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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1394**

State of Minnesota,
Respondent,

vs.

Ricardo Lavell Finn,
Appellant.

**Filed October 23, 2017
Reversed and remanded
Bratvold, Judge**

Hennepin County District Court
File No. 27-CR-15-15364

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Michael J. McLaughlin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Bjorkman, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant argues that his guilty plea was involuntary because the district court did not impose the sentence provided in his plea agreement. He also argues that his conviction

must be reduced to a lesser degree under the 2016 Drug Sentencing Reform Act. Because the record reflects that the parties reached a sentencing agreement, and the district court found the agreement was voluntary and accurate, we conclude that the district court erred in sentencing outside the agreed-upon range. Therefore, we reverse and remand on the first issue and do not decide the second issue.

FACTS

On June 5, 2015, law enforcement officers responded to a complaint about a man with a gun selling drugs out of a car. The officers located the car, asked appellant Ricardo Lavell Finn to get out, and then searched the interior with the assistance of a narcotics dog. The officers located 8.5 grams of cocaine and arrested Finn; he was later charged with one count of second-degree possession of controlled substance.

After an adverse ruling on his suppression motion, Finn agreed to enter a plea to the charged offense in February 2016. The plea was described at the hearing, as follows:

DEFENSE: [Y]our Honor, at this time Mr. Finn is prepared to enter a straight plea to Your Honor. In some discussions at the bench it had been agreed that we would argue the sentence at a sentencing date. Mr. Finn is prepared to enter his plea in today.

COURT: Okay is that your understanding, [counsel for the state]?

STATE: Your Honor, it was my understanding yes, it was a straight plea with arguing for sentencing for range of 51, 60 months. Obviously, since it's a straight plea, it's up to the Court.

COURT: Okay because that's different than a straight plea because if it's a straight plea I could do 98, or I could go above so.

DEFENSE: We agreed upon a range of 51 to 60 months, Your Honor, sorry.

COURT: Okay, so that means the State is agreeing to a downward durational departure but not to the amount that the Defense is requesting of 51 months, correct?

STATE: Well Your Honor, I would note that I had offered a 60 month commit and I was not willing to go down to 51 even in terms of putting in a range, so this is a true straight plea. I will be asking for 60 months at sentencing.

COURT: Okay, thank you. Okay Mr. Finn, is that your understanding?

FINN: My understanding was I was pleading between 51 and 60 months.

COURT: Okay I think that's what [the state] just put on the record [Defense counsel] agreed.

The signed petition describes the plea as a “straight plea, range of 51-60 months.” No conditions were stated during the hearing or in the written plea petition. During the plea hearing, Finn acknowledged that on June 5, 2015, he knew he was in possession of at least six grams of cocaine. The district court accepted the plea as voluntary and accurate, but deferred sentencing.

Between the plea and sentencing, Finn, who was in custody, made a request for a medical furlough. The district court granted Finn's request, ordered him to appear at sentencing on May 19, 2016, and told him that if he failed to appear at sentencing, the court “would impose the maximum sentence allowed,” a top-of-the box sentence of 117 months.¹

¹ Finn has five criminal history points, which leads to a presumptive sentencing range of 84-117 months, with 98 months as the middle of the presumptive range. Minn. Sent. Guidelines 4.A (2014).

Finn failed to appear for sentencing and a warrant was issued. After Finn was arrested during a traffic stop, he was brought before the court for sentencing on May 31, 2016. Defense counsel, noting Finn's failure to appear at sentencing, requested that the court allow Finn to serve a sentence of 60 months. The state, characterizing the plea as "a straight plea to the Court," requested a sentence of no less than 60 months, but stated it had "no problem" with sentencing at the presumptive 98 months. The district court, after reminding Finn he had entered a "straight plea," sentenced him to 108 months.² Finn appeals.

DECISION

Finn argues that the district court imposed an unlawful sentence when it sentenced him outside the 51- to 60-month sentencing range contemplated by the plea agreement without giving him an opportunity to withdraw his guilty plea. The state argues that the 108-month sentence was within the district court's sentencing discretion because Finn submitted a straight plea.

A district court must either "reject or accept the plea of guilty on the terms of the plea agreement." Minn. R. Crim. P. 15.04, subd. 3(1). If the district court rejects the plea agreement reached by the parties, it must afford the defendant an opportunity to withdraw his plea. *Id.* If a district court accepts a plea agreement that includes "an unqualified promise . . . on the sentence to be imposed," it must either sentence according to the

² Apparently due to a clerical error, Finn's warrant of commitment initially described his sentence as 180 months. It was later amended to 108 months at Finn's request.

agreement or allow the defendant to withdraw his guilty plea. *State v. Kunshier*, 410 N.W.2d 377, 379 (Minn. App. 1987), *review denied* (Minn. Oct. 21, 1987).

Violation of a plea agreement renders the plea involuntary. *State v. Wukawitz*, 662 N.W.2d 517, 521 (Minn. 2003) (concluding defendant's plea was invalid where parties agreed that he would receive a 140-month sentence but he was sentenced to an additional five-year conditional release term); *Kunshier*, 410 N.W.2d at 379-80 (concluding a district court erred in denying a plea-withdrawal request where defendant was sentenced to serve consecutive sentences totaling 78 months rather than the agreed-upon concurrent sentence of 54 months). A court must allow a defendant to withdraw an involuntary plea because withdrawal is "necessary to correct a manifest injustice." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010) (quoting Minn. R. Crim. P. 15.01, subd. 1). A defendant who fails to move to withdraw his plea in district court may nonetheless challenge his guilty plea on direct appeal. *State v. Anyanwu*, 681 N.W.2d 411, 413 (Minn. App. 2004). "A defendant bears the burden of showing his plea was invalid," and we assess the validity of a plea de novo. *Raleigh*, 778 N.W.2d at 94. "Issues involving the interpretation and enforcement of plea agreements" are also reviewed de novo. *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000).

We first examine "what the parties to the plea bargain reasonably understood to be the terms of the agreement" to determine whether the agreement was violated. *Wukawitz*, 662 N.W.2d at 527. Based on a thorough review of the record, we conclude that the parties reached a sentencing agreement and reject the state's position that Finn entered a straight plea. The plea transcript and the signed plea petition establish that Finn agreed to plead

guilty to the charged offense in exchange for a sentence of between 51 and 60 months. Finn's understanding of the plea agreement was not an "optimistic estimate," but was based on statements made by the state and the district court. *See id.* The parties submitted a plea petition describing a "range of 51-60 months," and the state and defense counsel each represented to the district court that the parties agreed upon a sentencing range of 51 to 60 months. After the prosecutor remarked that her offer did not "go down to 51 even in terms of putting in a range," the district court asked Finn to describe the agreement. Finn responded that he was pleading "between 51 and 60 months." The district court stated that Finn's understanding of the plea comported with what the prosecutor had said.

The fact that the parties' agreement contemplated a range and not a specific sentence does not affect our determination that they entered into a sentencing agreement. Plea agreements often reference a sentencing range. *See, e.g., State v. Tyska*, 448 N.W.2d 546, 549 (Minn. App. 1989) (noting an agreement to not depart from the guidelines is a plea agreement as to sentence).

In contrast, a "straight plea," consists of a plea of guilty to the charged offense without "any agreement regarding sentencing." *See State v. Sanchez-Sanchez*, 879 N.W.2d 324, 327 (Minn. 2016). It is true that the plea transcript contains many references to Finn's plea as "a straight plea." But when read in context, the agreement also makes reference to a specific 51- to 60-month sentencing range. Although the district court, defense counsel, and the prosecutor at various times characterized Finn's plea as a "straight plea," this record "leaves no doubt that a sentencing agreement was reached," and the parties' understanding

of the plea, rather than the label they used to describe it, is determinative. *Kunshier*, 410 N.W.2d at 379.

We are unpersuaded by the state’s argument that the parties agreed only to which sentencing recommendations they would advocate. *Tyska*, 448 N.W.2d at 549 (“[I]f the trial court rejects a recommendation made pursuant to an agreement, the defendant is not automatically entitled to withdraw the plea.”). “[I]t is the responsibility of the trial court to sufficiently clarify the terms and conditions of a plea agreement,” such that all parties understand the substance of the agreement and the rights of the criminal defendant. *Id.* at 550. Here, the district court clarified the terms of the agreement at the plea colloquy. Finn stated that he was pleading guilty in exchange for a range of 51 to 60 months. When the district court stated that Finn’s description of the agreement comported with previous descriptions by both the state and defense counsel, the state did not object.³

We therefore conclude that the parties agreed to a sentencing range of 51 to 60 months. We also conclude that the district court implicitly rejected Finn’s plea agreement when it sentenced him outside of the range contemplated by the plea agreement and, therefore, erred when it failed to allow Finn to withdraw his plea.⁴ Finn is entitled to either

³ We note that the state does not contend that Finn violated the plea agreement by failing to make his May 19 court appearance. This is probably because appearance at sentencing was not a condition of his plea, and as a result, Finn’s failure to appear does not affect our analysis. *See Kunshier*, 410 N.W.2d at 380 (reversing denial of plea-withdrawal request where defendant committed additional offenses between plea and sentencing and was given a longer sentence than that contemplated by his plea, even though having no new offenses was not a plea condition).

⁴ Because we conclude that the district court implicitly rejected the plea, we do not address whether the state violated the agreement by stating a preference for a 98-month sentence.

have the benefit of his plea or be allowed to withdraw it. *Tyska*, 448 N.W.2d at 548-49. If, on remand, the district court does not sentence within the range set out in the plea agreement, it must allow Finn an opportunity to withdraw his plea. *Kunshier*, 410 N.W.2d at 380.

Because we reverse the sentence and remand to the district court to either sentence Finn within the agreed-upon range or allow him to withdraw his plea, we do not reach Finn's argument that he is entitled to resentencing under the Drug Sentencing Reform Act.

Reversed and remanded.