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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1939

State of Minnesota,
Respondent,

vs.

Dale Dwayne Greer,
Appellant.

Filed December 9, 2019
Affirmed
Cleary, Chief Judge

Hennepin County District Court
File Nos. 27-CR-16-26204, 27-CR-17-25405

Keith Ellison, Attorney General, St. Paul, Minnesota; and

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

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Hooten, Judge; and Smith, Tracy M., Judge.

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

CLEARY, Chief Judge

In a direct appeal from his convictions of first-degree driving while intoxicated (DWI), fleeing a police officer, driving after cancellation, and fifth-degree controlled-

substance possession, appellant argues that his guilty plea was not intelligent because the district court failed to inquire whether he understood the maximum sentences he could face, the conditional-release term for his DWI offense, and the mandatory minimum sentence. We affirm.

FACTS

In October 2016, the state charged appellant Dale Dwayne Greer with fifth-degree possession of cocaine. In October 2017, the state charged appellant with first-degree DWI, fleeing a police officer, driving after cancelation as inimical to public safety, and possession of marijuana in a motor vehicle.

To resolve both cases, appellant pleaded guilty to first-degree DWI, fleeing a police officer, and driving after cancelation. He also pleaded guilty to fifth-degree controlled-substance possession. Appellant entered into straight pleas with no agreement as to sentencing. For the first-degree-DWI case, the plea petition stated that the maximum sentence appellant could receive was seven years, the mandatory minimum sentence was six months, and a mandatory period of conditional release would follow any executed prison sentence. The plea petition did not specify the duration of the conditional-release term. The plea petition for the fifth-degree-possession case stated that the maximum sentence the court could impose was five years, and the mandatory minimum sentence was six months. Appellant signed both plea petitions.

At the plea hearing, appellant stated that his attorney went through the plea petitions with him "page by page" and "line by line." Appellant acknowledged that he understood he was pleading guilty with no agreement from the state or from the district court as to

sentencing. The district court clarified with appellant, "I know that you and your attorney have gone through many times what type of sentence you're facing in this presumptive commit-type case. Do you have any questions of me right now?" Appellant replied, "No."

When the sentencing hearing began, the state said that the first-degree DWI conviction "will carry a five year conditional release should there be a commit." The district court sentenced appellant to 72 months with the commissioner of corrections for first-degree DWI with a five-year term of conditional release under Minn. Stat. § 169A.276, subd. 1(d) (2016). The district court sentenced appellant to 21 months with the commissioner of corrections for fifth-degree controlled-substance possession. Both sentences were presumptive sentences, *see* Minn. Sent. Guidelines 4.A (2017), 4.C (2016), and were consistent with the recommendation in the presentence investigation report (PSI). This appeal follows.

D E C I S I O N

A defendant has no absolute right to withdraw a guilty plea, *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010), but a defendant may challenge the validity of a guilty plea for the first time in a direct appeal, *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). We review de novo the validity of a guilty plea. *Dikken v. State*, 896 N.W.2d 873, 876 (Minn. 2017). We must allow withdrawal of a guilty plea if necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a plea is invalid because it was inaccurate, involuntary, or unintelligent. *Raleigh*, 778 N.W.2d at 94.

"The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea." *Id.* at 96.

Consequences are "a plea's direct consequences, namely the maximum sentence and fine." *Id.* It is appellant's burden to show that his plea is invalid. *Id.* at 94.

Appellant argues that his plea was not intelligent because the district court did not comply with Minn. R. Crim. P. 15.01, subd. 1(6), which requires the district court to ensure that "defense counsel has told the defendant and the defendant understands" 18 different aspects of his right to a jury trial. Specifically, appellant argues that the district court did not ask whether his attorney informed him of (1) the maximum sentences for the crimes to which he pleaded guilty; (2) the mandatory minimum sentences; and (3) the mandatory period of conditional release for his first-degree DWI offense. *See id.*, subd. 1(6)(i)-(k). Appellant cites the Federal Rules of Criminal Procedure and the ABA Standards for Criminal Justice for the same proposition.

Appellant's argument assumes that a guilty plea is invalid if the district court does not make a specific inquiry regarding the matters listed in Minn. R. Crim. P. 15.01, subd. 1(6). But the district court's failure to strictly comply with rule 15.01 procedures does not necessarily invalidate a guilty plea. *State v. Wiley*, 420 N.W.2d 234, 237 (Minn. App. 1988), *review denied* (Minn. Apr. 26, 1988). If the record shows careful questioning by the district court and that the defendant had the opportunity to consult with his attorney before entering the plea, this court may presume that the defendant was adequately informed of his rights. *Shackelford v. State*, 253 N.W.2d 149, 150 (Minn. 1977); *Hernandez v. State*, 408 N.W.2d 623, 626 (Minn. App. 1987).

The plea petitions cover all of the requirements in Minn. R. Crim. P. 15.01, subd. 1(6)(i)-(k) and list the maximum sentences that the district court could impose. "We

presume that, prior to entry of a guilty plea, defense counsel reviews the plea petition with the defendant and the defendant understands its terms." *State v. Byron*, 683 N.W.2d 317, 323 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). At the plea hearing, appellant testified that he reviewed the plea petition with his attorney "page by page" and "line by line." Moreover, the district court told appellant, "I know that you and your attorney have gone through many times what type of sentence you're facing in this presumptive commit-type case," and asked, "Do you have any questions of me right now?" Appellant replied, "No."

The plea petition for the first-degree DWI offense states that a mandatory period of conditional release will follow any executed prison sentence for any felony-DWI offense. As appellant points out, the plea petition does not include the duration of the conditional-release term. The PSI similarly states that appellant will be subject to a conditional-release term but does not include the duration. Appellant contends that this renders his plea unintelligent. But, at the start of the sentencing hearing, the state clarified that the conditional-release term was five years. Appellant did not object. "When a defendant is informed of a possible conditional-release term before sentencing, even if that term is not in the plea agreement or sentence, the defendant has sufficient notice of the consequences of the plea and the plea will be considered to have been voluntary and intelligent." *Thong v. State*, 892 N.W.2d 842, 847-48 (Minn. App. 2017) (citation omitted), *review denied* (Minn. May 30, 2017).

The supreme court rejected an argument similar to appellant's in *State v. Rhodes*, 675 N.W.2d 323, 327 (Minn. 2004). Rhodes argued that his plea was not intelligent

because he was not informed of the mandatory conditional-release term at the time he entered the guilty plea. *Rhodes*, 675 N.W.2d at 327. But the supreme court held that Rhodes was on notice of the conditional-release term because it had been a statutory requirement for years before he entered his plea. *Id.* The supreme court also stated that it could be inferred that Rhodes understood that the conditional-release term was mandatory when he failed to object to the PSI's recommendation of a conditional-release term, the state's request at the sentencing hearing, and the district court's imposition of the sentence. *Id.*

Similarly, in *Thong*, this court rejected Thong's argument that his guilty plea was not intelligent because he was not informed that a mandatory conditional-release term applied to his DWI offense. 892 N.W.2d at 847-48. Relying on *Rhodes*, this court concluded that Thong was on notice of the conditional-release period because it was referred to in the plea petition and the PSI, and Thong pleaded guilty more than ten years after a five-year conditional-release term became mandatory for felony-DWI offenses. *Id.* Here, the conditional-release term has been mandated by statute since 2002. *See id*. Moreover, appellant's plea petition and the PSI noted the conditional-release term. The state specified, prior to appellant's sentencing, that the conditional-release term would be five years. Appellant did not object to the state or to the district court's imposition of the sentence. Under *Rhodes* and *Thong*, the imposition of the conditional-release term did not render appellant's plea unintelligent.

Appellant relies on *James v. State*, 699 N.W.2d 723 (Minn. 2005), to argue that his plea was not intelligent because he was not aware of the ten-year conditional-release term

until after he pleaded guilty. But for the addition of a conditional-release term to violate a plea agreement, the plea agreement must contain an agreed-upon sentence length. *Oldenburg v. State*, 763 N.W.2d 655, 658-59 (Minn. App. 2009). Here, appellant pleaded guilty without an agreed-upon sentence length. His reliance on *James* is misguided.

The plea petition for the DWI case states that appellant is subject to a mandatory minimum sentence of six months. The statute provides that first-degree DWI convictions carry a mandatory minimum sentence of 36 months. Minn. Stat. § 169A.276, subd. 1(a) (2016). While the plea petition was incorrect with regard to the mandatory minimum sentence, prior to sentencing, appellant was on notice that he would be facing a sentence much higher than 36 months. The PSI noted that, based on appellant's criminal-history score and the severity level of his offense, the presumptive sentence was 72 months. Prior to entering into the plea, the district court confirmed with appellant that his attorney had "gone through many times what type of sentence [he was] facing." And appellant does not specifically argue that his sentence was unintelligent based on this error; his argument is premised on the district court's failure to question him on the matters listed in rule 15.01. Appellant's plea was intelligent and there is no manifest injustice requiring plea withdrawal.

Affirmed.