STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0122

Leanne Starr, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 14, 2017
Affirmed
Hooten, Judge

Hennepin County District Court
File No. 27-CR-14-32277

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant Public Defender, Chelsey Warner, (certified student attorney), St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

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

HOOTEN, Judge

Appellant argues that the district court abused its discretion when it denied her motion to withdraw her guilty plea or, in the alternative, to modify her sentence. We affirm.

FACTS

On October 30, 2014, appellant Leanne Starr and her nephew approached a man on the street and asked for directions to the bus stop. After the man provided directions, Starr's nephew threw the man on the ground and punched him 20 or more times in the face. As her nephew punched the man in the face, Starr kicked him repeatedly in the back and then stole his wallet and iPod. Police apprehended Starr and her nephew, and the victim positively identified Starr and her nephew as the people who had robbed him.

The next day, Starr was charged with one count of first-degree aggravated robbery. In May 2015, Starr entered a straight guilty plea, and moved for a downward durational departure due to her acceptance of responsibility and the offense being "less aggressive than is typical of the charge." The district court granted Starr's motion, and sentenced her to 60 months in prison.[1]

In August 2016, Starr filed a postconviction petition, seeking to withdraw her plea or, in the alternative, modify her sentence. The postconviction court summarily denied Starr's motion in its entirety. Starr now appeals.

[1] The presumptive sentence range for first-degree aggravated robbery for defendants with four criminal-history points is 75 to 105 months. *See* Minn. Sent. Guidelines 4.A (2014).

D E C I S I O N

I.

Starr first argues that the district court erred by denying her motion to withdraw her plea because her plea was not accurate, voluntary, or intelligent. We disagree.

Absent manifest injustice, a defendant does not have an absolute right to withdraw a valid guilty plea after sentencing. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). "[M]anifest injustice exists where a guilty plea is invalid." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A guilty plea is invalid if it is not "accurate, voluntary, and intelligent." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997).

The validity of a plea presents a question of law, which an appellate court reviews de novo. *Raleigh*, 778 N.W.2d at 94. However, appellate courts "review the postconviction court's factual findings for clear error, and evaluate the postconviction court's ultimate decision to deny relief for an abuse of discretion." *Lussier v. State*, 853 N.W.2d 149, 153 (Minn. 2014). Ultimately, the burden rests with the petitioner seeking postconviction relief to establish "by a fair preponderance of the evidence that the facts warrant relief." *Erickson v. State*, 725 N.W.2d 532, 534 (Minn. 2007) (quotation omitted).

Accuracy of Plea

Starr asserts that her guilty plea was not accurate because she was primarily asked leading questions during the plea hearing and did not state in her own words sufficient facts to prove all elements of first-degree aggravated robbery. This argument is without merit.

We note that while the district court should be "particularly wary of situations in which the factual basis is established by asking a defendant only leading questions," use of

only leading questions does not necessarily render a plea inaccurate. *Raleigh*, 778 N.W.2d at 94. And, while Starr was asked several leading questions, there is adequate testimony from non-leading questions to establish the accuracy of her plea.

The two elements of first-degree aggravated robbery at issue here are: (1) Starr committed a simple robbery; and (2) Starr was armed with a dangerous weapon or inflicted bodily harm upon the victim during the course of the robbery. Minn. Stat. § 609.245, subd. 1 (2014).

At the plea hearing, when Starr was asked to describe in her own words what happened, she replied that she "took some belongings that didn't belong to [her]." Starr was next asked what happened to the man from whom the belongings were taken, and she responded that "[h]e was assaulted." This testimony is sufficient to establish the first element, that Starr committed a simple robbery. *See* Minn. Stat. § 609.24 (2014) (defining crime of simple robbery to include taking property of another with use of force).

When asked who assaulted the victim, Starr replied, "[M]e and my nephew." Finally, Starr was asked if she caused the victim personal injury, and she replied, "Yes." This testimony is sufficient to establish the second element, that Starr inflicted bodily harm during the course of the robbery.

Because she provided testimony sufficient to establish all elements of the crime for which she pleaded guilty, Starr has failed to establish that her plea was not accurate.

Voluntariness and Intelligence of the Plea

Starr next asserts that her plea was not voluntary because the district court did not inquire as to her mental condition before accepting her plea despite evidence in the record

that she suffered from mental illness and a traumatic brain injury. This argument conflates the standard for voluntariness and intelligence of a guilty plea.

When reviewing the voluntariness of a plea, appellate courts examine the record to ensure "that a guilty plea is not entered because of any improper pressures or inducements." *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (quotation omitted). Because Starr signed a plea petition indicating that no one had made promises or threats to induce her guilty plea and she points to no evidence on appeal that her plea was the result of coercion, there is no evidence that her plea was involuntary. The issue, then, is not whether her plea was involuntary, but whether, because of her mental illness and traumatic brain injury, her plea was intelligent.

A guilty plea is intelligently made if it is "entered after a defendant has been informed of and understands the charges and direct consequences of a plea." *State v. Byron*, 683 N.W.2d 317, 322 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). When the record reveals that the defendant has discussed the plea arrangement with an attorney, as is the case here, a presumption arises that the defendant has been fully informed of the charges and direct consequences of the plea. *State v. Lopez*, 379 N.W.2d 633, 638 (Minn. App. 1986), *review denied* (Minn. Feb. 14, 1986).[2]

[2] Starr correctly notes that in a federal criminal proceeding, the district court must explicitly ask the defendant if he or she understands the nature of the charges and the consequences of the plea. *See McCarthy v. United States*, 394 U.S. 459, 464–65, 89 S. Ct. 1166, 1170 (1969). However, in Minnesota the district court is not required to explicitly ask the defendant if he or she understands the nature of the charges and the consequences of the plea, and the case relied upon by Starr, *Saliterman v. State*, 443 N.W.2d 841 (Minn. App. 1989), *review denied* (Minn. Oct. 13, 1989), cannot be read to extend the federal rule to Minnesota criminal courts.

Starr offers no evidence that she was not adequately informed of the charges or consequences of her plea. Instead, the thrust of Starr's argument is that because of her long history of mental illness and a past traumatic brain injury, she could not understand the charges against her or the consequences of her guilty plea. This argument is not supported by the record.

First, Starr signed a plea petition in which she indicated that she understood the charges against her. The plea petition also contained her representation that she had not had a recent illness or taken pills or other medications. On the record, Starr confirmed that she had reviewed the petition with her attorney and that she was offering the petition "know[ing] and understand[ing] all the rights" she was waiving.

Second, despite Starr's claim in her brief that she "had the capacity of a four-year old due to a traumatic brain injury" she suffered in 2003, the corrections agent conducting Starr's pre-plea investigative report (PPI) in early 2015 concluded that "it did not appear [Starr] was experiencing any cognitive impairment as [Starr] was able to maintain a coherent conversation, gave detailed historical information as well as provided recent information regarding her treatment." There is no evidence in the record to support Starr's assertion that her mental capacity was permanently diminished so as to not understand the charges against her and the consequences of her guilty plea.

In Minnesota, Minn. R. Crim. P. 15.01 governs what a district court must do in felony cases to ensure a defendant understands the charges and consequences of his or her plea before accepting a guilty plea. Failure to strictly adhere to the guidelines of rule 15.01 does not automatically invalidate a guilty plea. *State v. Wiley*, 420 N.W.2d 234, 237 (Minn. App. 1988), *review denied* (Minn. Apr. 26, 1988).

Finally, Starr has an extensive criminal history, with over a dozen misdemeanor convictions and multiple felony convictions, resulting in a criminal history score of four. Starr's extensive criminal history "makes it unlikely that [she] did not understand the proceedings." *State v. Bryant*, 378 N.W.2d 108, 110 (Minn. App. 1985), *review denied* (Minn. Jan. 23, 1986).

In sum, we conclude that Starr has not shown by a fair preponderance of the evidence that her plea was inaccurate, involuntary, or unintelligent.

II.

Starr next argues that the postconviction court erred by denying her motion to modify her sentence. We disagree.

Any person convicted of a crime may file a petition for postconviction relief if she claims that her sentence "violate[s] the person's rights under the Constitution or laws of the United States or of the state." Minn. Stat. § 590.01 (2016). Where, as here, a postconviction court denies a petition for postconviction relief without granting an evidentiary hearing, an appellate court reviews that decision for an abuse of discretion. *Chambers v. State*, 769 N.W.2d 762, 764 (Minn. 2009). "Any issues of law are reviewed de novo." *Id*.

Starr argues that, in denying her motion for sentence modification, the postconviction court abused its discretion in two respects. First, she asserts that because she is particularly amenable to treatment in a probationary setting, the postconviction court should have granted her request for a dispositional departure. Second, she asserts that because her sentence of 60 months unfairly exaggerates the criminality of her conduct, the

postconviction court should have granted her request for a further downward durational departure. We address each argument in turn.

A district court "must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a sentence outside the appropriate range." Minn. Sent. Guidelines 2.D.1 (2014). "Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case." *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009) (quotation omitted). A district court "has discretion to impose a downward dispositional departure if a defendant is *particularly* amenable to probation, but it is not required to do so." *Id*. at 664–65 (emphasis added). Factors that are potentially relevant to whether a defendant is particularly amenable to probation are the defendant's age, prior record, remorse, cooperation, attitude in court, and support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

Dispositional Departure

A review of the record illustrates that the district court did not abuse its discretion by concluding that Starr did not meet her burden of demonstrating that she is particularly amenable to probation. In the PPI, Starr admitted that "she has been through 15 to 20 treatment events" for alcohol and chemical abuse issues and that those "treatment programs have been unsuccessful." The PPI indicated that Starr "score[d] high in all areas of criminogenic factors which would indicate a high risk for future criminal activity." The PPI noted that Starr did not take "responsibility for having any involvement [in] robbing

the victim on the night of the offense." Finally, the PPI concluded that there were "no substantial or compelling reasons for [a dispositional] departure."

In sum, based upon this record, the district court did not abuse its discretion by determining that Starr failed to show that she was particularly amenable to probation.

Durational Departure

We first note that Starr argues that her sentence unfairly exaggerates the criminality of her conduct because, despite the district court acknowledging that she played a lesser role in the robbery, she received a greater penalty than her nephew. We decline to address this argument for two reasons. First, "a defendant is not entitled to a reduction in his sentence merely because a co-defendant received a lesser sentence." *State v. Olson*, 765 N.W.2d 662, 665 (Minn. App. 2009). Second, and more importantly, the record contains no evidence revealing the criminal history, or perhaps lack thereof, of Starr's nephew.

To determine whether a sentence unfairly exaggerates the criminality of a defendant, we compare the sentence imposed with sentences imposed on other offenders. *Neal v. State*, 658 N.W.2d 536, 548 (Minn. 2003). A review of other robbery cases illustrates that Starr's sentence does not unfairly exaggerate the criminality of her conduct.

In *Williams v. State*, Williams and an accomplice robbed a store with 16 people in it. 365 N.W.2d 370, 371 (Minn. App. 1985). During the robbery, Williams struck two of the people in the store with the butt of his pistol. *Id*. Williams received two consecutive 54-month sentences, one for each count of aggravated robbery. *Id*. This court concluded that Williams' consecutive sentences did not unfairly exaggerate the criminality of his conduct. *Id*. at 372.

In *State v. Hazley*, Hazley and two accomplices robbed a restaurant. 428 N.W.2d 406, 407 (Minn. App. 1988), *review denied* (Minn. Sept. 28, 1988). During the robbery, Hazley struck one of the restaurant staff with the butt of his pistol. *Id*. at 407–08. Hazley was sentenced to 60 months for aggravated robbery and a consecutive term of 60 months for assault. *Id*. at 407. This court determined that Hazley's consecutive 60-month sentences did not unfairly exaggerate the criminality of his conduct. *Id*. at 411.

Here, Starr participated in a robbery whereby the victim was punched 20 or more times in the face. As the victim was being punched, Starr kicked the victim repeatedly and stole his belongings. After pleading guilty to a crime which carried a presumptive sentence of 88 months, the district court granted Starr a downward durational departure to 60 months, due to the offense being "less aggressive than is typical of the charge." Comparing the conduct and sentence here to the conduct and sentence in other, similar cases of first-degree aggravated robbery, we conclude that a sentence of 60 months does not unfairly exaggerate the criminality of Starr's conduct.

Affirmed.