STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0581

State of Minnesota,
Respondent,

vs.

Mario Patino,
Appellant.

Filed March 7, 2022
Affirmed
Frisch, Judge

Hennepin County District Court
File No. 27-CR-19-19146

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Frisch, Presiding Judge; Gaïtas, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Following his conviction for first-degree assault, appellant argues that the district court erred by denying his motion to withdraw his guilty plea and abused its discretion by sentencing him to 176 months' imprisonment. Appellant makes additional pro se arguments. We affirm.

FACTS

On August 8, 2019, respondent State of Minnesota charged appellant Mario Patino with attempted first-degree murder, pursuant to Minn. Stat. §§ 609.185(a)(1) and 609.17, subd. 4(1) (2018). In April 2020, the state amended the complaint to include two additional charges: committing a crime for the benefit of a gang and second-degree assault with a dangerous weapon, pursuant to Minn. Stat. §§ 609.229, subd. 2, and 609.222, subd. 1 (2018), respectively.

In early October 2020, the state extended an offer to Patino to plead guilty to an amended charge of first-degree assault, pursuant to Minn. Stat. § 609.221, subd. 1 (2018). The offer provided for a sentence in the range of 135 to 189 months, to be determined by the district court at sentencing. Patino expressly stated that he understood the state's offer was that "we would argue for the 130's, they would argue for the 180's." Patino rejected the offer.

The following week, the state extended the same offer to Patino. At an October 16 hearing, Patino initially rejected the offer. The district court then engaged in a lengthy exchange with Patino. During that exchange, the district court described the potential

consequence if Patino were to be convicted by a jury of the multiple charges and the manner in which it would determine sentencing pursuant to the plea agreement. The district court stated that to determine the appropriate sentence, it would rely, at least in part, on the recommendation submitted by probation in the presentence investigation report (the PSI). The district court emphasized that it did not know what sentence the PSI would recommend and stated that the recommendation "might come in at 135 or it might come in at 189 or it might come in saying, No way, Jose. He should do 240. We just don't know." Patino acknowledged that he understood the offer and stated, "[t]hank you for explaining [the plea and sentencing process], your Honor. I think I got a better grasp of the situation now."

Patino thereafter agreed to accept the state's offer. Patino acknowledged that he understood that "[t]he parties will . . . have the opportunity at the time of sentencing to argue a range of 135 to 189 months." Patino signed a plea petition, which provided that the parties agreed to a prison sentence between 135 and 189 months.

At the guilty-plea hearing, Patino again acknowledged that the terms of the agreement provided for a prison sentence between 135 and 189 months. After testifying to the factual basis in support of his guilty plea, the district court accepted the plea and encouraged Patino to be forthright and honest with probation in its preparation of the PSI because the recommendation in the report will "help me decide what to do about your sentencing range, and I understand it's 135 to 189." The district court added that it "can't make any promises" about the length of the sentence that it would impose.

In early December 2020, the parties received the PSI, which included information indicating that Patino was subject to a severe-violent-offender modifier under the

Minnesota Sentencing Guidelines that augmented the presumptive sentencing range upward by 18 months. *See* Minn. Sent. Guidelines 2.G.14 (2019). The PSI therefore showed a presumptive sentencing range of 153 to 207 months—a range different than was set forth in the plea agreement. The PSI recommended that Patino be sentenced to 176 months' imprisonment.

On February 1, 2021, the district court held a sentencing hearing. Notwithstanding the information set forth in the PSI regarding the upward-sentencing modifier, the state asked the district court to honor the plea agreement. The parties argued for sentencing pursuant to the agreed-upon range—the state requested that Patino be sentenced to a term of 189 months and Patino argued for a sentence of 135 months. The district court sentenced Patino to 176 months' imprisonment, stating that "I'm going to follow what the recommendations are in the presentence investigation report, and that's 176 months."

Patino appeals.

DECISION

Patino argues that he is entitled to withdraw his guilty plea or, in the alternative, that the district court abused its discretion by sentencing him to 176 months' imprisonment. Patino asserts additional arguments in a pro se supplemental brief. We address each argument in turn.

I. Patino is not entitled to withdraw his guilty plea.

Patino argues that because the parties were unaware at the time they entered into the plea agreement that an 18-month upward-sentencing modifier applied to his conviction, his guilty plea was unintelligent and the product of a mutual mistake.[1] We disagree.

"A defendant does not have an absolute right to withdraw a guilty plea once it is entered." *State v. Hughes*, 758 N.W.2d 577, 582 (Minn. 2008). But a defendant must be allowed to withdraw the guilty plea at any time if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs when a plea is not constitutionally valid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Id.* The validity of a guilty plea is a question of law that we review de novo. *Id.* "The defendant bears the burden of establishing the facts that support his claim that the guilty plea is invalid." *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017).

"A plea is intelligently made if the defendant understands the charges, understands the rights that are waived by pleading guilty, and understands the consequences of the plea." *Williams v. State*, 760 N.W.2d 8, 15 (Minn. App. 2009) (citing *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007)), *rev. denied* (Minn. Apr. 21, 2009). To be intelligent, the defendant must understand the maximum sentence that they can receive. *State v.*

[1] Patino does not forfeit his manifest-injustice argument by raising it for the first time on appeal. *See Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) (explaining that "[a] defendant is free to simply appeal directly from a judgment of conviction and contend that the record made at the time of the plea was entered is inadequate" to establish that a plea was inaccurate, involuntary, or unintelligent).

Crump, 826 N.W.2d 838, 841-42 (Minn. App. 2013), *rev. denied* (Minn. May 21, 2013). In other words, the defendant must have "knowledge that the sentence actually imposed could be imposed." *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004) (quoting Standards for Crim. Just. 14-2.1(b)(i)(C) (Am. Bar Ass'n 1999)).

Patino's plea was not unintelligent because he fully understood the consequences of his plea and received the benefit of his bargain. Patino was repeatedly advised of, and expressly acknowledged, that the parties agreed to a sentencing range of 135 to 189 months' imprisonment and that they could argue for either end of that range at sentencing. The upward-sentencing modifier set forth in the PSI had no effect on the parties' agreement. The state requested that the district court adhere to the plea agreement; the parties argued within the agreed-upon range at sentencing; the district court considered the parties' respective positions; and the district court imposed a sentence within that range. In other words, Patino understood the material terms of the plea agreement and received the benefit of his bargain; namely, the opportunity to argue for a sentence of 135 months and the imposition of a sentence within the range contemplated by the plea agreement.

Patino argues that "[t]here can be no dispute that the parties here made a material and mutual mistake in identifying the applicable presumptive sentencing range." But our de novo review of the record reveals no evidence showing that Patino entered into the agreement because of this allegedly mistaken assumption or even that he was mistaken about the applicable presumptive sentencing range. To that end, Patino fails to meet his burden to establish that his plea was invalid because of an alleged mutual mistake. *See*

Raleigh, 778 N.W.2d at 94 ("A defendant bears the burden of showing his plea was invalid.").

In any event, the record shows that Patino asked to withdraw his plea for reasons other than the allegedly mistaken assumption. The record reflects that Patino chose to proceed with sentencing even after the PSI and the district court identified the upward-sentencing modifier. Patino stated that he was ready to "go forward" with sentencing "with the box being what we agreed it to be" and knowing that he would be arguing for a sentence outside of the presumptive range. The state then began its sentencing argument. During the argument, the prosecutor referred to Patino as "a known documented gang member" who previously "gave up some people." These statements "incite[d]" Patino, and he exited the courtroom. When Patino returned, he *then* moved to withdraw his guilty plea under the fair-and-just standard of Minn. R. Crim. P. 15.05, subd. 2, asserting that "the misrepresentations . . . about his character" justified withdrawal. The district court found Patino's motion to withdraw "disingenuous" and denied the motion, finding that it would constitute "extreme prejudice to the State."[2]

In addition, Patino understood that the district court would consider the information in the PSI and recommendation from probation in determining the appropriate sentence. The district court expressly informed Patino that the recommendation in the PSI could

[2] We note that the mutual-mistake authorities cited by Patino involve motions by a defendant to withdraw a plea *because* of an alleged mutual mistake. *See State v. DeZeler*, 427 N.W.2d 231, 235 (Minn. 1988); *State v. Benson*, 330 N.W.2d 879, 880 (Minn. 1983); *Hodges v. State*, No. A13-2207, 2014 WL 3558335, at *4 (Minn. App. July 21, 2014), *rev. denied* (Minn. Sept. 24, 2014). These cases are inapposite because the record here does not show that Patino moved to withdraw his plea because of any mistake.

exceed the agreed-upon sentencing range and that the probation officer may recommend a sentence of, for example, 240 months, well in excess of both the agreed-upon range and the presumptive sentence with the 18-month upward enhancement. Patino thanked the district court for explaining the sentencing process, accepted the state's offer, and proceeded to enter his guilty plea. Accordingly, the record shows that before entering his guilty plea, Patino was fully informed that the district court would rely on the recommendation of probation and the PSI could recommend a sentence in excess of the agreed-upon range. Moreover, Patino ultimately received the benefit of his bargain, a sentence within the agreed-upon range.

Finally, Minnesota caselaw confirms that Patino's plea was not unintelligent because he received the benefit of his bargain when he was sentenced within the agreed-upon sentencing range. *See, e.g.*, *State v. Brown*, 606 N.W.2d 670, 675 & n.6 (Minn. 2000) (holding in relevant part that defendant's plea was not unintelligent when the district court later imposed an additional conditional-release term because defendant's total sentence remained less than the maximum sentence contemplated in the plea agreement); *Rhodes*, 675 N.W.2d at 326 ("In situations where the addition of the conditional release term would result in a sentence that exceeded the maximum executed sentence agreed to in the plea bargain, we have held that the addition of the conditional release term violates the plea agreement."); *State v. Jumping Eagle*, 620 N.W.2d 42, 44 (Minn. 2000) (holding that the later imposition of a conditional-release term rendered defendant's plea invalid because the additional sentence exceeded the maximum sentence contemplated by the plea agreement). These authorities suggest that a plea resulting in the imposition of unexpected

consequences is not invalid when those unexpected consequences result in a sentence within the maximum term contemplated by the plea agreement.[3]

Because Patino understood the maximum possible sentence that he could receive under the plea agreement and the district court sentenced him within the agreed-upon range, his plea was not mistaken or unintelligent and no manifest injustice occurred.[4]

II. The district court acted within its discretion by imposing a sentence within the agreed-upon range.

Patino next argues that the district court abused its discretion by imposing a sentence of 176 months' imprisonment. Patino specifically argues that "[a] sentence at the bottom of the presumptive range is warranted due to ample evidence of Patino's remorse, his

---

[3] We also observe that the agreement Patino reached with the state afforded him a significant benefit because he was able to argue for a sentence of 135 months and capped his maximum sentence at 189 months. Had the parties negotiated an agreement including the upward-sentencing modifier, the presumptive range would have increased by 18 months. These circumstances do not indicate manifest injustice to Patino.

[4] Patino alternatively argues that "[i]t is fair and just to afford Patino the opportunity to withdraw his plea for the same reasons Patino argues that his plea was unintelligent: the plea was based on confusion and patent error regarding the presumptive sentencing range." *See* Minn. R. Crim. P. 15.05, subd. 2. However, Patino did not raise this argument to the district court and thus forfeits it. *See State v. Myhre*, 875 N.W.2d 799, 806 (Minn. 2016).

Although Patino argued at sentencing that the "misrepresentations made both about his character but also about the events that led up to these—this case" made it fair and just to allow Patino to withdraw his plea, he did not allege that these "misrepresentations" included the upward-sentencing modifier. Because Patino raises this argument for the first time on appeal, it is forfeited.

We review forfeited issues for plain error. *State v. Epps*, 964 N.W.2d 419, 422 (Minn. 2021). To satisfy the plain-error doctrine, Patino must establish: "(1) an error, (2) that was plain, and (3) that affected his substantial rights." *State v. Zinski*, 927 N.W.2d 272, 275 (Minn. 2019). Here, any error did not affect Patino's substantial rights because he received the benefit of the bargain, and any error benefited rather than harmed him.

acceptance of responsibility, his resolution of the case without trial, and his cooperation with the court and the PSI." We disagree.

District courts have broad discretion in sentencing. *State v. Soto*, 855 N.W.2d 303, 305 (Minn. 2014). "[W]e generally will not interfere with sentences that are within the presumptive sentencing range." *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982). "[A]lthough we have the authority, if the circumstances warrant, to modify a sentence that is within the presumptive sentence range, we generally will not exercise that authority absent compelling circumstances." *Id.*

We review a district court's sentencing decision for an abuse of discretion. *See Soto*, 855 N.W.2d at 307-08. A district 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." *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011).

Here, the district court acted within its discretion by sentencing Patino to 176 months' imprisonment—a sentence that comported with both the parties' agreement and the sentencing guidelines. The district court heard arguments from both parties, declined to adopt either party's recommendation, and instead found that the recommended sentence set forth in the PSI was "a fair sentence." Nothing in the record supports Patino's assertion that the district court abused its discretion by imposing a 176-month sentence, and we therefore see no abuse of discretion by the district court.

III. Patino's pro se arguments are meritless.

Patino summarily asserts four additional issues in a pro se supplemental brief: (1) violation of his speedy-trial rights; (2) erroneous admission of video evidence; (3) erroneous denial of motions to exclude and dismiss; and (4) the failure to consider additional motions to exclude and dismiss.

As to the speedy-trial issue, Patino waived this argument when he pleaded guilty to the charges. *See State v. Ford*, 397 N.W.2d 875, 878 (Minn. 1986) ("A guilty plea by a counseled defendant has traditionally operated, in Minnesota and in other jurisdictions, as a waiver of all non-jurisdictional defects arising prior to the entry of the plea."). As to the remaining issues, Patino does not make any substantive argument or cite to any authorities in support of these arguments. We decline to consider issues that are inadequately briefed. *State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997).

In addition, the record provides no basis to support Patino's arguments. Patino bears the burden of providing an adequate record. *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995). The record must be "sufficient to show the alleged errors and all matters necessary for consideration of the questions presented." *Truesdale v. Friedman*, 127 N.W.2d 277, 279 (Minn. 1964). If the record is not sufficient to support review, the appeal may be dismissed. *Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968). "When an appellant acts as attorney pro se, appellate courts are disposed to disregard defects in the brief, but that does not relieve appellants of the necessity of providing an adequate record and preserving it in a way that will permit review." *Thorp Loan & Thrift*

Co. v. Morse, 451 N.W.2d 361, 363 (Minn. App. 1990), *rev. denied* (Minn. Apr. 13, 1990). Because the record contains no information regarding these claims, we are unable to assess them.

Affirmed.