STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0691

Kenny Lee Reed, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 31, 2018
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CR-99-102206

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

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Reilly, Judge; and Florey, Judge.

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

SCHELLHAS, Judge

Appellant challenges the postconviction court's denial of his petition to withdraw his guilty plea, arguing that plea withdrawal is necessary to correct a manifest injustice. We affirm.

FACTS

Respondent State of Minnesota charged appellant Kenny Lee Reed with felon in possession of a firearm and two counts of second-degree assault in connection with a July 1999 shooting. While those charges were pending, Reed shot R.J.T. in the leg at a party in September 1999. The state charged Reed with second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (1998) and felon in possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(b) (1998).

In connection with the July 1999 shooting, a jury found Reed guilty of two counts of second-degree assault and one count of felon in possession of a firearm. In December 1999, before sentencing on those offenses, the state offered to dismiss the felon-in-possession-of-a-firearm charge from September 1999 in exchange for Reed's plea of guilty to second-degree assault. The plea negotiation also contemplated that Reed would be sentenced consecutively to 36 months' imprisonment on each second-degree assault conviction, two from the shootings in July 1999 and one from the shooting in September 1999, "for a grand total of 108 all consecutive." Reed pleaded guilty to second-degree assault, and the district court sentenced Reed to three consecutive 36-month prison sentences for his three second-degree-assault convictions and one 60-month prison

sentence for his July 1999 conviction of felon in possession of a firearm, to be served concurrently with his sentences for assault.

In March 2017, Reed filed a pro se writ of error coram nobis, seeking to withdraw his guilty plea to second-degree assault in connection with the September 1999 shooting and his December 1999 guilty plea. The district court construed the writ as a postconviction petition, concluded that Reed's claim was not time barred because of "unusual and exceptional circumstances," considered Reed's petition on the merits, and denied relief.

This appeal follows.

D E C I S I O N

The state argues that we should affirm the district court's denial of Reed's postconviction petition on the basis that it was untimely. Because we affirm the denial on the merits, we need not address the timeliness of Reed's petition.

An appellate court reviews the denial of a postconviction petition for an abuse of discretion. *Johnson v. State*, 916 N.W.2d 674, 678 (Minn. 2018). An appellate court "will reverse a postconviction court if the court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Id.* (quotation omitted).

Validity of Reed's guilty plea

"At any time the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists if the plea is not valid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). To be valid, a

guilty plea must be accurate, voluntary, and intelligent. *Id*. Whether a plea is valid is a legal question that we review de novo. *Id*.

Reed does not argue that his guilty plea was inaccurate or involuntary. He argues that he did not validly waive his fundamental rights when he entered his plea of guilty to second-degree assault in December 1999, and that the postconviction court abused its discretion by denying his petition to withdraw his guilty plea because a manifest injustice occurred. The only issue we consider is whether Reed's guilty plea was intelligent.

The plea hearing in December 1999, at which Reed pleaded guilty to second-degree assault for shooting someone in the leg at a party, immediately followed the jury's return of guilty verdicts in connection with second-degree-assault charges against Reed for shootings in July 1999. At the plea hearing, the district court instructed Reed's counsel to proceed with Reed's waiver of trial rights. In response, Reed's lawyer said, "Your Honor, just one minute. I have to complete my Petition." The court allowed Reed and his counsel time to complete the plea petition and, when ready, Reed's lawyer reviewed the plea petition with Reed, in relevant part, as follows:

> DEFENSE COUNSEL: When you plead guilty to the second degree assault from September 23, 1999, you are giving up your right to a jury trial?
> REED: Yeah
> . . . .
> DEFENSE COUNSEL: That means unlike the prior case where you had an opportunity to have a jury trial, you are saying you don't want one and in this case you giving up all of your rights that we exercised in the prior case; do you understand that?
> REED: Yes.
> DEFENSE COUNSEL: So I as your lawyer won't be confronting witnesses against you; do you understand that?

> REED: Yes.
> DEFENSE COUNSEL: And you're waiving your right to remain silent because you are standing up here and you are going to be entering your plea of guilty to the Court; do you understand that?
> REED: Yes.
> DEFENSE COUNSEL: Additionally, I won't be calling any witnesses in your defense. Do you feel okay with that?
> REED: Yes.
> DEFENSE COUNSEL: Any hesitation whatsoever, Mr. [Reed]? This is your opportunity to say you don't want to do it.
> REED: No hesitation.
> DEFENSE COUNSEL: So you acknowledge to the Court that you do wish to waive your right to a jury trial and you do want to admit to this offense, you signed the bottom of this petition, is that right?
> REED: Yes.
> DEFENSE COUNSEL: Is this your signature at the bottom of all four pages?
> REED: Yeah.

After the above colloquy, the district court asked Reed if he had gone over the petition with his counsel and if he had any questions. Reed replied that he had gone over the petition and did not have any questions. Before accepting the petition, the court also asked Reed, "You have been through a trial, so you know what a trial means, and you know that you could have one in this case too?" Reed replied, "Yeah." Reed then provided a factual basis to support his plea, and the court sentenced Reed in accordance with the plea agreement.

As a threshold argument, Reed contends that the district court failed to comply with Minn. R. Crim. P. 15.01 and that its noncompliance invalidates his guilty plea. "Before the judge accepts a guilty plea, the defendant must be sworn and questioned by the judge with the assistance of counsel" with regard to eight enumerated factors. Minn. R. Crim. P. 15.01,

subd. 1. Reed cites *State v. Halseth*, arguing that "the lack of necessary waivers of any fundamental right renders the plea proceedings invalid." *See* 653 N.W.2d 782, 786 (Minn. App. 2002) (stating "that the requirements for a valid waiver prior to a stipulated court trial are similar to those necessary for a valid guilty plea under Minn. R. Crim. P. 15.01"). But "[t]he Comments to Minn. R. Crim. P. 15.01, and Minnesota case law establish that failure to interrogate a defendant as set forth in Rule 15.01 or to fully inform [a defendant] of all constitutional rights does not invalidate a guilty plea." *State v. Doughman*, 340 N.W.2d 348, 351 (Minn. App. 1983), *review denied* (Minn. Mar. 15, 1984). Because no per se rule concerning necessary waivers exists, Reed's threshold argument fails.

Reed argues that even if the waiver of rights "does not have to be perfect to support a valid plea," the "inquiry here was still deficient" and his plea was unintelligent because the district court did not receive express verbal waivers of his right to testify and the presumption of innocence. "The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea." *Raleigh*, 778 N.W.2d at 96.

"A reviewing court may weigh a defendant's experience with the criminal justice system when evaluating whether his plea was knowing and intelligent." *Doughman*, 340 N.W.2d at 353. Reed had just completed a jury trial with the same counsel and judge who appeared at his plea hearing. And Reed discussed the plea petition with counsel and signed each page before entering his plea. Reed's consultation with his lawyer moreover "raises the presumption that he was fully informed of his rights." *Id.* We conclude that any failure to question Reed about each and every constitutional right did not affect the intelligence of

his plea. *See id*. at 351 (stating that failure to inform defendant "of all constitutional rights does not invalidate a guilty plea," that "the order or the wording of the questions" is not important; what is important is "whether the record is adequate to establish that the plea was intelligently and voluntarily given").

Here, the record shows that Reed was well aware of his fundamental trial rights and fully understood the trial rights that he was waiving when he entered his guilty plea. We conclude that the district court did not abuse its discretion by denying Reed's postconviction request to withdraw his plea.

Affirmed.