

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0516**

Jesus Daniel Ibarra, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 24, 2022
Affirmed
Segal, Chief Judge**

Watonwan County District Court
File No. 83-CR-17-333

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Stephen J. Lindee, Watonwan County Attorney, St. James, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant challenges the denial of his petition for postconviction relief seeking withdrawal of his guilty plea. He argues that the plea was unintelligent and involuntary and that the district court therefore abused its discretion in denying his petition. We affirm.

FACTS

In June 2017, respondent State of Minnesota charged appellant Jesus Daniel Ibarra with first-, third-, and fifth-degree assault. The complaint alleged that Ibarra approached an 80-year-old man who was fixing a bicycle in his front yard and that, after the man cautioned Ibarra to get rid of a bag of marijuana, Ibarra assaulted him. The man suffered multiple broken bones and a subdural hemorrhage, and ultimately had to be airlifted from a local medical clinic to North Memorial Medical Center for trauma care.

In August 2018, Ibarra pleaded guilty to first-degree assault pursuant to a plea agreement. During the plea colloquy, Ibarra stated that he did not have a full recollection of the assault and that he was under the influence of a controlled substance when it occurred. He admitted, however, that he remembered hitting and hurting the man, and agreed that the man was severely injured and suffered a broken nose, broken wrist, and subdural hemorrhage from the assault. Ibarra advised the district court that he was taking prescription medication to treat his depression and reduce anxiety, but stated that he was thinking clearly, understood the rights that he was waiving by pleading guilty, and wished to plead guilty. The district court accepted the guilty plea.

Based on the sentencing guidelines, the presumptive sentence was an executed prison term of 98 months, with a presumptive guidelines range of between 84 and 117 months. Minn. Sent. Guidelines 4.A (2016). Under the terms of the plea agreement, Ibarra agreed to plead guilty to first-degree assault and the state agreed to a stayed 117-month sentence and dismissal of the remaining charges. The agreement therefore contemplated a top-of-the-box sentence duration, but a downward dispositional departure to probation.

The district court held a sentencing hearing in September 2018 and sentenced Ibarra, in accordance with the plea agreement, to 117 months in prison for first-degree assault, but stayed execution of the sentence and placed Ibarra on probation for 15 years.

In January 2019, Ibarra's probation officer filed a report that alleged Ibarra had violated the conditions of his probation by failing to contact his probation officer as directed, report an address or telephone number change within 72 hours, and report to his probation officer as directed. The district court issued an arrest warrant, and Ibarra was arrested a few days later. Following his arrest, Ibarra submitted to a drug test and tested positive for benzodiazepines, opiates, tetrahydrocannabinol (THC), and methamphetamine. Ibarra met with his probation officer and admitted to using marijuana one to two times per day since his release from jail, and to using Xanax, a benzodiazepine, about five times since his release. He denied using opiates or methamphetamine and claimed that he had recently been injected with a syringe at a party but did not know what was in the syringe.

In February 2019, Ibarra appeared before the district court on the alleged probation violations. At that time, his counsel expressed serious concerns over Ibarra's mental health and requested that the district court order Ibarra to undergo a competency evaluation. Counsel explained that Ibarra had been diagnosed with post-traumatic stress disorder (PTSD) that was not properly treated, and that he believed that Ibarra had "an overarching paranoia that is almost suicidal." Counsel later filed an affidavit to support his request for a competency evaluation that explained that Ibarra "was severely sexually abused as a minor while in drug treatment" and that the abuse "produced a very damaged individual

with a very immature outlook on the world and reality.” Counsel also stated that he believed that Ibarra’s mental capacity had been diminished by years of drug use. Counsel later withdrew his request based on Ibarra’s request to proceed, but nonetheless believed it was important to make a record concerning Ibarra’s mental-health history.

In March 2019, the district court held a probation-revocation hearing. Ibarra admitted that he violated the conditions of his probation by using chemicals, failing to report to and maintain contact with his probation officer, and being terminated from his community-service program. He argued that his probation should not be revoked, and instead requested the opportunity to seek treatment for his mental-health and chemical-dependency issues. He recounted his history of mental-health issues, including previous suicide attempts and hospitalizations, and testified that he was sexually abused by other juveniles at a juvenile-detention center when he was about 13 years old. He testified that his chemical-dependency issues were related to that abuse. The district court revoked Ibarra’s probation and executed his prison sentence. Ibarra appealed the revocation of his probation, but this court affirmed, and the supreme court denied review. *State v. Ibarra*, No. A19-0899, 2019 WL 7049937, at *3 (Minn. App. Dec. 23, 2019), *rev. denied* (Minn. Mar. 17, 2020).

In September 2020, Ibarra petitioned for postconviction relief. Ibarra sought to withdraw his guilty plea, arguing that his plea was unintelligent because he did not understand the rights he was waiving and the consequences of pleading guilty. He also alleged that his plea was involuntary because his attorney provided ineffective assistance of counsel. The district court held an evidentiary hearing, at which Ibarra testified that his

trial counsel did not adequately explain the rights he was waiving or the consequences of pleading guilty. Ibarra acknowledged that he had extensive experience in juvenile court. He asserted, however, that as a juvenile, he had “numerous [probation] violations,” but would be sent back home with “a slap on the wrist” and “no serious custody time.” He testified that based on his experience as a juvenile he “didn’t think that [he] would be serving these 117 months on a first violation,” particularly because he did “not pick[] up any new charges.” He also testified that he was unaware that the state had offered a plea deal for him to serve 84 months in prison, a bottom-of-the-box sentence, and that he would have taken that offer “[i]n a heartbeat.”

The district court denied the petition for postconviction relief. The district court determined that it was “satisfied that [Ibarra] was well aware at the time of sentencing of the consequences of violating his probation.” The district court reasoned that “[i]t is incredible to suggest . . . that [Ibarra] would have accepted an 84-month commit to prison” rather than the plea agreement that included a downward dispositional departure to probation, which allowed him to avoid prison so long as he abided by the probation conditions. Ibarra appeals.

DECISION

“When a criminal defendant seeks to withdraw a guilty plea under Rule 15.05, after the defendant has been sentenced, the motion to withdraw the plea must be raised in a petition for postconviction relief.” *James v. State*, 699 N.W.2d 723, 727 (Minn. 2005). We review the denial of a petition for postconviction relief for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). An abuse of discretion occurs when a district

court's "decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* "The burden is on the petitioner at a post-conviction proceeding to prove by a preponderance of the evidence the facts which would warrant withdrawal of his guilty plea." *Doughman v. State*, 351 N.W.2d 671, 674 (Minn. App. 1984), *rev. denied* (Minn. Oct. 16, 1984).

A criminal defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But Minn. R. Crim. P. 15.05, subd. 1, provides that "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." "[A] manifest injustice exists if a guilty plea is not valid. To be valid, a guilty plea must be accurate, voluntary, and intelligent." *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016) (quotation and citation omitted). Ibarra argues that his guilty plea is not valid because it was not intelligent and not voluntary.

Claim that Plea Was Not Intelligent

We turn first to Ibarra's claim that his guilty plea was not intelligent. "The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea." *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). The supreme court has observed that when a criminal defendant is represented by counsel, that counsel plays a key role in ensuring that the plea is intelligent by explaining the nature of the charges, the rights a defendant is waiving, and any consequences that will result. *Taylor*, 887 N.W.2d at 823.

Ibarra argues that his plea was not intelligent because his counsel did not adequately explain the rights that Ibarra was waiving or the consequences of pleading guilty. He asserts that his counsel repeatedly told him that he was facing 20 years¹ in prison and that because of “the traumatic experiences of [his] past” while in custody, he “would have done just about anything to be released from custody.” He argues that when his counsel called to tell him about the plea offer he was in a “diminished mental state” and only understood that under the agreement he would not go to prison. He asserts that at that time he “was told 15 years’ probation but did not know what that meant” and that if he had known that he “could go to prison for 117 months if [he] violated [the] conditions of probation, [he] would not have accepted the plea deal.”

At the time of the guilty plea, Ibarra signed a “petition to enter plea of guilty.” The petition states that Ibarra had sufficient time to discuss his case with counsel, that his counsel had discussed with him the possible defenses and the evidence against him, and that Ibarra had the right to a jury trial. The petition explains that if Ibarra were to have a trial then the state would have to present witnesses in open court and that he could question the witnesses, that he would have a right to present favorable witnesses, and that the jury would presume him innocent until his guilt was proven beyond a reasonable doubt. The petition contains the following paragraph with a description of the plea agreement:

I have been told by my attorney and I understand:
a. That my attorney discussed this case with one of the prosecuting attorneys and that my attorney and the prosecuting attorney agreed that if I entered a plea of guilty,

¹ Twenty years is the statutory maximum sentence for the offense of first-degree assault. Minn. Stat. § 609.221, subd. 1 (2016).

the prosecutor will do the following: I will plead guilty to Count I [first-degree assault] with an agreed stay of execution on a commitment to prison but if upon violation of my probation I am determined by [the district court to] lose my stay of execution my sentence will be at the top of the box, 117 months. Probation to include at [the district court's] discretion one (1) year in County Jail with credit for time served. Counts II [third-degree assault] and III [fifth-degree assault] dismissed with prejudice. Other conditions of probation left to the discretion of the [district] Court.

Finally, the plea petition reflects that Ibarra had been hospitalized in a psychiatric unit in April 2018 due to a suicide attempt and that he was taking prescription medication that “gives [him] a clear head and reduces anxiety.”

At the plea hearing, the district court questioned Ibarra about the contents of the plea petition. The district court asked Ibarra if he understood the rights explained in the petition and Ibarra responded, “Yes.” The district court then went through the trial rights that Ibarra was waiving by pleading guilty, and Ibarra said that he understood those rights. The district court also questioned Ibarra about his hospitalization and prescription medication, and asked Ibarra if he was clear-headed, understood what was going on and what the plea of guilty meant, and wished to plead guilty. Ibarra responded “Yes” to each question. The district court also confirmed with the attorneys and Ibarra that the agreement was for a 117-month, top-of-the-box sentence, with execution stayed, probation, county jail time with credit for time served, and the dismissal of the third- and fifth-degree assault charges.

Ibarra argues that the “descriptions of the plea agreement are vague at best” and did not explain how long he would be on probation, what a stay of execution was, how the stay

could be revoked, and that he would receive a 117-month prison sentence if the stay was revoked. He claims that he challenged the legitimacy of his guilty plea “only after his probation was revoked because that is when he learned that serving a 117-month sentence for violating probation was a consequence of his plea.” He asserts that this establishes his plea was unintelligent. We are not persuaded.

In the affidavit accompanying the petition for postconviction relief, Ibarra acknowledged that before he entered his guilty plea he “was told 15 years’ probation.” Ibarra argues that most of his experience with probation, however, was as a juvenile, and that, while on probation as a juvenile, he committed numerous probation violations and received only minor punishments as consequences for those violations. He claims this led him to believe that his probation would not be revoked after a first violation and expected that he would be given more chances. While this may be true, it is not enough to establish that he lacked the knowledge that his probation could be revoked, particularly since Ibarra had previously experienced a probation revocation. At the evidentiary hearing, Ibarra acknowledged that he was sentenced to probation in 2016 for fleeing a peace officer and that, after he violated the conditions of probation, his sentence was executed and he was sent to jail. *See State v. Wiley*, 420 N.W.2d 234, 237 (Minn. App. 1988) (considering appellant’s plea petition and experience with the criminal justice system when determining whether a plea was intelligent), *rev. denied* (Minn. Apr. 26, 1988).

Moreover, the description of the plea agreement in the signed plea petition states that a consequence of a violation of the conditions of his probation could include a sentence “at the top of the box, 117 months.” This further undermines Ibarra’s assertion that he did

not know that the possible consequences of violating his probation included having to serve 117 months in prison.

On this record, we conclude that the district court did not err in determining that Ibarra was aware of the consequences of his guilty plea and the rights he was waiving by pleading guilty. The guilty plea was therefore intelligent.

Ineffective-Assistance-of-Counsel Claim

Ibarra next argues that his guilty plea was not voluntary because he received ineffective assistance of counsel. “In order for a guilty plea to be valid, it must be made voluntarily.” *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). Ineffective assistance of counsel renders a guilty plea involuntary. *Sames v. State*, 805 N.W.2d 565, 567 (Minn. App. 2011), *rev. denied* (Minn. Dec. 21, 2011). “When an accused is represented by counsel, the voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” *Ecker*, 524 N.W.2d at 718 (quotations omitted).

A two-part standard applies to Ibarra’s claim of ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). First, Ibarra must show that his counsel’s “representation fell below an objective standard of reasonableness.” *Id.* at 687-88. Second, Ibarra must establish that he was prejudiced as a result. *Ecker*, 524 N.W.2d at 718. Prejudice can be shown by demonstrating there is a “reasonable probability that but for the alleged errors of his counsel, he would not have pleaded guilty.” *Id.* (quotation omitted).

Ibarra argues that he received ineffective assistance of counsel because his counsel did not adequately explain the proceedings and consequences of pleading guilty in a way that Ibarra could understand, did not fully advise the district court of Ibarra's mental-health issues, and "did not even discuss [Ibarra's] waiver of the right to an intoxication defense." But as discussed above, the record shows that counsel did explain the rights Ibarra was waiving and the consequences of pleading guilty, which Ibarra confirmed when questioned by the district court during the plea hearing. Ibarra was also questioned by the district court at the plea hearing about his medication and mental health and stated that he was thinking clearly, understood the proceedings, and wished to plead guilty.

The record further indicates that Ibarra's counsel did discuss a potential intoxication defense with Ibarra. When counsel questioned Ibarra to establish a factual basis for the plea, Ibarra stated that he did not have a full recollection of the assault and that he was under the influence of a controlled substance. The following exchange then occurred between the district court and Ibarra:

Q: And then if I could just follow up with—[counsel] had indicated to you—you went through a bunch of different defenses for your case? Correct?

A: Yes.

Q: And you had talked about it at the time that you were taking a controlled substance. Is that correct?

A: Yes.

Q: And did [counsel] explain to you an intoxication defense? Did you go through that?

A: Yes.

Q: Alright. And is it even though you may have that, if you've discussed that, you're waiving your right to present an

intoxication defense and plead[ing] guilty pursuant to this plea agreement? Is that correct?

A: Yes.

Thus, Ibarra confirmed at the plea hearing that counsel did explain and discuss an intoxication defense, and that Ibarra understood that he was waiving the right to present an intoxication defense by pleading guilty.

Finally, Ibarra argues that he received ineffective assistance of counsel because his counsel failed to communicate a plea offer from the prosecutor to plead guilty to first-degree assault and receive an executed sentence of 84 months, a bottom-of-the-box sentence. In general, “counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” *Eason v. State*, 950 N.W.2d 258, 268 (Minn. 2020) (quoting *Missouri v. Frye*, 566 U.S. 134, 145 (2012)). Ibarra argues that if counsel had communicated the offer to serve 84 months, he would have taken it “[i]n a heartbeat.”

We first note that the record contains evidence that Ibarra was aware of the previous plea offer from the state. In July 2018, the district court held a pretrial hearing. At that hearing, the following exchange occurred:

PROSECUTOR: I think I’m also obliged to put in the record that my offer, at least at this point, to—to settle is that [Ibarra] would plea to [first-degree assault], [and] be sentenced to the bottom of the box on that, which is 84 months.

THE COURT: Okay.

PROSECUTOR: Which it sounds like he’s not going to take that. But I think I’m obliged to put that on the record

THE COURT: Okay, And [defense counsel], you went over the—the plea offer so far with—with your client?

DEFENSE COUNSEL: I have, Your Honor.

THE COURT: And it's his decision not to accept and proceed to trial?

DEFENSE COUNSEL: Correct.

Ibarra was present at this hearing. He was not asked to confirm that his counsel had communicated and discussed the plea offer with him, but at the very least he was present when the offer was formally put on the record.

The district court also determined that Ibarra's assertion that he would have accepted the plea offer for a sentence of 84 months in prison was not credible. Ibarra argues that this credibility determination is clearly erroneous. *See Bobo v. State*, 860 N.W.2d 681, 684 (Minn. 2015) (stating that appellate courts review credibility determinations made by the district court during postconviction proceedings "under the clearly erroneous standard"). We disagree.

As the district court noted, counsel ultimately secured a favorable plea agreement that allowed Ibarra to serve probation rather than receiving a presumptive executed prison term. Ibarra made it very clear during both the initial and postconviction proceedings that he was traumatized by his experience while in custody as a juvenile and that, above all else, he wished to avoid prison time. The affidavit accompanying his petition for postconviction relief states that "[d]ue to the traumatic experiences of [his] past as well as the trauma [he] experienced after [his] arrest; [he] would have done just about anything to be released from custody." Ibarra further revealed that when counsel told him about the plea agreement that allowed him to avoid going to prison, "[t]hat settled [his] anxiety."

On this record, we discern no clear error in the district court's finding that Ibarra's assertion that he would have accepted the plea agreement for an 84-month executed

sentence was not credible. Ibarra has therefore failed to establish that but for the allegedly deficient representation there is a reasonable probability that he would not have pleaded guilty. We thus conclude that Ibarra's plea was voluntary.

Because Ibarra's plea was valid, the district court did not abuse its discretion by denying the petition for postconviction relief.

Affirmed.