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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0004**

Walter Vernell Guthrie Jr., petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 23, 2008
Affirmed
Johnson, Judge**

St. Louis County District Court
File No. 69DU-CR-06-2920

Lawrence Hammerling, Chief Appellate Public Defender, Ngoc Nguyen, Assistant 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

Melanie Ford, St. Louis County Attorney, Mark S. Rubin, Assistant County Attorney, 100 North Fifth Avenue West, #501, Duluth, MN 55802 (for respondent)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Walter Vernell Guthrie, Jr., pleaded guilty to a first-degree controlled substance crime after he was arrested for selling crack cocaine to a cooperating witness. He later

filed a petition for postconviction relief in which he sought to withdraw his guilty plea, but the district court denied the petition. We conclude that Guthrie's guilty plea was accurate, voluntary, and intelligent and, therefore, affirm.

FACTS

In May 2006, Guthrie was arrested after he participated in three arranged purchases of drugs. First, on May 4, 2006, officers of the Duluth Police Department recorded a telephone call between a cooperating witness and Guthrie in which Guthrie agreed to sell crack cocaine to the cooperating witness. Officers transported the cooperating witness to Guthrie's residence in Duluth and observed the cooperating witness enter and leave Guthrie's residence. The cooperating witness then turned over a package to the police that tested positive for cocaine. Second, on May 9, 2006, officers transported the cooperating witness to a local motel, where the cooperating witness contacted Guthrie, who again agreed to sell him crack cocaine. Conducting surveillance from a nearby motel room, officers observed Guthrie arrive and enter the cooperating witness's room and observed Guthrie give the cooperating witness a package that later tested positive for crack cocaine. Third, on May 10, 2006, the cooperating witness called Guthrie from the same motel room, and Guthrie came to the motel to meet him. Officers observed Guthrie enter the cooperating witness's room and remove a plastic bag from his mouth, which he gave to the cooperating witness. The contents of the bag later tested positive for crack cocaine. Immediately after Guthrie handed the bag to the cooperating witness, officers entered the room and arrested him.

The state charged Guthrie with one count of a first-degree controlled substance crime, in violation of Minn. Stat. § 152.021, subd. 1(1) (2004). Guthrie pleaded guilty pursuant to a plea agreement. In February 2007, the district court sentenced Guthrie to an executed 89-month sentence, which reflected a downward durational departure from the presumptive 134-month sentence. Guthrie did not pursue a direct appeal.

In October 2007, Guthrie filed a petition for postconviction relief in the district court. He argued that his plea was not voluntary and intelligent because he has a low I.Q. and other limitations, which caused him to be pressured into pleading guilty. The district court denied the petition without an evidentiary hearing. Guthrie appeals.

D E C I S I O N

Guthrie argues that the district court erred by denying his motion to withdraw his guilty plea. A defendant does not have an absolute right to withdraw a guilty plea. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007); *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). But rule 15.05 of the Minnesota Rules of Criminal Procedure provides for two situations in which a defendant may withdraw a guilty plea. First, a district court must permit a defendant to withdraw a guilty plea upon a showing that withdrawal is necessary to correct “manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Second, a district court may, in its discretion, permit a defendant to withdraw a guilty plea before sentence is imposed “if it is fair and just to do so.” *Id.*, subd. 2. A district court’s decision on a postconviction petition will not be disturbed absent an abuse of discretion. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). Likewise, a reviewing court will reverse the district court’s denial of a request to permit withdrawal of a guilty plea only if

the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

Because Guthrie did not seek to withdraw his guilty plea until after he was sentenced, only the manifest-injustice standard applies in this case. Manifest injustice exists if a defendant can show that a guilty plea is invalid. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). To be valid, a guilty plea “must be accurate, voluntary, and intelligent.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). If a guilty plea fails to meet any of the three requirements, it is invalid. *Id.* As the supreme court has explained,

The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial. The voluntariness requirement insures that the guilty plea is not in response to improper pressures or inducements; and the intelligent requirement insures that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty.

Alanis, 583 N.W.2d at 577. Thus, if a person’s guilty plea was not accurate, voluntary, or intelligent, a district court must permit the person to withdraw his plea. *Theis*, 742 N.W.2d at 650.

Guthrie’s primary argument is that his guilty plea was not voluntary or intelligent. He contends that he has a low I.Q. and is developmentally disabled, illiterate, and naïve. He also contends that, at the time of his guilty plea, he was afraid and unfamiliar with the legal system. He further contends that all of these factors caused him to be coerced into pleading guilty to charges that he did not understand. The district court rejected these

arguments, determining, based on the record made at the plea hearing, that Guthrie's plea was accurate, voluntary, and intelligent.

The record supports the district court's determination that Guthrie's guilty plea was both voluntary and intelligent. Guthrie's answers at the plea hearing establish that he understood the charges against him, understood the plea agreement, understood the proceedings, and wished to plead guilty. Guthrie stated that he and his attorney had reviewed the petition to plead guilty and that his attorney had answered all his questions. *See State v. Simon*, 339 N.W.2d 907, 907 (Minn. 1983) (stating that assistance of counsel at guilty plea "justifies the conclusion that counsel presumably advised defendant of his other rights"). The district court asked Guthrie whether he understood his attorney's explanation of the plea agreement and the plea hearing and whether he understood how much time he would spend in prison based on the agreed-upon sentence of 89 months. Guthrie responded by saying that he understood. Guthrie also stated that there were extenuating circumstances affecting his decision to plead guilty and that he wanted to move forward with the guilty plea. In addition, the record reflects that Guthrie has had multiple encounters with the legal system over the past 20 years. *See State v. Camacho*, 561 N.W.2d 160, 168 (Minn. 1997) (reasoning that experience with legal system is factor to consider in determining whether waiver of *Miranda* rights is knowing, voluntary, and intelligent). Thus, the district court record supports the determination that Guthrie's guilty plea was voluntary and intelligent.

In his pro se supplemental brief, Guthrie appears to argue that his guilty plea was not accurate. He contends that he did not commit the crime to which he pleaded guilty.

“A proper factual basis must be established for a guilty plea to be accurate.” *Ecker*, 324 N.W.2d at 716. In this case, both the prosecutor and defense counsel questioned Guthrie regarding the factual basis for the plea. Guthrie provided affirmative answers to the questions posed to him. He also supplied additional information regarding the events that led to the charge. The district court “need not interrogate the defendant to establish the factual basis ‘if defense counsel and the prosecutor have established an adequate factual basis.’” *Theis*, 742 N.W.2d at 648 (quoting *Ecker*, 524 N.W.2d at 716). In addition, Guthrie’s pro se supplemental brief essentially admits that he provided crack cocaine to the cooperating witness, which practically compels a conclusion that he committed the crime to which he pleaded guilty. Thus, Guthrie’s guilty plea was accurate.

In determining whether a guilty plea was accurate, voluntary, and intelligent, “a reviewing court will give deference to the primary observations and trustworthiness assessments made by the district court.” *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997). Here, the district court judge who accepted the guilty plea made an express determination that Guthrie’s plea was accurate, voluntary, and intelligent. We conclude that the district court did not abuse its discretion by denying Guthrie’s petition.

Affirmed.