STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0966

State of Minnesota,
Respondent,

vs.

Aaron Gary Broehl,
Appellant.

Filed June 12, 2017
Reversed and remanded
Reyes, Judge

St. Louis County District Court
File Nos. 69HI-CR-14-799; 69HI-CR-14-803;
69HI-CR-14-845; 69HI-CR-15-928

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

Mark S. Rubin, St. Louis County Attorney, Jeffrey M. Vlatkovich, Assistant County Attorney, Hibbing, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

REYES, Judge

Appellant argues that (1) he should be allowed to withdraw his guilty plea because two of the four sentences imposed by the district court violated the parties' plea

agreement and (2) the district court erred in imposing lifetime conditional-release terms because, at the time those terms were imposed, appellant did not have a "prior sex offense conviction" as defined under Minn. Stat. § 609.3455, subd. 1(a)(g) (2014). We reverse and remand.

FACTS

Respondent State of Minnesota charged appellant Aaron Gary Broehl with several counts of unlawful sexual contact with minors and possession of child pornography. Specifically, appellant was charged with two counts of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subds. 1(a), 1(h)(i) (2014) (case one). The previous month, the state charged appellant in two separate complaints, involving two separate victims, each with one count of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(a) (case two and case three, respectively). A year after the initial charges, and after an investigation into appellant's computer server and other electronic items, appellant was charged with ten counts of possessing child pornography in violation of Minn. Stat. § 617.247, subd. 4(a) (2014) (case four).

Pursuant to a written plea agreement, appellant pleaded guilty to one count of second-degree criminal sexual conduct in case one, case two, and case three, respectively, and five counts of possessing child pornography in case four. In return, the state dismissed all remaining charges, did not file additional charges of child pornography possession, and recommended sentencing pursuant to the sentencing guidelines. The sentencing guidelines called for a presumptive stayed sentence for case one and case two. Minn. Sent. Guidelines 4.B (2014). In addition, the parties agreed that all the sentences

were to run concurrently, and that lifetime conditional release applied with respect to case two and case three based on appellant having a prior conviction from case one.

At the plea hearing, the state noted that the plea agreement calls for appellant to be sentenced first on case one, then on case two, case three, and case four, respectively, and that his guilty pleas should be entered in the same order. Appellant pleaded guilty for each case in the order listed above, directly followed by a factual basis for that plea. However, after each plea was entered, the district court did not indicate that it accepted appellant's plea. Appellant's attorney went over the plea agreement on the record with appellant, filed it with the district court, and the matters were adjourned for sentencing.

At the sentencing hearing, the state reviewed the plea agreement on the record. The state reiterated to the district court that appellant should be sentenced in case one first. With respect to the plea agreement, the district court stated, "I am going to . . . adopt the recommendations here." The district court then proceeded to sentence appellant on case one to 36 months in prison and a ten-year conditional-release term; on case two to 48 months in prison and a lifetime conditional-release term; on case three to 70 months in prison and a lifetime conditional-release term; and on case four to 39 months on count one, 51 months on count three, 60 months on count five, 60 months on count seven, and 60 months on count nine, with each of these prison sentences having a five-year conditional-release term. Lastly, the district court noted that all the sentences were to run concurrently as indicated in the plea agreement. This appeal follows.

D E C I S I O N

I. The district court erred because it did not sentence appellant in accordance with the plea agreement.

Appellant argues that he should be allowed to withdraw his plea because the district court did not follow the plea agreement. Specifically, appellant argues that he was induced to plead guilty in part by an unfulfilled promise that he would be sentenced according to the sentencing guidelines, which the district court failed to do by executing, instead of staying, the sentences on case one and case two. We agree.

A defendant is entitled to plea withdrawal if he proves that his plea is invalid, making "withdrawal . . . necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1; *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Nelson v. State*, 880 N.W.2d 852, 858 (Minn. 2016) (quotation omitted).

"A guilty plea is involuntary when it rests in any significant degree on an unfulfilled or unfulfillable promise." *Uselman v. State*, 831 N.W.2d 690, 693 (Minn. App. 2013) (quotation omitted); *see also Kochevar v. State*, 281 N.W.2d 680, 687 (Minn. 1979) ("[A]n unqualified promise which is part of a plea arrangement must be honored or else the guilty plea may be withdrawn."). Because the validity of a guilty plea is a question of law, we apply de novo review. *Raleigh*, 778 N.W.2d at 94. An involuntary guilty plea may be remedied by the district court by altering the sentence, requiring specific performance of the agreement, or allowing the plea to be withdrawn. *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000); *State v. Brown*, 606 N.W.2d 670, 674

(Minn. 2000). "Whether a plea is voluntary is determined by considering all relevant circumstances." *Raleigh*, 778 N.W.2d at 96. Determining the terms of a plea agreement is a factual inquiry, "but interpretation and enforcement of agreements involving issues of law are reviewed de novo." *State v. Miller*, 754 N.W.2d 686, 707 (Minn. 2008).

Here, the record demonstrates that the parties agreed that appellant "would be sentenced pursuant to the Minnesota Sentencing Guidelines" as noted by the state at the plea hearing. At the sentencing hearing, the district court indicated its acceptance of the plea agreement when the district court judge stated, "I am going to . . . adopt the recommendations here."

Under the sentencing guidelines, the presumptive sentences for appellant's convictions in case one and case two are stayed sentences of 36 months and 48 months, respectively. Minn. Sent. Guidelines 4.B. However, the district court executed those sentences. While there is nothing in the record to suggest that the district court intended to reject the parties' plea agreement, the district court sentenced appellant in violation of the parties' agreement. Indeed, the state all but concedes this point.

Furthermore, by executing the sentences in case one and case two, the district court dispositionally departed from the presumptive sentences. An upward dispositional departure must be supported by "substantial and compelling circumstances" that warrant a departure. *See State v. Weaver*, 796 N.W.2d 561, 568 (Minn. App. 2011) ("Unless there are substantial and compelling circumstances to warrant an upward departure, the district court must order the presumptive sentence provided by the guidelines." (quotation omitted), *review denied* (Minn. Jul. 19, 2011). A district court's decision to depart must

also be supported by the record. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). And, here, there is insufficient evidence in the record to justify an upward departure.

Appellant's sentences are not in accordance with the plea agreement because he was not sentenced pursuant to the sentencing guidelines with respect to case one and case two. As a result, appellant received an unfulfilled promise, which creates a manifest injustice whereupon appellant may be entitled to withdraw his guilty plea. Accordingly, we reverse and remand for either plea withdrawal or sentencing in accordance with the plea agreement. *Jumping Eagle*, 620 N.W.2d at 45 (upon violation of plea agreement, appellate court can either require specific performance of agreement or plea withdrawal).

II. The district court erred in imposing a lifetime conditional-release term on appellant's sentences in case two and case three.

Appellant next argues that the district court erred by imposing lifetime conditional-release terms because he "was simultaneously adjudicated guilty of multiple sex offenses during his sentencing hearing, and thus . . . , did not have a 'prior or previous sex offense conviction'" under Minn. Stat. § 609.3455.[1] We agree.

Statutory interpretation involves a question of law subject to de novo review. *State v. Nodes*, 863 N.W.2d 77, 80 (Minn. 2015). Minnesota Statutes § 609.3455, subdivision 7(b) (2014), states:

> [W]hen the court commits an offender to the custody of the commissioner of corrections for a violation of [second-degree sexual conduct] . . . , *and the offender has a previous or prior sex offense conviction*, the court shall provide that, after the offender has been released from prison, the commissioner shall

[1] Appellant does not contest that each conviction was a separate behavioral incident.

> place the offender on conditional release for the remainder of the offender's life.

(Emphasis added.) Additionally, pursuant to section 609.3455, subdivision 1(g) (2014):

> A conviction is considered a "prior sex offense conviction" if the offender was convicted of committing a sex offense before the offender has been convicted of the present offense, regardless of whether the offender was convicted for the first offense before the commission of the present offense, and the convictions involved separate behavioral incidents.

The supreme court has defined a "prior sex offense conviction" to include "a conviction for a separate behavioral incident entered before a second conviction, whether at different hearings *or during the same hearing*." *Nodes*, 863 N.W.2d at (Minn. 2015) (emphasis added). In *Nodes*, the supreme court addressed the dispositive issue of when Nodes's guilty pleas "were officially accepted and recorded by the court." *Id*. at 80. The supreme court held that a conviction occurs when the district court accepts a guilty plea and adjudicates the defendant guilty on the record. *Id.* at 81.

Like appellant, Nodes had never before been sentenced for a sex offense and pleaded guilty to multiple sex offenses at the same hearing. *Id.* at 78-79. The supreme court concluded that, "[a] defendant who, in a single hearing, is convicted of two sex offenses, *one immediately after the other*, each arising out of separate behavioral incidents, has a 'prior sex offense conviction' under Minn. Stat. § 609.3455." *Id.* at 77 (emphasis added). In so concluding, the supreme court emphasized that "[a]s long as one conviction is entered before the second, it is a 'prior conviction' under the plain language of [Minn. Stat. § 609.3455]." *Id.* at 82.

Here, the record reflects that the district court did not accept appellant's guilty pleas at the plea hearing and was free to reserve acceptance of appellant's plea until the sentencing hearing. *See e.g.*, *State v. Thompson*, 754 N.W.2d 352, 356 (Minn. 2008) (concluding that district court reserved acceptance of plea deal until completion of PSI report). At the sentencing hearing, the district court indicated its acceptance of all the pleas in total when the district court judge stated, "I am going to . . . adopt the recommendations here." Unlike in *Nodes*, here, the district court accepted the guilty pleas simultaneously, and appellant was not convicted of any sex-offense count before he was convicted of another. 863 N.W.2d at 82. Furthermore, it is inconsequential that appellant was sentenced sequentially. The focus is on when the convictions were accepted and entered and whether appellant had a prior conviction at the time the second conviction was entered. *See id.* As a result, the district court erred by imposing lifetime conditional releases on case two and case three because appellant did not have a prior sex-offense conviction at the time these convictions were entered. *See id*. While appellant seeks imposition of 10-year conditional releases on case two and case three, we decline to remand with such instructions because it would violate the terms of the parties' agreement.[2]

We reverse and remand for enforcement of the plea agreement according to its terms or for plea withdrawal by either party. *See State v. Montermini*, 819 N.W.2d 447, 456 (Minn. App. 2012) (quoting *State v. Lewis*, 656 N.W.2d 535, 539 (Minn. 2003))

[2] The record demonstrates that the parties contemplated and agreed that appellant would receive lifetime conditional releases on case two and case three.

(quotation marks omitted) (noting that district court is "free to consider the effect that changes in the sentence have on the entire plea agreement and could entertain motions [by the state] to vacate the conviction[s] and the plea agreement."); *see also State v. Misquadace*, 629 N.W.2d 487, 491 (Minn. App. 2001) (noting that state is allowed to withdraw from plea when sentences at issue are part of a package deal and modification by this court would allow defendant to retain all benefits of plea agreement but escape the consequences of agreement to which he agreed), *aff'd on other grounds*, 644 N.W.2d 65 (Minn. 2002).

Reversed and remanded.