STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0072

Nikita Nikel Dixon, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed November 22, 2021
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-CR-17-5420

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

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal from the postconviction court's denial of his petition to withdraw his guilty plea, appellant argues his plea was not intelligent because he did not understand that the direct consequences of his plea could include an executed prison sentence. Appellant

understood that he could receive a presumptively executed prison sentence and, therefore, his guilty plea was intelligent, and no manifest injustice occurred by the district court accepting his guilty plea. We affirm.

FACTS

Appellant Nikita Nikel Dixon pleaded guilty to first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a) (2016). The district court accepted appellant's guilty plea following an inquiry during which appellant acknowledged an understanding of his rights, the charges against him, and the plea petition describing and waiving those rights, which he signed. The district court sentenced appellant to 124 months' imprisonment followed by a ten-year conditional-release period—a downward durational departure—because it found his criminal conduct "somewhat less serious than other criminal sexual conduct in the first degree."

Appellant filed a petition for postconviction relief arguing that his guilty plea was not intelligent.[1] The postconviction court received testimony from appellant and his trial counsel and concluded that appellant had "not provided any new information which would undermine the record made during the plea hearing" and that "his plea was intelligent . . .

[1] Appellant requested "[i]n the alternative" that the postconviction court "reduce his sentence, and impose a downward dispositional departure with a stay of execution." The postconviction court properly denied this request which was based upon appellant's claim that the district court did not consider all possible mitigating factors. *See State v. Pegel*, 795 N.W.2d 251, 253-54 (Minn. App. 2011) ("[t]he mere fact that a mitigating factor is present in a particular case does not obligate the court to place the defendant on probation or impose a shorter term than the presumptive term."). Additionally, appellant has provided no authority which obligates "reconsideration" of a sentence other than one not authorized by law. *See* Minn. R. Crim. P. 27.03 subd. 9 ("The court may at any time correct a sentence not authorized by law."); Minn. Stat. § 590.01 (2018).

and therefore valid." It further concluded that the record supported the district court's sentencing decision and therefore denied the petition. This appeal follows.

DECISION

Appellate courts review a postconviction court's denial of a petition for postconviction relief for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). "Legal issues are reviewed de novo, but [] review of factual issues is limited to whether there is sufficient evidence in the record to sustain the postconviction court's findings." *Id.* (quotations omitted). The validity of a guilty plea is a question of law which is reviewed *de novo*, and the defendant bears the burden of showing that the plea was invalid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). Although a "defendant has no absolute right to withdraw a guilty plea after entering it . . . the court must allow withdrawal of a guilty plea if withdrawal is necessary to correct a manifest injustice." *Id.* at 93 (quoting Minn. R. Crim. P. 15.05, subd. 1). A plea is constitutionally invalid and works a manifest injustice if it is inaccurate, involuntary, or unintelligent. *Id.* at 94.

For a plea to be intelligent, the defendant must understand "the charges against him, the rights he is waiving, and the consequences of his plea." *Id.* at 96. Appellant argues that he did not understand the consequences of his plea because he believed he would receive probation rather than the executed prison sentence.[2] The record belies appellant's claim.

[2] Appellant also argues that he did not understand the charges against him because he was not informed of the intent criminal sexual conduct requires. The criminal sexual conduct statute "does not contain an intent requirement, making it a general intent crime." *State v. Hart*, 477 N.W.2d 732, 736 (Minn. App. 1991), *rev. denied* (Minn. Jan. 16, 1992); *see also*

Appellant participated in a pre-plea investigation, which recommended the presumptive executed prison sentence of 168 months. Before appellant pleaded guilty, the prosecutor indicated that the state's "offer would be 144 months at this time, which would be bottom of the box." After the district court accepted appellant's guilty plea, the prosecutor reminded the court that a pre-plea investigation recommended the presumptive executed prison sentence of 168 months and "that the state will be asking for a presumptive sentence." Appellant's counsel responded that they "would be filing a motion for a departure." During the sentencing hearing appellant stated he understood the judge "could give [him] 100-and-something months."

Appellant's testimony during the postconviction hearing reaffirmed that when he made the plea of guilty, he understood he was "giving up [his] rights and putting [his] fate in the judge to make a ruling on a straight plea" and determine his sentence. Appellant's trial attorney testified that he reviewed the pre-plea investigation with appellant and the presumptive guidelines sentences the judge could impose. In sum, the record indicates appellant understood that an executed prison term was the presumptive consequence of his guilty plea and that the ultimate determination of his sentence lay in the discretion of the district court.[3] Therefore, appellant's guilty plea was valid.

State v. Wenthe, 865 N.W.2d 293, 302 (Minn. 2015) ("Generally, criminal sexual conduct offenses require only an intent to sexually penetrate, unless additional mens rea requirements are expressly provided."). A general intent crime only requires "the intent to do the act that constitutes a crime." *Hart*, 477 N.W.2d at 736. (citing *State v. Kjeldahl*, 278 N.W.2d 58, 61 (Minn. 1979)). The record reflects that appellant admitted he intended to engage in sexual contact. Therefore, his argument lacks merit.

[3] Appellant separately argues that his guilty plea was not voluntary because he believed he would receive probation. This argument lacks merit. Appellant appears to conflate

Appellant argues in a *pro se* supplemental brief that imposition of the ten-year conditional-release period violates his constitutional rights pursuant to *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2002), because it extends beyond his 124-month prison sentence. This issue was not raised before the postconviction court, so we need not address its merits. *Roby v. State*, 547 N.W.2d 354, 357 (1996). Moreover, appellant's argument would fail pursuant to *State v. Jones*, 659 N.W.2d 748 (Minn. 2003). *Jones* held that, for *Apprendi* purposes, the statutorily authorized maximum sentence is the sum of the statutory-maximum term of incarceration and the required conditional-release period. *Id.* at 754. First-degree criminal sexual conduct requires a statutory maximum sentence of 30 years' imprisonment, Minn. Stat. § 609.342, subd. 2(a), and a mandatory ten-year conditional-release period. Minn. Stat. § 609.3455, subd. 6 (2016). Appellant's combined prison sentence and conditional-release period total just over 22 years, well under the statutory maximum of 30 years' imprisonment and ten years of conditional release.

Affirmed.

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intelligence, which is the sole factual basis for his petition, with voluntariness. Nothing in the record indicates appellant experienced improper pressures or inducements. *Dikken v. State*, 896 N.W.2d 873, 876-77 (Minn. 2017) ("To be voluntary, a guilty plea may not be based on any improper pressures or inducements.").