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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2233**

Timothy Terrell Bryant,
petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 25, 2008
Reversed
Klaphake, Judge**

Ramsey County District Court
File No. K0-05-3340

Lawrence Hammerling, Chief Appellate Public Defender, Cathryn Young Middlebrook, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

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

Susan Gaertner, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, 50 West Kellogg Blvd., Suite 315, St. Paul, MN 55102 (for respondent)

Considered and decided by Worke, Presiding Judge; Klaphake, Judge; and Peterson, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Timothy Terrell Bryant entered a straight guilty plea to the offense of failing to register as a predatory offender under Minn. Stat. § 243.166, subd. 5(a) (2006), after he admitted that he gave the Bureau of Criminal Apprehension an incorrect address as his residence. At his plea hearing, he stated that he was pleading guilty as charged and had not entered into a plea agreement. At sentencing, the district court imposed a 17-month presumptive guidelines sentence as well as a mandatory 10-year period of conditional release required by Minn. Stat. § 243.166, subd. 5a (2006). Appellant immediately objected to the imposition of the term of conditional release, asked to withdraw his plea, and now appeals from the postconviction court's denial of his petition to withdraw his plea. Because appellant has shown a factual basis for plea withdrawal because the record does not demonstrate that he received any notice of the term of conditional release before entering his plea, we conclude that the postconviction court abused its discretion by denying the petition, and reverse.

DECISION

This court reviews a postconviction court's decision under the abuse of discretion standard of review. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). After a postconviction court denies relief, the appellate court's scope of review "is limited to determining whether the court abused its discretion, including whether there was sufficient evidence to support the court's conclusions." *James v. State*, 699 N.W.2d 723, 728 (Minn. 2005). A postconviction petitioner has the burden of establishing facts

alleged by a fair preponderance of the evidence. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997).

After imposition of a sentence, a defendant may withdraw a guilty plea if “withdrawal is necessary to correct a manifest injustice,” Minn. R. Crim. P. 15.05, subd. 1, and the burden is on the defendant to prove manifest injustice. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A defendant demonstrates manifest injustice if the guilty plea fails to meet the constitutional requirement of being accurate, voluntary, and intelligent. *Id.*

Appellant argues that his plea was not intelligently made because he was not informed of the 10-year term of conditional release. We agree. Typically, a defendant is entitled to be informed of all direct consequences of pleading guilty. *Id.* at 578-79. *Alanis* defines direct consequences as those that flow definitely, immediately, and automatically from the guilty plea, such as the maximum sentence and any fine to be imposed. *Id.* at 578. More recently, the supreme court refined that definition when it held that sentencing terms that are definite, automatic, and punitive are direct consequences for purposes of establishing manifest injustice to withdraw a guilty plea. *Kaiser v. State*, 641 N.W.2d 900, 905 (Minn. 2002). In *State v. Calmes*, 632 N.W.2d 641, 649 (Minn. 2001), the supreme court recognized the punitive nature of a mandatory term of conditional release when it addressed whether a court’s post-plea modification of a criminal sentence to include a term of conditional release violated a defendant’s double jeopardy rights. *See also State v. Christopherson*, 644 N.W.2d 507, 511 (Minn. App. 2002) (while holding that the plea in that case was valid, the court stated that “there may

be much to be said for” the “practice” of informing defendants of a mandatory term of conditional release at the time of plea entry if they “will or may be subject to a conditional release”), *review denied* (Minn. July 16, 2002). Because appellant was subject to a term of conditional release that was definite, automatic, and punitive, his plea was not intelligent if it was entered without knowledge of that sentencing term.

Appellant further alleges that his plea was not voluntary. Again, we agree. Minn. R. Crim. P. 15.01, subd. 1, mandates that before a court accepts a guilty plea, the court “shall” interrogate the defendant, with the assistance of counsel, on twenty topics in order to ensure both the voluntariness of the plea and the factual basis for it. *State v. Hoaglund*, 307 Minn. 322, 326, 240 N.W.2d 4, 6 (1976). Among these topics is the following:

10. Whether defense counsel has told the defendant and the defendant understands:

...

c. That for [. . .] most sex offenses, a mandatory period of conditional release will be imposed to follow any executed prison sentence, and violating the terms of that conditional release may increase the time the defendant serves in prison.

Minn. R. Crim. P. 15.01, subd. 1 (emphasis added). No Minnesota case law has addressed whether the court must include this particular topic in its questioning in every appropriate case, although some cases have held that lesser inquiries may be sufficient. *See, e.g., State v. Wiley*, 420 N.W.2d 234, 237 (Minn. App. 1988) (holding that a defendant’s guilty plea was valid, even though the district court failed to ask all rule 15 questions), *review denied* (Minn. Apr. 26, 1988); *State v. Doughman*, 340 N.W.2d 348, 351 (Minn. App. 1983) (stating court’s failure to interrogate defendant exactly as

required by rule 15 does not automatically invalidate the plea), *review denied* (Minn. Mar. 15, 1984).

Notably, this case does not involve plea negotiations. *See, e.g., James*, 699 N.W.2d at 730, *State v. Wukawitz*, 662 N.W.2d 517, 521-22 (Minn. 2003) (noting plea agreement did not include mandatory conditional release); *State v. Jumping Eagle*, 620 N.W.2d 42, 43-44 (Minn. 2000) (same). Because the holdings of this line of cases are premised on facts involving a defendant's failure to receive notice of a term of conditional release during *plea negotiations*, those cases are inapposite here. By entering a guilty plea to the charged offense, appellant did not condition his plea on any possible sentence that he would receive, nor was he induced to agree to the plea by a promise of a sentence that did not include a mandatory term of conditional release.

The plea petition signed by appellant, apparently a standard form, did not inform him that a term of conditional release would be imposed at sentencing. The record shows that appellant's presentence investigation report was not prepared until after the plea hearing, and it was signed five days before sentencing but provided to defense counsel only one day prior to the sentencing hearing. At sentencing, when appellant was informed of the mandatory term of conditional release, he stated: "Conditional release. Where does that come from? I don't understand" Later, he claimed: "I don't think conditional release is for this type of sentence as far as [a failure to register as a sex offender offense]." Thus, we conclude that this record, which includes absolutely no reference to the term of conditional release until after entry of appellant's plea, coupled with appellant's statements at the time of sentencing, establishes that appellant's plea was

not intelligently and voluntarily given and that withdrawal of his plea is necessary to correct a manifest injustice.

Because Minn. R. Crim. P. 15.01, subd. 1(10)(c), specifically requires that a defendant receive notice of a mandatory sentencing term of conditional release before entering a plea, and related case law supports this practice, we conclude that appellant must be allowed to withdraw his plea. Appellant has met his burden to show that he was not informed of the term of conditional release at the time he entered his plea.

Reversed.