *State v. Shattuck*, 704 N.W.2d 131, 141-42 (Minn. 2005).

Here, appellant was sentenced on November 13, 2003, and he did not file a direct appeal. Thus, appellant’s sentence became final 90 days after he was sentenced. *See* Minn. R. Crim. P. 28.02, subd. 4(3) (mandating that a criminal defendant appeal within 90 days after entry of judgment); *see also O’Meara v. State*, 679 N.W.2d 334, 339 (Minn. 2004) (stating that a conviction becomes final after the time for appeal is exhausted). *Blakely* was decided on June 24, 2004, after appellant’s sentence became final. The Minnesota Supreme Court has held that the *Blakely* decision is not retroactive and only applies to cases on direct appeal at the time of the decision. *State v. Houston*, 702 N.W.2d 268, 273 (Minn. 2005). Because appellant’s sentence was final before the ruling in *Blakely*, and because *Blakely* does not apply retroactively, appellant is not entitled to benefit from the rule in *Blakely*.

Moreover, even if *Blakely* applied retroactively to appellant’s sentence, the conditional-release period does not constitute an upward departure. Under Minn. Stat. § 609.109, subd. 7(a), the conditional-release period is part of the statutory sentence for

criminal sexual conduct. Therefore, the district court correctly held that imposition of the conditional release in this case does not implicate *Apprendi* or *Blakely*.

Affirmed.