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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-1474**

Kaye Marie Hanks, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 17, 2015
Affirmed
Kirk, Judge**

Becker County District Court
File No. 03-CR-08-418

Cathryn Middlebrook, Chief Appellate Public Defender, F. Richard Gallo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Gretchen D. Thilmony, Becker County Attorney, Brian W. McDonald, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Kirk, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant Kaye Marie Hanks challenges the district court's denial of her petition for postconviction relief claiming that her guilty plea more than three years earlier was

not intelligent because she believed that the maximum penalty for a very serious felony offense was 30 days in custody. We affirm.

DECISION

“When reviewing a postconviction court’s decision, we examine only whether the postconviction court’s findings are supported by sufficient evidence. We will reverse a decision of the postconviction court only if that court abused its discretion.” *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012) (quotations omitted). In reviewing a postconviction court’s decision to grant or deny relief, issues of law are reviewed de novo and issues of fact are reviewed for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

The validity of a guilty plea is a question of law, which this court reviews de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). Minn. R. Crim. P. 15.05, subd. 1, states in relevant part that “the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice.” “To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Raleigh*, 778 N.W.2d at 94. A defendant does not have an absolute right to withdraw a guilty plea. *Id.* at 93. A defendant bears the burden of advancing reasons to support withdrawal. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

In July 2008, appellant pleaded guilty to a felony charge of first-degree possession of a controlled substance in violation of Minn. Stat. § 152.021, subd. 2(1) (2006). The sentencing guidelines called for a presumptive executed sentence of 86 months in prison.

See Minn. Sent. Guidelines IV (2006). Appellant was represented by a seasoned and able attorney, and she was already participating in the Becker County Drug Court. As part of a very generous plea agreement, the state agreed to a dispositional departure from the guidelines, a stay of adjudication, and 30 years of supervised probation conditioned on appellant's successful completion of drug court. Over two years later, the district court found that appellant violated the terms of her probation after she failed to complete drug court, but allowed her to remain on supervised probation with modified conditions. After appellant again violated probation, the district court revoked her probation and sentenced her to 86 months in prison.

More than five years after entering her guilty plea in 2008, and almost two years after she was sentenced to prison, appellant filed a petition for postconviction relief claiming for the first time that a typographical error in the plea petition that she had signed caused her to believe that the maximum penalty that she could receive for this very serious felony offense was 30 days in jail.¹ The district court denied appellant's postconviction petition, rejecting her argument that the error in the plea petition undermined the reliability of her plea. The district court found that appellant had been repeatedly informed of the maximum sentence of the offense, and the court could assume that appellant's counsel had informed her that the maximum penalty was 30 years in custody. *State v. Russell*, 236 N.W.2d 612, 613 (Minn. 1975).

A review of the plea hearing transcript reflects that the district court judge first asked the attorneys to recite the plea agreement on the record. She then arraigned

¹ This document is part of the court file and appears to be signed by appellant.

appellant on an amended complaint charging her with controlled substance crime in the first degree and informed appellant in very clear language that the maximum penalty for the offense was 30 years in prison. Immediately after hearing the maximum penalty, appellant pleaded guilty. Appellant was then placed under oath and the judge thoroughly questioned her about her understanding of her constitutional rights as required by Minn. R. Crim. P. 15.01, subd. 1.

The record demonstrates that a factual basis for the plea was developed, that the district court found that appellant's plea was properly entered, and that final acceptance of the plea was deferred pending a presentence investigation. Nowhere in the record of the plea hearing was a plea petition identified, authenticated, or even referenced.² While Minn. R. Crim. P. 15 cmt. states that it is desirable that a plea petition be authenticated by the defendant at the time of the plea hearing, it is not required so long as the defendant is sworn and questioned in the manner that occurred in this case. *See* Minn. R. Crim. P. 15.01, subd. 1. The record of the plea hearing establishes that appellant knew the maximum sentence that she could receive for controlled substance crime in the first degree, and, therefore, her plea was intelligent.

Affirmed.

² Appellant argues in her brief that she did not understand the consequences of pleading guilty to an offense carrying a 30-year penalty and claims that “[t]he *only* acknowledgment in the record is appellant’s signature on the [p]lea [p]etition, acknowledging the penalty to be limited to 30 days.” (Emphasis added.) This is a misstatement of the record of the plea hearing as discussed in this opinion as well as the plea petition itself. While early in the plea petition where the offense is first described the maximum penalty is listed as “30 days,” paragraph 20(b) of the plea petition states that appellant “[has] been told by my attorney and I understand [t]hat the maximum penalty that the [c]ourt could impose for this crime . . . is imprisonment for 30 years.”