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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0015**

Harvey M. Henry, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 29, 2009
Affirmed
Peterson, Judge**

Dakota County District Court
File No. 19-K1-07-000478

Marie L. Wolf, Interim Chief Appellate Public Defender, Andrea G. Barts, 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

James Backstrom, Dakota County Attorney, Amy A. Schaffer, Assistant County Attorney, 1560 Highway 55, Hastings, MN 55033 (for respondent)

Considered and decided by Lansing, Presiding Judge; Peterson, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from the denial of his petition for postconviction relief, appellant argues that because his guilty plea was not intelligent and voluntary, the district court erred in denying his motion to vacate the plea. We affirm.

FACTS

The police stopped appellant Harvey Henry for speeding. During the stop, appellant put his vehicle in gear and sped away. A high-speed chase ended when appellant lost control of his vehicle and spun into a ditch. One of appellant's passengers was thrown from the vehicle and killed, and another passenger was injured.

Appellant was charged with two counts of fleeing a police officer in a motor vehicle in violation of Minn. Stat. § 609.487, subd. 4(a) (flight resulting in death), 4(c) (flight resulting in substantial bodily harm) (2006). The state notified appellant that it intended to seek an aggravated sentence under Minn. Stat. § 609.1095 (2006). Pursuant to a plea agreement, appellant pleaded guilty to the fleeing count involving death and received a 288-month sentence, and the remaining count was dismissed.

About a year after pleading guilty,¹ appellant brought a postconviction petition seeking to have his guilty plea vacated. The petition alleged that the plea (1) was not intelligent because appellant was mentally ill and taking psychotropic medication that caused him to be confused when he pleaded guilty, and (2) was not voluntary because appellant was pressured into pleading guilty by the threat of being sentenced as a career

¹ Appellant initially filed a direct appeal, but he voluntarily dismissed it.

offender without fully understanding the relevant statute. The district court denied appellant's petition, and this appeal followed.

D E C I S I O N

There is no absolute right to withdraw a guilty plea after it is entered. *Shorter v. State*, 511 N.W.2d 743, 746 (Minn. 1994). Whether to permit withdrawal of a guilty plea is committed to the district court's discretion, and the district court's decision will not be reversed absent an abuse of discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). The district court may allow a defendant to withdraw a guilty plea on "proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1; *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

A manifest injustice occurs when a guilty plea is not accurate, voluntary, and intelligent. 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 (footnotes omitted).

Shortly after appellant was charged, the district court ordered him to undergo a psychiatric evaluation under Minn. R. Crim. P. 20.01 and 20.02. Appellant was receiving psychotropic medications and complained that he was hearing voices, but the evaluating psychiatrist concluded that appellant did not suffer from a significant mental illness and was feigning psychotic symptoms "to avoid criminal prosecution and

responsibility for his behavior.” The plea-hearing transcript demonstrates that appellant was questioned about his mental health and medication use.

PROSECUTOR: Have you ever been treated for a mental illness?

APPELLANT: Yes, I have.

PROSECUTOR: When was that?

APPELLANT: Recently, a year ago.

PROSECUTOR: When you say *recently*, do you mean while you have been in custody . . . ?

APPELLANT: Yes.

PROSECUTOR: What are you being treated for?

APPELLANT: Treated for schizophrenic paranoia.

PROSECUTOR: Are you prescribed any medications for that?

APPELLANT: Yes, I am.

PROSECUTOR: Are you currently taking those medications?

APPELLANT: Yes.

PROSECUTOR: Are you taking them as they have been prescribed to you by your doctor?

APPELLANT: Yes, I am.

PROSECUTOR: Do you feel that they are at all affecting your ability to understand what’s going on here today?

APPELLANT: I don’t know what’s going on.

PROSECUTOR: You don’t know what’s going on, Mr. Henry?

APPELLANT: [no response]

PROSECUTOR: Do you understand what’s going on today, Mr. Henry?

APPELLANT: Yes, I do.

PROSECUTOR: Now, I just asked you if that medication was helping you understand what’s going on here today. Do you believe that it’s helping or hindering you from understanding what’s going on?

APPELLANT: I don’t know.

PROSECUTOR: Do you understand that you are in front of Judge Lynch here pleading guilty to a serious felony offense?

APPELLANT: Yes, I do.

PROSECUTOR: Do you understand that the agreement calls for you to go to prison for 288 months?

APPELLANT: Yes.

PROSECUTOR: Do you understand that?
APPELLANT: [nodding]
PROSECUTOR: Yes?
APPELLANT: Yes.
PROSECUTOR: That's what you want to do here today?
APPELLANT: No, that ain't what I want to do. No.
PROSECUTOR: Do you understand that I—
APPELLANT: I have no choice but to do it.
PROSECUTOR: When you say you *have no choice*, could you explain that, please?
APPELLANT: Either I do it, or else you all going to try to give me more time.
PROSECUTOR: Perhaps I can ask a follow-up question, Mr. Henry. Have you and your attorney discussed—
APPELLANT: Yes, we have.
PROSECUTOR: —of career offender in this case?
APPELLANT: Yes.
PROSECUTOR: You understand after that trial, a jury would look at your criminal history and make a determination of whether or not you are a career offender?
APPELLANT: I am damned anyway. Let's get this over with.
PROSECUTOR: Do you want to proceed today, Mr. Henry?
APPELLANT: Yes.
PROSECUTOR: It's your own voluntary decision?
APPELLANT: Yes.

The transcript shows that appellant was taking prescribed medication when he pleaded guilty, but it also demonstrates that the medication did not prevent appellant from understanding the charges against him, his rights under the law, and the consequences of pleading guilty. Also, the record supports the postconviction court's finding that appellant did not present any evidence that shows that his judgment was impaired by the use of prescription medications at the time of the plea.

Appellant asserts that the pressure he felt due to the possibility that he could receive a longer sentence under the career-offender statute rendered his plea involuntary.

But “[w]hile confronting a defendant with the risk of more severe punishment clearly may have a discouraging effect on the defendant’s assertion of his trial rights, the imposition of these difficult choices [is] an inevitable—and permissible—attribute of any legitimate system which tolerates and encourages the negotiation of pleas.” *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 98 S. Ct. 663, 668 (1978) (alteration in original) (quotation omitted). The requirement that a guilty plea must be voluntary is to insure that a plea is “not in response to *improper* pressures or inducements.” *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000) (emphasis added) (quotation omitted). Whatever pressure appellant might have felt because his criminal history provided a basis for imposing a harsher sentence was not improper pressure; it was simply the pressure created by Minn. Stat. § 609.1095, which permits increased sentences for certain repeat felony offenders.

Appellant has not shown that the district court abused its discretion when it concluded that his plea was intelligent and voluntary and, therefore, denied his motion to vacate his guilty plea.

Affirmed.