This opinion will be unpublished and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
A17-0999

David Walt Studanski, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed April 2, 2018
Affirmed in part and remanded
Rodenberg, Judge

Stearns County District Court
File No. 73-CR-14-799

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and Smith, John, Judge.[*]

---

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

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant David Walt Studanski appeals from the postconviction court's denial of his petition for postconviction relief. We affirm in part and remand for resentencing consistent with the plea agreement.

FACTS

Appellant was charged by complaint with four counts of first-degree criminal sexual conduct against two young girls, then between the ages of eight and ten, committed over a two-year period. According to the complaint, appellant forced acts of sexual penetration on the girls. Appellant faced presumptive prison sentences on all of the charged offenses. Minn. Sent. Guidelines 4.B (2013).

Appellant pleaded guilty to two counts of first-degree criminal sexual conduct[1] in exchange for an agreement that "[h]e would be sentenced to a stay of execution of 144 months as to each count served concurrently" and placed on probation for up to 30 years. Appellant provided a factual basis for each guilty plea. He agreed on the record that he was pleading guilty to avoid the possibility of being sent to prison. The plea agreement also called for lifetime conditional release. The district court found that appellant "made a knowing and intelligent waiver of [his] rights" and provided "an adequate fact basis to support [his] plea to both Counts 1 and 3." It convicted appellant of both counts. A presentence investigation (PSI) recommended stayed sentences of 144 months on count

---

[1] Appellant pleaded guilty to counts one and three of the complaint, representing one count of first-degree criminal sexual conduct against each of the victims.

one and 180 months on count three, with a ten-year conditional-release period under Minn. Stat. § 609.3455, subd. 6 (Supp. 2013).[2]

At sentencing on March 20, 2015, the district court inquired whether there were any additions or corrections to the PSI. Both parties addressed the amount of jail time that appellant would serve under the plea agreement, and appellant's trial counsel discussed appellant's amenability to probation. Neither attorney discussed the length of the recommended stayed sentences or of the conditional-release period. Before imposing sentence, the district court asked, "on Count 3, am I staying 180 months?" to which the state responded, "Correct. I think that's correct, your Honor." Appellant's attorney did not respond. The district court also asked, "is it correct that the agreement calls for a lifetime conditional release?" Appellant's attorney responded, "Correct." The district court then sentenced appellant to 144 months in prison on count one and 180 months in prison on count three. The district court stayed the execution of both sentences, placed appellant on probation for up to 30 years, and ordered appellant to serve 365 days in jail as a condition for the stay of execution on each count, to be served consecutively. The district court also imposed lifetime conditional-release periods for each count. Neither attorney objected or requested clarification.

Appellant violated the terms of his probation in August 2016 when he had unsupervised contact with minor children. After appellant admitted the violation, he was

---

[2] Minn. Stat. § 609.3455 (2010) was in effect when the conduct for which appellant was charged began. The statute was amended in 2013, while appellant's conduct was ongoing. The amendment does not affect the issues in this appeal.

sentenced to three additional days in jail and his probation was reinstated. In December 2016, Appellant petitioned for postconviction relief, seeking to withdraw his guilty pleas because they were involuntary.[3] Appellant also sought to have his sentence amended to include a ten-year conditional-release term, and not a lifetime conditional-release term. The postconviction court denied appellant's petition to withdraw his guilty plea, but set the case for resentencing in recognition of the original sentence having not complied with the plea agreement.

Appellant filed his notice of appeal before the scheduled hearing on resentencing, and appellant has not yet been resentenced.

DECISION

We review denial of a petition for postconviction relief for abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). We review the postconviction court's legal conclusions de novo, "but on factual issues our review is limited to whether there is sufficient evidence in the record to sustain the postconviction court's findings." *Id.* (quotation omitted). "A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted). A postconviction court

[3] Appellant filed no direct appeal. Therefore, the issues that appellant could have raised on direct appeal are available by postconviction petition. *See Deegan v. State*, 711 N.W.2d 89, 94 (Minn. 2006) (stating that a postconviction petitioner can raise nearly the same breadth of issues in a postconviction proceeding that could have been brought in a direct appeal).

also abuses its discretion by acting in an arbitrary or capricious manner. *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010).

I. The postconviction court acted within its discretion in denying appellant's request to withdraw his guilty pleas.

Appellant argues that he is entitled to withdraw his guilty pleas because they were entered involuntarily, resulting in a 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). A court must allow a defendant to withdraw a guilty plea if it "is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs when the guilty plea is invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Raleigh*, 778 N.W.2d at 94. The validity of a plea is a question of law that we review de novo. *Id*.

Appellant agrees that his guilty pleas were entered knowingly and were supported by an adequate factual basis. Appellant's only argument on appeal is that his pleas were involuntary.

Whether a plea was voluntary is a question of fact; we review a district court's determination for clear error. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994). "The involuntariness of a guilty plea constitutes such a manifest injustice as to entitle a defendant to withdraw his plea." *Butala v. State*, 664 N.W.2d 333, 339 (Minn. 2003) (quotation omitted). "The voluntariness requirement ensures a defendant is not pleading guilty due to improper pressure or coercion." *Raleigh*, 778 N.W.2d at 96. The supreme court has

also stated that "the State also cannot induce a guilty plea based on a promise by the prosecutor that goes unfulfilled or was unfulfillable from the start, such as a plea agreement involving the promise of an illegal sentence." *Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017). "In short, a plea is involuntary when it is induced by coercive or deceptive action." *Id.* Additionally, "[i]nducement of a guilty plea by promises that cannot be fulfilled invalidates the plea." *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000). Courts determine whether a plea is voluntary by examining "what the parties reasonably understood to be the terms of the plea agreement." *Raleigh*, 778 N.W.2d at 96. Courts consider "all of the relevant circumstances" in making this determination. *Danh*, 516 N.W.2d at 544 (quotation omitted).

An unfulfilled plea agreement is not always rendered involuntary such that it requires withdrawal; rather, if a "plea agreement has been breached, the court may allow withdrawal of the plea, order specific performance, or alter the sentence if appropriate." *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000); *Jumping Eagle*, 620 N.W.2d at 43 ("[P]ossible remedies include requiring specific performance of the agreement, altering the sentence, or allowing the plea to be withdrawn."). But a plea agreement that calls for a sentence not authorized by law cannot be specifically enforced. *Brown*, 606 N.W.2d at 674. We review a district court's interpretation and enforcement of plea agreements de novo. *Id.*

Appellant agrees that his guilty pleas were not induced by coercion, fraud, or any apparent deception. At the plea hearing, appellant agreed that he was entering the guilty pleas to avoid being sent to prison. And he was not sent to prison. However, appellant

argues that his guilty pleas were rendered involuntary when the district court sentenced him to a stayed sentence of 180 months on count three instead of the agreed-upon 144 months. Consequently, he contends, a manifest injustice entitles him to plea withdrawal. Appellant relies on *Theis*, *Danh*, and *Butala* for the proposition that plea withdrawal is always required when a manifest injustice exists.

The district court acted within its discretion in denying plea withdrawal on the facts here. The cases upon which appellant relies are clearly distinguishable from the present circumstances. First, in *Theis*, the supreme court concluded that the defendant's guilty plea was inaccurate because he "maintained his innocence, [and] did nothing at the plea hearing to affirm that the evidence supporting the[] allegations would lead a jury to find him guilty of" the charged offense. 742 N.W.2d at 650. Because the plea in *Theis* was insufficient to support a conviction, it was necessary to allow the defendant to withdraw it to correct the resulting manifest injustice. *Id.* at 651. *Butala* and *Danh* both involved promises of immunity or leniency to family members in exchange for the defendant's entry of guilty pleas. *Butala*, 664 N.W.2d at 336; *Danh*, 516 N.W.2d at 540-41. The state made no such promises here. Moreover, the supreme court in *Butala* and *Danh* did not hold that the defendants were entitled to plea withdrawal as of right. 664 N.W.2d at 340; 516 N.W.2d at 544.[4]

---

[4] The court noted in *Danh* that "withdrawal might not be in [the defendant's] best interests because if he were to withdraw his plea, he would face trial on the reinstated original charges." 516 N.W.2d at 544.

At oral argument, appellant also argued that *State v. Wukawitz*, 662 N.W.2d 517 (Minn. 2003), not cited in either party's brief, supports his position that he is entitled to withdraw his guilty pleas. However, *Wukawitz* is not on point. *Wukawitz* involved the imposition of a conditional-release term in violation of the plea agreement after the defendant had already been sentenced and no conditional-release term was included. 662 N.W.2d at 520. The supreme court held that "in those limited circumstances where imposition of a conditional-release term after sentencing would violate the plea agreement, the district court may allow the defendant to withdraw his plea." *Id.* Appellant's plea-withdrawal argument does not concern the imposition of a conditional-release period after sentencing. *Wukawitz* has no application here.

The record indicates that the breached plea agreement here resulted from mistakes by the attorneys and the district court. The district court asked at sentencing if the agreement called for a 180-month stayed sentence on count three. The prosecutor stated that it did, and defense counsel did not correct that response. After announcing that sentence on count three, the district court said, "That complies with the plea agreement, is that true?" to which the prosecutor said, "I think it's within the scope of the plea agreement" and appellant's attorney said, "It is, your Honor." The record shows beyond question that the district court intended to honor the plea agreement.

When this mistaken 180-month sentence on count three was identified in appellant's petition for postconviction relief, the state agreed that the district court should resentence appellant in conformity with the plea agreement. The postconviction court denied appellant's request to withdraw the guilty pleas and set the matter for resentencing

consistent with the plea agreement. Minnesota Rule of Criminal Procedure 15.05, subdivision 1, requires plea withdrawal only when "necessary to correct a manifest injustice." And the district court concluded that, because resentencing consistent with the plea agreement was possible, plea withdrawal was not "necessary." The law affords the district court the authority to order specific performance of a plea agreement or alter the sentence to conform to such an agreement when doing so is possible. *Brown*, 606 N.W.2d at 674; *Jumping Eagle*, 620 N.W.2d at 43. Contrary to appellant's contention that he is entitled to choose between the alternative remedies, the postconviction court did not abuse its discretion in denying appellant's petition to withdraw his pleas. It was and is prepared to resentence appellant consistent with the plea agreement. On remand, the district court must resentence appellant to the agreed-upon 144 months, stayed, for count three.

II. The district court erred in imposing lifetime conditional release.

Although the postconviction court did not address this issue, appellant argues that the district court erred in imposing a lifetime conditional-release term and that he is entitled to a ten-year conditional-release term on both counts. The state agrees.

Interpreting a sentencing statute is a question of law, which appellate courts review de novo. *State v. Noggle*, 881 N.W.2d 545, 547 (Minn. 2016). Minn. Stat. § 609.3455 (Supp. 2013) provides for conditional-release terms for sex offenders. Subdivision 6 provides for a mandatory ten-year conditional-release term for first- and fourth-degree criminal sexual conduct. *Id.* Subdivision 7 provides for a mandatory lifetime conditional-release term for offenders who have a prior sex-offense conviction. *Id.* The statute defines "prior sex conviction" as occurring "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." *Id.*, subd. 1(g).

In *State v. Nodes*, the supreme court interpreted the meaning of a prior sex-offense conviction under Minn. Stat. § 609.3455 when a defendant was convicted of two sex offenses in the same hearing. 863 N.W.2d 77 (Minn. 2015). The supreme court held that, when a defendant is convicted of two offenses, one after the other, at a sentencing hearing, the offender has a prior sex-offense conviction for the purpose of sentencing the second conviction and no "particular temporal gap" is required, so long as "one conviction is entered before the second." *Id.* at 82.

We have interpreted the supreme court's reasoning in *Nodes* in a number of unpublished opinions to conclude that, where a district court accepts two guilty pleas "simultaneously," it is error for the district court to impose a lifetime conditional-release period under Minn. Stat. § 609.3455. *See State v. Ingalls*, 2017 WL 5560033 (Minn. App. 2017); *State v. Klanderud*, 2016 WL 6395252 (Minn. App. 2016); *State v. Rekdal*, 2015 WL 7199866 (Minn. App. 2016).[5] The district court entered appellant's convictions

[5] The supreme court's decision in *Nodes* did not explicitly hold that entering two convictions at the same time could never result in a lifetime conditional release. Instead, it held that when convictions are entered separately, even if by only seconds, Minn. Stat. § 609.3455, subd. 7, applies. However, the legislature has not amended Minn. Stat. § 609.3455 in light of *Nodes*, and our several unpublished opinions interpreting *Nodes* as the state concedes is proper here. Because the state makes no argument that *Nodes* does not preclude the application of Minn. Stat. § 609.3455, subd. 7, in the present circumstances, and agrees that a ten-year conditional-release period is proper, we do not reach this question.

simultaneously in one statement on the record. Therefore, appellant had no "prior sex convictions" when he was sentenced on count three. Accordingly, the district court erred by sentencing appellant to a lifetime conditional-release term and not a ten-year conditional release.

In sum, we affirm the postconviction court's denial of appellant's request to withdraw his guilty pleas. We remand to the district court to modify appellant's sentence on count three to conform to the plea agreement. Based on the state's agreement, we also direct the district court on remand to vacate the lifetime conditional-release term and impose a ten-year conditional-release term on both counts.

Affirmed in part and remanded.