STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2126

State of Minnesota,
Respondent,

vs.

Nikki Jo Hauser,
Appellant.

Filed December 23, 2019
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge

Stearns County District Court
File No. 73-CR-18-624

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Kirk, 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

SMITH, TRACY M., Judge

In this direct appeal from her convictions of three counts of aiding and abetting first-degree criminal sexual conduct, appellant Nikki Jo Hauser argues that (1) her guilty plea was unintelligent and involuntary because it was induced by an unfulfilled promise, and (2) the district court erred by imposing a lifetime conditional-release term at sentencing because all three offenses were adjudicated simultaneously. We affirm in part, reverse in part, and remand for resentencing.

FACTS

In July 2017, Hauser's daughter, referred to by the parties as Child A, reported to law enforcement that she had experienced frequent, consistent sexual abuse at the hands of her mother and her stepfather, S.H. As a result, the state charged Hauser with eleven counts of aiding and abetting first-degree criminal sexual conduct. On July 10, 2018, Hauser pleaded guilty to three counts of aiding and abetting first-degree criminal sexual conduct, and the state dismissed the remaining counts.

Hauser admitted the following facts at her plea hearing. Hauser is the mother of Child A. When Child A was about 11 years old, Hauser and her then-husband S.H. spoke with Child A about beginning a sexual relationship with the two of them. For the next five years, Hauser and S.H. engaged in regular sexual relations with Child A. The sexual activity occurred at least once a week and typically included Hauser and S.H. having Child A perform oral sex on S.H. Hauser repeatedly encouraged Child A to engage in this sexual activity.

Plea Agreement and Plea Hearing

Hauser agreed to plead guilty to counts 2, 4, and 7 as charged in the complaint in exchange for the state's agreement to dismiss the remaining eight counts.[1] Hauser's attorney articulated the agreement to the district court at the July 10, 2018 plea hearing, stating that there would be a $50 fine and "a 220-month cap of an executed sentence." The state confirmed that this was a correct statement of the agreement and added that it would not object to defense counsel "arguing for 180 months." The district court questioned Hauser to ensure that she understood the agreement and asked: "You understand your worst-case scenario is 220 months, but then your attorney will argue for 180 months?" Hauser confirmed that she understood and that she did not have any questions. Her attorney tendered a plea petition, which summarized, in handwriting, the agreement as: "plea to ct 2, 4, 7[;] Dismiss remaining cts[;] $50 fine, 220 month cap ex." After Hauser made admissions to establish a factual basis, the district court found that there was a knowing, intelligent, and voluntary waiver of rights and a sufficient factual basis to support the pleas. The district court ordered a psychosexual evaluation and presentence investigation (PSI) and set the matter on for sentencing.

[1] Counts 1, 2, 4, and 7 were based on multiple acts committed over extended periods of time, whereas the remaining counts were based on personal injury to Child A.

Presentence Investigation

The PSI agent found that Hauser had no prior criminal convictions and determined her presumptive sentencing exposure under the guidelines as follows:

Count 2: 144 months' imprisonment (144 to 172 range)

Count 4: 180 months' imprisonment (153 to 216 range)

Count 7: 360 months' imprisonment (306 to 360 range)

Given these presumptive sentences, the parties' agreed-upon sentencing range of 180 to 220 months would be a downward durational departure if Hauser was sentenced on all three counts. The PSI agent concluded that a departure would be inappropriate because Hauser's conduct was not less serious than the typical offense and, if anything, it was "especially egregious." The agent also noted that Hauser showed minimal remorse and that Hauser had told the agent that she did not deserve to go to prison.

Sentencing Hearing

At the sentencing hearing on September 27, 2018, the state explained to the district court that it was asking it to sentence Hauser on counts 2 and 4, and to leave count 7 adjudicated but unsentenced, in order to "put[] the guideline range at what was bargained for." The state argued for a prison term of 216 months, the high end of the guidelines range for count 4 after sentencing on count 2, emphasizing the seriousness of the offense and Hauser's lack of genuine remorse. Hauser's attorney argued for a 180-month term, the presumptive sentence for count 4 after sentencing on count 2, emphasizing mitigating factors such as Hauser's cognitive difficulties and history of abuse and manipulation at the

hands of S.H. The district court also heard from Child A, who gave a detailed, emotional account of how the abuse has impacted her.

After hearing the arguments and victim-impact statement, the district court explained its reasoning for its sentencing decision and why it was unpersuaded by the defense's argument for a lesser sentence. The district court expressed concern about Hauser's lack of remorse, her suggestion in her sentencing letter that Child A was partially to blame for the sexual activity, and that, even when S.H. was away and in prison, Hauser made choices that facilitated the abuse and it continued after he was released from prison. The district court believed that the arguments about Hauser's cognitive deficits and own victimization were valid but had already been accounted for in the plea agreement Hauser received.

The district court then adjudicated Hauser on all three counts, stating:

> Ms. Hauser, you previously pled guilty to Counts Two, Four, and Seven, all three counts being criminal sexual conduct in the first degree in violation of Minnesota Statute 609.342, subdivision l(h)(3). These offenses each carry a maximum penalty of 30 years imprisonment and/or $40,000 fine. The Court will adjudicate you guilty of all three counts by virtue of your pleas. I'm going to sentence only on Count Two and Count Four, however.

The district court sentenced Hauser to 144 months' imprisonment for count 2 and 216 months' imprisonment on count 4, to run concurrently. The district court informed Hauser that she would be subject to lifetime conditional release for count 4. The district court asked Hauser and her attorney if they had any objections or questions about the sentencing, and both responded that they did not.

This appeal follows.

D E C I S I O N

Hauser argues that (1) the district court's imposition and execution of multiple sentences rendered her plea unintelligent and involuntary because she was sentenced on two counts instead of one, and (2) the district court erred as matter of law by imposing a lifetime conditional-release term for count 4. We address each argument in turn.

I. The district court's imposition of multiple sentences did not render Hauser's plea unintelligent and involuntary as induced by an unfulfilled promise.

Hauser argues that her guilty plea was rendered unintelligent and involuntary because she and the state agreed to a $50 fine and a "220-month cap of *an executed sentence*," but the district court imposed *two executed sentences* (144 months' imprisonment on count 2 and 216 months' imprisonment on count 4, to run concurrently). Her argument relies on a literal interpretation of the precise language used in the plea petition; specifically, it places great weight on the absence of an "s" at the end of "sentence."

Hauser does not argue that she will spend more time in prison than she anticipated prior to pleading guilty; it was made clear to her, and she acknowledged multiple times, that she was facing up to 220 months' imprisonment. Nor does Hauser argue that she thought she would be convicted of only one count of criminal sexual conduct. Her argument instead appears to be that, even though she knew she would stand convicted of three counts of first-degree criminal sexual conduct, and knew that the state would recommend up to 220 months' imprisonment, she thought she would be *sentenced on only*

one count, and because she was sentenced on two counts, her plea was not knowing and voluntary.

A. Standard of review and legal standard

As an initial matter, Hauser did not move to withdraw her guilty plea pursuant to Minn. R. Crim. P. 15.05 at the district court. And she does not ask to withdraw the plea here, either, but instead requests that this court "remand the matter to the district court with instructions to re-sentence Hauser to a single executed sentence of no more than 220 months and a single $50 fine to comply with the terms of her plea agreement." Although her requested remedy from this court would not be proper,[2] a defendant may challenge the validity of a plea on direct appeal from a judgment of conviction or in a postconviction hearing. *Brown v. State*, 449 N.W.2d 180, 182-83 (Minn. 1989).

As to the standard of review, "what the parties agreed to involves an issue of fact to be resolved by the district court," but "[i]ssues involving the interpretation and enforcement of plea agreements . . . are issues of law that [appellate courts] review de novo." *State v.*

[2] If a plea agreement is breached, a 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). This decision, though, rests within the sound discretion of the district court. *See State v. Montermini*, 819 N.W.2d 447, 455 (Minn. App. 2012) (noting that the district court generally has "flexibility to consider the effect of the court of appeals decision on the remainder of the plea agreement"), *review denied* (Minn. Nov. 20, 2012); *see also State v. Garcia*, 582 N.W.2d 879, 882 (Minn. 1998) (holding that "there is no constitutional right to specific performance of a plea agreement"). This is because "a plea agreement represent[s] a bargained-for understanding between the government and criminal defendants in which each side foregoes certain rights and assumes certain risks in exchange for a degree of certainty as to the outcome of criminal matters." *Montermini*, 819 N.W.2d at 455 (quotation omitted).

Brown, 606 N.W.2d 670, 674 (Minn. 2000) (citations omitted). Here, the parties dispute the meaning of the plea agreement, which, as summarized by Hauser's attorney at the plea hearing, says that Hauser would plead guilty to counts 2, 4 and 7 and face a "220-month cap of an executed sentence." Hauser contends that she thought this meant that she would be sentenced on only one count and face up to 220 months *on that count*, whereas the state contends that the only reasonable interpretation of this agreement is that Hauser would be sentenced on two counts and face a 180 to 220 month sentencing range. We review this issue regarding the interpretation of the plea agreement de novo.

"[T]here are three basic prerequisites to a valid guilty plea: the plea must be (a) accurate, (b) voluntary, and (c) intelligent (that is, knowing and understanding)." *Brown v. State*, 449 N.W.2d at 182. Our focus here is on the latter two requirements. The voluntariness requirement is aimed at "insur[ing] that the defendant does not plead guilty because of any improper pressures or inducements." *Id.* In examining the voluntariness requirement, the Minnesota Supreme Court noted in *State v. Brown* that, "[w]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." 606 N.W.2d at 674 (quotation omitted). If such a promise is not fulfilled, due process is violated. *State v. Wukawitz*, 662 N.W.2d 517, 522 (Minn. 2003). The intelligent requirement is meant to ensure "that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty." *Id.* (quotation omitted).

We begin with whether Hauser's plea was involuntary as induced by an unfulfilled promise.

B. Hauser's plea was voluntary.

"In determining whether a plea agreement [is] violated, courts look to what the parties to [the] plea bargain reasonably understood to be the terms of the agreement." *State v. Brown*, 606 N.W.2d at 674 (quotation omitted). Courts resolve interpretive disputes over plea agreements using general principles of contract interpretation. *See State v. Spaeth*, 552 N.W.2d 187, 194 (Minn. 1996). These principles are tempered, though, with "safeguards to insure the defendant [receives] what is reasonably due in the circumstances." *Id.* (quotation omitted). For instance, in close cases, courts should resolve ambiguities in favor of the defendant. *See In re Ashman*, 608 N.W.2d 853, 858 (Minn. 2000). Whether there is an ambiguity in the plea agreement is a legal question. *Id.*

Hauser argues that the plea agreement called for sentencing on only one count of first-degree criminal sexual conduct. The state argues that Hauser's interpretation is unreasonable and that the plea agreement clearly contemplates sentencing on multiple counts. The state contends that when Hauser's attorney summarized the agreement by saying "there would be a 220-month cap on an executed sentence," he was merely emphasizing the maximum length of Hauser's total prison term. As the state points out, the prison-term length was the sole issue disputed at sentencing and is, practically speaking, the issue that typically matters most to the defendant. The state submits that this is not an unusual short-hand description of the agreement and provides several unpublished opinions of this court that similarly use "sentence"—singular—when referring to a combined sentence.

The state also makes several arguments based on context that support its reading of the plea agreement and show that Hauser had the same understanding as the state at the time of the guilty plea and sentencing hearings. First, at the sentencing hearing, the parties unequivocally agreed that Hauser should be sentenced on two counts in order to conform to their plea agreement:

> [PROSECUTOR]: [W]e're asking the court . . . to sentence on Counts Two and Four, I believe that that's an agreement of the parties, to leave Count Seven then adjudicated but unsentenced at this point. That puts the guideline range at what was bargained for.
>
> THE COURT**:** I'm assuming you have no objection to that, [Hauser's attorney]?
>
> [HAUSER'S ATTORNEY]: No, I do not have any objection to that.

The state argues that Hauser's silence during this exchange, in addition to her later representation to the district court that she had no questions about her sentences, demonstrates that she expected to be sentenced on more than one count. An appellate court may infer from a defendant's failure to object to the state's request at sentencing, as well as from the court's imposition of the sentence, that the defendant knew about the sentencing conditions expressed on the record. *See State v. Rhodes*, 675 N.W.2d 323, 326-27 (Minn. 2004).

Further, as the state notes, under Hauser's purported interpretation of the plea agreement, she would have only faced a presumptive range of 144 to 172 months' imprisonment. It was precisely because the three felony points from count 2 were added to

her criminal history score for count 4 (or "*Hernandized*"[3]) that the parties were able to argue for a presumptive range between 180 and 216 months. If Hauser was only facing one sentence, she would oddly have been arguing for an upward durational departure by arguing for 180 months, which does not align with the defense's mitigation-focused sentencing argument.

Hauser's proposed interpretation of the plea agreement is unreasonable. For the above reasons, it is clear that her attorney, the state, and the court always understood the plea agreement to mean that she would be sentenced on multiple counts. Nothing in the record suggests that her attorney ever gave her a different impression. Hauser confirmed at her guilty plea hearing that she understood that her "worst-case scenario [was] 220 months, but then [her] attorney [would] argue for 180 months."

Furthermore, even if Hauser did harbor a personal belief that she would be convicted on all three counts, sentenced on one, and receive up to 220 months' imprisonment on that one count, there is no evidence that this understanding induced her guilty plea. To show that an unfulfilled promise rendered her guilty plea involuntary, Hauser needs to show that her plea rested, "in any significant degree," on that promise. *See James v. State*, 699 N.W.2d 723, 728 (Minn. 2005) (quotation omitted); *State v. Brown*, 606 N.W.2d at 674.

[3] *See State v. Hernandez*, 311 N.W.2d 478, 481 (Minn. 1981). "*Hernandize*" is "the unofficial term for the process described in section 2.B.1.e [of the sentencing guidelines] of counting criminal history when multiple offenses are sentenced on the same day before the same court." Minn. Sent. Guidelines 1.B.9 (2012). The guidelines provide that "[m]ultiple offenses sentenced at the same time before the same court must be sentenced in the order in which they occurred. As each offense is sentenced, include it in the criminal history on the next offense to be sentenced . . . ." Minn. Sent. Guidelines 2.B.1.e (2012).

Hauser does not explain in her briefing how her understanding of the plea agreement as calling for a single sentence influenced her decision to plead guilty. Nothing in the record suggests that her plea was in any way influenced by this understanding. *See, e.g.*, *State v. Brown*, 606 N.W.2d at 672 (noting that the defendant specifically articulated his understanding of the plea agreement at the plea hearing). Instead, it seems far more likely that Hauser's guilty plea was induced by the state's promise to dismiss the other eight counts of first-degree criminal sexual conduct and recommend that Hauser serve no more than a total of 220 months in prison. The record does not specify how much time Hauser could have faced if convicted on all eleven counts, but it seems significant that, even if she had been sentenced concurrently on all three of the counts to which she pleaded guilty, she would have faced up to twelve more years in prison. Hauser has failed to show that her plea was involuntary as induced by an unfulfilled promise.

C. Hauser's plea was intelligent.

Hauser's argument that her plea was unintelligent is, in essence, the same as her argument that it was involuntary as induced by an unfulfilled promise. She argues that she was never told, prior to pleading guilty, that she would be sentenced on more than one count, so she therefore did not understand the consequences of the plea. *See Brown v. State*, 449 N.W.2d at 182. As the supreme court explained in *Rhodes*, though, a court may infer from a defendant's "failure to object to the presentence investigation's recommendation, the state's request at the sentencing hearing and the court's imposition of the sentence" that the defendant "understood from the beginning" a particular aspect of the plea agreement. 675 N.W.2d at 327. Here, it was made clear on the record at the sentencing hearing that

the state was arguing for, and Hauser's attorney supported, sentencing on two counts and leaving the third unsentenced. Hauser's corresponding silence demonstrates that she understood the consequences of her plea. Her plea was intelligent.

II. The district court improperly sentenced Hauser to a lifetime conditional-release term.

Hauser argues that because she did not have a "previous or prior" sex offense conviction when she was sentenced on count 4, the district court erroneously imposed a lifetime conditional-release term in violation of Minn. Stat. § 609.3455 (2012). The state agrees that the lifetime conditional-release term was unauthorized by law. Both parties agree that the case should be remanded with instructions to reduce the conditional release term to ten years. The issue of whether simultaneously adjudicated convictions can result in a prior conviction and a present offense is a matter of statutory interpretation, which is a question of law that appellate courts review de novo. *See State v. Campbell*, 814 N.W.2d 1, 4 (Minn. 2012).

Minn. Stat. § 609.3455, subd. 6, mandates a ten-year conditional-release term for offenders convicted of criminal sexual conduct in violation of Minn. Stat. §§ 609.342, 609.343, 609.344, 609.345, or 609.3453. However, an offender convicted under these sections may instead be sentenced to a lifetime conditional-release term if they have a "previous or prior sex offense conviction." Minn. Stat. § 609.3455, subd. 7. An offender has a "prior[4] sex offense conviction" "if the offender *was convicted of committing a sex*

[4] The "previous sex conviction" provision does not apply here. "A conviction is considered a 'previous sex offense conviction' if the offender was convicted and sentenced for 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) (emphasis added).

In *State v. Nodes*, the supreme court determined that the meaning of "prior sex offense conviction" in Minn. Stat. § 609.3455, subd. 1(g), is unambiguous and accordingly held that, when two convictions are entered in the same hearing, the first conviction entered constitutes a "prior sex offense conviction" with respect to any subsequently entered conviction. 863 N.W.2d 77, 80, 82 (Minn. 2015). To analyze the plain meaning of the statute, the *Nodes* court interpreted the terms "convicted," "before," and "present offense." *Id.* at 80. A person is "convicted" pursuant to a guilty plea when the plea is accepted and recorded by the court. *Id.* (citing Minn. Stat. § 609.02, subd. 5 (2014)). "Before," as used in the statute, means "earlier than" and requires only that the first conviction be adjudicated "at an earlier time than the second." *Id.* at 82 (citing *Webster's Third New International Dictionary of the English Language, Unabridged* 197 (2002)). Finally, a "present offense" is one "now existing or in progress." Once the district court announces that the defendant is adjudicated guilty of an offense, "in the next instant it [is] no longer a present offense, but [is] now a past conviction." *Id.*

The supreme court's decision in *Nodes* gave rise to the question: If the district court enters convictions on multiple offenses *simultaneously* rather than *sequentially* in a

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offense before *the commission* of the present offense." Minn. Stat. § 609.3455, subd. 1(f) (emphasis added).

hearing, does it mean that none of the offenses is a qualifying "prior sex offense conviction"? Following *Nodes*, this court answered the question affirmatively in a series of unpublished opinions, reasoning that when the court enters convictions simultaneously, there was never a moment in time where the defendant had a "prior sex offense conviction."[5] We then confirmed this interpretation in *State v. Brown*, ___ N.W.2d ___, ___, 2019 WL 6460852, at *6 (Minn. App. Dec. 2, 2019), holding that, under the plain meaning of section 609.3455, subdivision 1(g), "when a district court convicts an offender simultaneously of multiple sex offenses in the same hearing, the offender does not have a prior sex-offense conviction and is not subject to a lifetime conditional-release term under Minn. Stat. § 609.3455, subd. 7(b), absent another qualifying conviction."

Under *Brown*, Hauser and the state are correct that the district court erroneously imposed a lifetime conditional-release term here. The parties agree, and the record supports, that Hauser's convictions on counts 2 and 4 were entered simultaneously. The district court stated at the sentencing hearing:

> Ms. Hauser, you previously pled guilty to Counts Two, Four, and Seven, all three counts being criminal sexual conduct in

[5] *See, e.g.*, *Studanski v. State*, No. A17-0999, 2018 WL 1569955, at *4 (Minn. App. Apr. 2, 2018) (simultaneous entry of two guilty pleas), *review denied* (Minn. June 19, 2018); *State v. Davidson*, No. A17-0149, 2018 WL 1370569, at *7 (Minn. App. Mar. 19, 2018) (simultaneous entry of three jury convictions); *State v. Ingalls*, No. A16-1803, 2017 WL 5560033, at *7 (Minn. App. Nov. 20, 2017) (simultaneous entry of two jury convictions); *State v. Klanderud*, No. A15-1897, 2016 WL 6395252, at *4-5 (Minn. App. Oct. 31, 2016) (simultaneous entry of two guilty pleas), *review denied* (Minn. Jan. 17, 2017); *State v. Rekdal*, No. A14-1364, 2015 WL 7199866, at *1-3 (Minn. App. Nov. 16, 2015) (simultaneous entry of two guilty pleas); *see also Edwards v. State*, No. A18-1263, 2019 WL 2571680, at *1 (Minn. App. June 24, 2019) (sequential entry of two guilty pleas), *review denied* (Minn. Sept. 17, 2019).

> the first degree in violation of Minnesota Statute 609.342, subdivision l(h)(3). These offenses each carry a maximum penalty of 30 years imprisonment and/or $40,000 fine. *The Court will adjudicate you guilty of all three counts by virtue of your pleas.* I'm going to sentence only on Count Two and Count Four, however."

(Emphasis added.) There was never a moment in time where Hauser was convicted of one count but not the others. Hauser thus had no other previous or prior sex offense convictions at the time of her adjudication on count 4. We accordingly remand the case to the district court for resentencing consistent with this opinion.

Affirmed in part, reversed in part, and remanded.