This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0235

Johnny Hernandez Perez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 7, 2019
Affirmed
Slieter, Judge

Kandiyohi County District Court
File No. 34-CR-16-84

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

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

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Ross, Judge; and Slieter, Judge.

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

SLIETER, Judge

In this appeal from a denial of postconviction relief, appellant Johnny Hernandez Perez argues that the postconviction court abused its discretion in refusing to modify his sentence by finding that the plea agreement did not call for a 144-month sentence. Because

the record supports the postconviction court's conclusion that there was no agreement as to the length of the sentence, we affirm.

FACTS

As a result of an incident reported to Willmar Police in June 2015, the state charged appellant with first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(h)(iii) (2014), and second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(h)(iii) (2014). Appellant entered an *Alford* plea[1] with respect to count 1, the first-degree criminal sexual conduct. In return, count 2 was dismissed. The state also agreed to withdraw its motion seeking an aggravated sentence. The district court accepted the plea.

On September 13, 2016, the district court held a sentencing hearing. The state recommended the presumptive 144 months' imprisonment. Defense counsel agreed, stating that "we reviewed the recommendations of probation. They appear consistent with the plea agreement." The presentence investigation report recommended 144 months. However, the signed plea agreement did not state that the parties agreed to 144 months, only that the state waived its motion for an aggravated sentence.

The district court did not accept the state's recommendation. It addressed appellant: "You have failed to take responsibility. You have continued to blame [the victim] and for

---

[1] "A defendant enters an *Alford/Goulette* plea if he maintains his innocence but 'reasonably believes, and the record establishes, the state has sufficient evidence to obtain a conviction.'" *State v. Johnson*, 867 N.W.2d 210, 215 (Minn. App. 2015) (quoting *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994) (citing *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970)), *review denied* (Minn. Sept. 29, 2015); *see also State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977).

that reason I think you need additional time than a typical 144 month sentence because you cannot begin to heal yourself for your own wrongs until you start admitting what you did." The district court noted that the presumptive sentence was 144 months' imprisonment, with a discretionary range of up to 172 months. It sentenced appellant to 172 months. Appellant objected, stating that the sentence is inconsistent with the plea agreement, and that there was a joint agreement for a 144-month sentence. The district court disagreed, stating, "That is not my recollection of the plea agreement . . . I took extensive notes with regard to the plea agreement and it's not in the plea petition." The state noted that it did not have anything indicating an agreement to a 144-month sentence. The district court agreed to review the plea hearing recording and, after doing so, issued an order reiterating that the plea agreement did not limit the sentence to 144 months and that no change would occur to the imposed 172-month sentence.

On September 10, 2018, appellant petitioned the district court for postconviction relief requesting that his sentence be reduced to 144 months pursuant to the terms of the plea agreement. Appellant argued that, pursuant to the terms of the plea agreement as he understood them, he was supposed to receive a 144-month sentence. Appellant did not request an evidentiary hearing on the petition. The postconviction court denied the motion, finding that "[t]he transcript of the plea hearing and the plea petition are silent as to an agreement on sentencing. There is no evidence in the record that a sentence of 144 months was an agreed-upon term of the plea agreement." This appeal follows.

D E C I S I O N

Appellant argues that the postconviction court erred in denying his petition and not imposing a 144-month prison sentence because the parties understood that he would receive a 144-month sentence in exchange for his guilty plea. The plea agreement—as the district court found—did not include a term establishing the length of appellant's sentence. Accordingly, appellant's argument lacks merit.

This court reviews a denial of postconviction relief for an abuse of discretion. *Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). In doing so, this court reviews the "postconviction court's legal determinations de novo, and its factual findings for clear error." *See Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017). "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, or exercises its discretion in an arbitrary or capricious manner." *Crow v. State*, 923 N.W.2d 2, 9 (Minn. 2019) (quotation omitted).

"Determining what the parties agreed to in a plea bargain is a factual inquiry for the postconviction court to resolve." *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). The petitioner bears the burden of proving facts alleged in the plea agreement by a preponderance of the evidence. Minn. Stat. § 590.04, subd. 3 (2018).

The postconviction court found that "[t]he petition to plead guilty reflects the fact that Defendant would offer an *Alford* plea in exchange for waiver of the State's *Blakely* motion. The petition does not include a stated term for the length of the sentence." It also found that, "[b]efore reaching the factual basis of the plea, [the district court] informed defendant of a ten year conditional release period after he finished [his] 144 months," but

noted the district court said this to demonstrate how a conditional-release term could be implemented. Consequently, the postconviction court found that "[t]here is no evidence in the record that a sentence of 144 months was an agreed-upon term of the plea agreement." The record supports the postconviction court's factual findings.

There are two pieces of evidence in the record which describe the plea agreement terms.[2] First, in the written plea agreement, appellant agreed to the following terms:

> In exchange for my plea to Count 1 the State will dismiss Count 2. I will be presenting my plea on an Alford basis. I believe if the State's evidence is presented at trial I will be found guilty. I wish to take advantage of the plea agreement, including waiver by the State of its Blakely motion.

There is no mention of an agreed-upon 144-month sentence.

Second, in the transcript of the plea hearing, the state summarized the agreement as follows: "it's my understanding that [appellant] would plead guilty to count one . . . in exchange, count two would be dismissed. In light of the plea agreement, the State would withdraw its Blakely motion seeking an aggravated upward departure." Appellant made no objection to this summary. Appellant also agreed that no one made promises other than those contained in the plea agreement for him to enter the guilty plea.

Appellant, however, points to the following exchange at the hearing:

> [Defense counsel]: Your Honor . . . can we just approach for just one moment?
> The Court: Yes
> (Judge instructed bench conference does not need to be on record.)

[2] Appellant also draws on the presentence investigation report and state's recommendations for a 144-month sentence in support of his argument, but those recommendations do not establish a term of the plea agreement.

> The Court: [Appellant], do you understand that whether it's an Alford plea or not the entry of a guilty plea to count one will result in a commit to prison?
> [Appellant]: Yes.
> The Court: Do you also understand that there is a ten year conditional release period after –
> [Appellant]: Yes.
> The Court: – after you're finished with your 144 months that there's a ten year conditional release period.
> [Appellant]: Yeah – yes.

Appellant argues that this demonstrates that the parties agreed to a 144-month prison sentence and that the district court knew that. This is the only mention of a sentence length during the entire plea hearing—and it was not brought up again until the sentencing hearing.

With respect to that portion of the transcript, the postconviction court found:

> The only mention of 144 months occurred at the plea hearing in which [the district court] referenced the presumptive sentence in explaining the conditional release period. At this point in the hearing, the terms and factual basis of the plea petition had not been discussed. This mention had nothing to do with Defendant's proposed or actual sentence length, nor a promise to sentence at that level, nor was it a term negotiated by the parties and accepted by the court. Rather, the mention of a 144 month sentence was in the context of the results of a guilty plea to First Degree Criminal Sexual Conduct and its relation to a period of conditional release.

This finding is not clearly erroneous. It is reasonable that the district court made reference to a prison term within the discretionary range for the first-degree criminal sexual conduct to explain the conditional-release period.

As the postconviction court found, the plea agreement reflects that appellant would enter an *Alford* plea and that the state would dismiss a charged offense and waive its

aggravated sentence motion. But the agreement failed to specify a length of the sentence in exchange for the guilty plea. We determine that the postconviction court's factual findings are not clearly erroneous regarding the parties' understanding of the plea agreement terms. Accordingly, appellant failed to meet his burden and the district court did not abuse its discretion in denying relief.

Affirmed.