This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).

STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1493

State of Minnesota,
Respondent,

vs.

Virgil Ernest Beaulieu,
Appellant.

Filed June 12, 2017
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CR-16-8832

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth R. Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Kalitowski, Judge.[*]

---

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

SCHELLHAS, Judge

Appellant argues that he is entitled to withdraw his guilty plea to third-degree assault because the district court violated his due-process rights by "rejecting the plea agreement" when it imposed a harsher intermediate sanction than that to which he agreed without first conducting an evidentiary hearing to determine whether he violated the terms of the agreement. We affirm.

FACTS

Respondent State of Minnesota charged appellant Virgil Beaulieu with third-degree assault based on evidence that he punched his girlfriend in the eye, causing her to need medical care, including stitches. Beaulieu pleaded guilty to the charge under a plea agreement negotiated with the state.[1] Under the plea agreement, the parties agreed that Beaulieu would be released from jail pending sentencing so that he could participate in and complete chemical-dependency treatment before sentencing. At the plea hearing, the state summarized the terms of the agreement as follows:

> The defendant will plead guilty to Count 1 for a stay of execution of 18 months for three years and 150 days in jail. Other terms and conditions will be dictated by a PSI, which he will complete out of custody, as we are agreeing to release him to [chemical-dependency] treatment before sentencing.
>
> Your Honor, we discussed this in chambers and I wanted to make a clear record that should the defendant violate the terms of this conditional release such as absconding from treatment or not complying with any plans put in place by

[1] The district court deferred acceptance of Beaulieu's guilty plea until the time of sentencing.

> treatment that the State will ask for more time at sentencing, and the defendant will not be able to withdraw his plea.

Beaulieu's counsel "agree[d] with everything the State said" regarding the plea agreement, and Beaulieu informed the district court that he understood the agreement and did not have any questions.

But, at the plea hearing after entering his plea of guilty, Beaulieu expressed concern about the requirement that he attend chemical-dependency treatment, stating, "It feels like I'm going into this under duress into treatment. I haven't been to a treatment." The district court then explained the release conditions to him:

> Well, and here's the bottom line. If you go to treatment and cooperate with treatment and you do well—the conditions are you remain law abiding and you show up for court, and you cooperate with treatment. If you do all of that, then we're going to go ahead with the deal the way that it is.
>
> If you aren't—if you don't remain law abiding or you don't show up for court and you don't have a good reason for not showing up for court, or if you get kicked out of treatment, then you're looking at some different deal, more time.

In answering Beaulieu's follow-up questions about treatment, the court told him, "[Y]ou have to do what they tell you to do." When Beaulieu asked the court whether he could go to "a Native-American treatment," defense counsel volunteered to look into whether a culturally specific treatment program might be available. But defense counsel also suggested that it would be best if Beaulieu started treatment at a non-culturally specific program and that Beaulieu should request a change if he had any issues. The district court agreed and told Beaulieu:

> So, why don't we do that. Get you into [Restoration Counseling & Community Services] and if you find that's not

> working, don't leave, but call [your attorney]. Call probation and call [your attorney]. If you find that it's not working for you, don't leave the program cause then you're going to be in violation of my order. So, the worst thing you can do is leave. Call [your attorney]. Call your probation officer, and they'll work at getting you into a culturally specific program.

Beaulieu entered chemical-dependency treatment but was discharged within about eight days for refusing to undergo a recommended mental-health evaluation.

On May 26, 2016, at a hearing before a different judge than the one who heard Beaulieu's guilty plea, the state informed the district court that, "Allegations of the conditional release violation are that he washed out of [Restoration Counseling & Community Services] treatment after being in it for about eight days and then he refused a mental health evaluation." Appearing with a substitute attorney, Beaulieu informed the district court that he wanted to withdraw his guilty plea. The district court informed Beaulieu that he could raise the matter at his scheduled sentencing on June 22 or earlier if counsel obtained an earlier date from the sentencing judge, and ordered Beaulieu's continued custody without bail pending sentencing.

At his sentencing hearing, Beaulieu moved the district court to withdraw his plea, stating that he "felt like [he] was coerced and stuff into pleading guilty." He admitted that he refused to undergo the mental-health evaluation at the chemical-dependency treatment center but argued that his refusal did not violate his release terms, explaining: "I need alcohol treatment, not an addict treatment. I need abstinence from alcohol. I don't need mental health treatment. . . . And, therefore, there was no violation." The district court denied Beaulieu's plea-withdrawal motion, sentenced him to 18 months' imprisonment

stayed, and placed Beaulieu on probation for three years with the following terms: an intermediate sanction of 365 days[2] in the Hennepin County Adult Correctional Facility (ACF) with jail credit of 78 days; completion of the Telesys chemical-dependency program and Cognitive Skills program at the ACF; completion of the Domestic Abuse Program following confinement at the ACF; undergo a gambling assessment, refrain from consuming alcohol or any mood-altering substance to be monitored by the probation department, refrain from having any contact with L.J.A.O. and stay at least three blocks away from the 1100 block of 80th Street East in Bloomington; not possess a firearm or ammunition; provide probation with a DNA sample; and remain in contact with and follow all of the rules of probation.

Beaulieu now appeals.

D E C I S I O N

Beaulieu argues that the district court rejected the terms of his plea agreement and therefore abused its discretion by not allowing him to withdraw his guilty plea. "[Appellate courts] review a district court's decision to deny a withdrawal motion for abuse of discretion, reversing only in the rare case." *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010) (quotation omitted).

"In Minnesota plea agreements have been analogized to contracts and principles of contract law are applied to determine their terms." *In re Ashman*, 608 N.W.2d 853, 858 (Minn. 2000). "[I]nterpretation and enforcement of plea agreements involve issues of law

[2] The intermediate sanction contemplated by the plea agreement was 150 days.

that [appellate courts] review de novo." *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). "Where a defendant's liberty interests are implicated in a criminal proceeding, . . . we generally temper contract principles with safeguards to insure the defendant receives what is reasonably due in the circumstances, and in close cases, plea agreements should be construed in favor of defendants." *Ashman*, 608 N.W.2d at 858 (citations and quotations omitted).

Recently, this court addressed a defendant's rights under a plea agreement in circumstances similar to Beaulieu's in *State v. Montez*, ___ N.W.2d ___ (Minn. App. June 5, 2017). In *Montez*, this court held that when a defendant's plea agreement provided that a particular sentence would be imposed if the defendant complied with certain conditions, and the defendant did not comply with those conditions, the district court did not violate the plea agreement by imposing a different sentence and the defendant was not entitled to withdraw the plea. ___ N.W.2d ___, ___, No. A16-1071, slip op. at 7; *see also State v. Rud*, 372 N.W.2d 434, 435 (Minn. App. 1985) (concluding that district court was not required to honor plea agreement that defendant knowingly breached), *review denied* (Minn. Sept. 26, 1985).

Terms of Plea Agreement

Beaulieu argues that the record demonstrates that he did not violate the conditions of his release, i.e., the terms of his plea agreement, and that the district court simply rejected the plea agreement when it imposed a harsher intermediate sanction than that contemplated by the agreement. Beaulieu asserts that, at the plea hearing, the district court entitled him to request a culturally appropriate program and that he followed the court's release

conditions. He appears to argue that he did not voluntarily leave the chemical-dependency treatment program—he was discharged from it—and that he therefore satisfied the court's release condition that he remain in treatment. But Beaulieu's argument ignores the clear terms of the plea agreement that required him to "comply[] with any plans put in place by treatment," and the district court's explicit instruction that he "cooperate with treatment" and "do what they tell [him] to do," as well the court's admonition that "if [he] g[o]t kicked out of treatment, then [he would be] looking at some different deal, more time."

Although Beaulieu is correct that the court did not specifically order him to undergo a mental-health assessment as a release condition, the treatment center requested the mental-health evaluation in order to best provide him chemical-dependency treatment, and the request was a "plan[] put in place by treatment" under the terms of the plea agreement. And in addition to Beaulieu's refusal to undergo the mental-health assessment, the record is replete with evidence that Beaulieu failed to cooperate with other aspects of his treatment, including that he was late for several of his scheduled groups and attempted "to overtake the groups with his feedback and opinions or minimally engaged at all." According to the treatment discharge summary, he "reported that he lied on his Rule 25 about his use to get out of jail and obtain his driver's license," and "denied that he has anything that he needs to change." While Beaulieu may have followed the court's release condition not to simply leave treatment, he violated his plea agreement and release condition when he was discharged from treatment for refusing to cooperate.

Alleged Due-Process Violation

Beaulieu argues that the district court violated his right to due process when it imposed a harsher intermediate sanction,[3] i.e., a longer period of confinement at the ACF, than contemplated by his plea agreement without first holding an evidentiary hearing.[4] The Minnesota Rules of Criminal Procedure do not squarely address whether an evidentiary hearing is required under these circumstances. While rule 6.03, subdivision 3, provides that defendants are entitled to hearings on alleged violations of pretrial release conditions, and rule 27.04, subdivision 3, similarly requires revocation hearings on alleged violations of probation conditions, the rules do not explicitly address hearings with respect to alleged violations of post-guilty-plea, presentence release conditions. While no rule is directly on point, Beaulieu argues that the Due Process Clause nevertheless requires a hearing in this situation.

The Due Process Clause of the U.S. Constitution provides that a state shall not "deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1; *see also State v. Krause*, 817 N.W.2d 136, 144 (Minn. 2012) ("The due process protection provided under the Minnesota Constitution is identical to the due

---

[3] Beaulieu does not challenge the district court's denial of his motion to withdraw his guilty plea because the plea was allegedly coerced.

[4] Beaulieu refers to this hearing in his appellate brief as a "*Morrissey* hearing," in reference to *Morrissey v. Brewer*, 408 U.S. 471, 484, 92 S. Ct. 2593, 2602 (1972). In *Morrissey*, the Supreme Court held that due process requires, among other things, that a parolee be afforded an informal hearing to determine if there is reason to believe that the parolee has violated a parole condition. 408 U.S. at 484, 92 S. Ct. at 2602. Because Beaulieu was not a parolee at the time of his sentencing hearing, this opinion will use the term evidentiary hearing.

proces[s] guaranteed under the Constitution of the United States." (quotation omitted)). "Whether due process is required in a particular case is a question of law, which [appellate courts] review de novo." *Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005).

We conclude that Beaulieu forfeited his due-process challenge by failing to raise it in district court. Appellate courts generally will not decide matters not argued to and considered by the district court, including constitutional questions of criminal procedure. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Although, at his sentencing hearing, Beaulieu disputed that he violated the conditions of his post-plea, presentence release, at no point did he or his counsel request an evidentiary hearing or argue Beaulieu was entitled to any additional process. Because the issue of whether due process necessitated an evidentiary hearing was never presented to or considered by the district court, the issue is forfeited. *See id.*

Even if Beaulieu were entitled to an evidentiary hearing, the record shows that, at his sentencing hearing, he availed himself of the opportunity to challenge the alleged release violation and he argued mitigating circumstances. Indeed, much of the sentencing hearing's 20-page transcript is comprised of Beaulieu's argument to the district court about why he should not receive a harsher intermediate sanction. Despite the lengthy colloquy between Beaulieu and the district court, Beaulieu cites *State v. Modtland*, 695 N.W.2d 602 (Minn. 2005), and *State v. Austin*, 295 N.W.2d 246 (Minn. 1980), and states that "probation reflexively sought revocation." But Beaulieu's reliance on *Modtland* and *Austin* is misguided because they concern probation revocation, not post-plea, presentence release. *Cf. State v. Cottew*, 746 N.W.2d 632, 634 (Minn. 2008) (holding that *Austin* findings are

not required when a district court imposes local incarceration as an intermediate sanction for a probation violation and does not execute an underlying sentence); *State v. Batchelor*, 786 N.W.2d 319, 322–23 (Minn. App. 2010) (concluding that due process did not require *Austin* findings regarding defendant's intentional or inexcusable failure to appear at scheduled sentencing hearing before imposing sentence that deviated from agreed-on sentence that was expressly conditioned upon appearance at sentencing), *review denied* (Minn. Oct. 19, 2010).

Beaulieu suggests that the district court judge was insufficiently neutral. Citing *State v. Anyanwu*, 681 N.W.2d 411, 415 (Minn. App. 2004), Beaulieu argues that the district court stepped into the state's role because the sentencing hearing "was more-or-less a discussion between Beaulieu and the Judge." But *Anyanwu* involved an allegation that a district court improperly injected itself into plea negotiations when it promised the defendant a particular sentence. 681 N.W.2d at 415. Nothing in *Anyanwu* suggests that the district court judge usurped the responsibility of counsel under the facts of this case.

Finally, Beaulieu argues for the first time in his reply brief that this situation is analogous to convictions for constructive criminal contempt. *See Peterson v. Peterson*, 278 Minn. 275, 279, 153 N.W.2d 825, 829 (1967) (noting that, with respect to conduct committed outside the presence of the court, "formal proceedings are needed . . . to establish the contumacious conduct involved and to give the person accused notice and opportunity to be heard"). "Generally, arguments not made in appellant's principal brief will be deemed waived." *State v. Stockwell*, 770 N.W.2d 533, 541 (Minn. App. 2009).

Because Beaulieu did not present the argument in his principal appellate brief, we will not consider it.

Affirmed.