

*This opinion is nonprecedential except as provided by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
A21-0803**

State of Minnesota,
Respondent,

vs.

Ryan Timothy Kellen,
Appellant.

**Filed June 6, 2022
Reversed and remanded; motion granted
Bryan, Judge**

Stearns County District Court
File No. 73-CR-20-376

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

Janelle P. Kendall, Stearns County Attorney, Carl Ole Tvedten, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

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

Considered and decided by Wheelock, Presiding Judge; Jesson, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal, appellant seeks to vacate his convictions, arguing that his guilty pleas were unintelligent, involuntary, the product of mutual mistake by the parties, the result of ineffective assistance of plea counsel, and the result of ineffective assistance of

sentencing counsel. We conclude that appellant's guilty pleas were invalid because appellant entered into the plea agreement on the condition that he could request a downward dispositional departure. Because such departures are prohibited by statute, we vacate the convictions to correct a manifest injustice and remand for further proceedings.

FACTS

On January 14, 2020, respondent State of Minnesota charged appellant Ryan Timothy Kellen with two counts of domestic assault and five counts of first-degree assault of a peace officer. Kellen and the state reached an agreement prior to trial. According to the written plea agreement, Kellen would plead guilty to one count of domestic assault and two counts of first-degree assault of a peace officer. The parties assumed that Kellen could request a downward dispositional departure. To that end, the plea petition noted that Kellen intended "to argue for a durational or dispositional departure," and that the court could "stay up to 146 months (top of the box)" if it granted Kellen's dispositional departure request. In addition, the petition stated that Kellen's sentences would run concurrently "regardless of commit or probationary term." The state agreed to dismiss the remaining counts.

During the plea hearing, Kellen acknowledged the rights he was giving up, and the parties again acknowledged that Kellen would argue for a departure. The district court explained that Kellen's anticipated departure motion would be considered, but that there was no guarantee that the district court would grant the request. Kellen provided the factual basis for one count of domestic assault. Kellen also entered *Norgaard* pleas to two counts

of first-degree assault of a police officer.¹ The district court entered convictions and dismissed the remaining counts. Kellen’s counsel then requested a furlough for Kellen to attend chemical dependency treatment “in support of the fact that we are motioning for a dispositional departure.” The district court denied the furlough request.²

At sentencing, Kellen requested a downward dispositional departure, or in the alternative, a continuance to allow him to participate in treatment. The state opposed the motion, and the district court denied the departure request. The district court concluded that Kellen was not particularly amenable to probation based on the applicable factors set forth in *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). The district court sentenced Kellen to concurrent 120-month and 132-month terms of imprisonment for the first-degree assault convictions and a concurrent sentence of one year and a day for the domestic-assault conviction. The district court stayed execution of the prison sentences for five years.

At no point prior to or during the sentencing hearing did the parties or the district court acknowledge that Minnesota law prohibits dispositional departures when a person is convicted of assaulting a police officer. Minn. Stat. § 609.221, subd. 2(b) (2018) (a person convicted of assaulting a peace officer under subdivision 2(a), “is not eligible for probation,

¹ A defendant enters a *Norgaard* plea if unable to admit facts due to memory loss, but agrees there is sufficient evidence for conviction. *State v. Ecker*, 524 N.W.2d 712, 716-17 (Minn. 1994) (citing *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871 (1961)).

² Before sentencing, Kellen moved to withdraw his pleas. Kellen also obtained new counsel who filed a separate motion to withdraw his pleas. In these requests, Kellen argued that the decision to deny his furlough request effectively removed any opportunity he might have to succeed in his departure motion. The district court denied the withdrawal requests, determining that being held pending sentencing did not prevent Kellen from seeking a departure. On appeal, Kellen argues that his new counsel provided ineffective assistance, but Kellen does not appeal the denial of his presentence requests to withdraw his pleas.

parole, discharge, work release, or supervised release, until that person has served the full term of imprisonment as provided by law”). Kellen appeals.

DECISION

Kellen argues that he is entitled to withdraw his guilty pleas because the pleas were unintelligent, involuntary, the product of mutual mistake, and the result of ineffective assistance of counsel.³ We agree that Kellen did not enter intelligent pleas and conclude that he is entitled to withdraw his pleas to prevent a manifest injustice. Given this conclusion, we need not address Kellen’s alternative arguments.

“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). However, 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.

³ On appeal, Kellen moved to strike portions of the state’s brief and the state’s addendum that relate to defendants in other cases receiving “dispositional or durational departures despite the statutory language.” “The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.” Minn. R. Civ. App. P. 110.01. “Appellate courts may not consider matters outside the record on appeal and will strike references to such matters from the parties’ briefs.” *Stageberg v. Stageberg*, 695 N.W.2d 609, 613 (Minn. App. 2005), *rev. denied* (Minn. July 19, 2005). Because the state relies on evidence outside the record on appeal, we grant Kellen’s motion to strike the identified portions of the state’s brief and addendum.

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) (citation omitted). We determine whether a manifest injustice occurred due to an unintelligent plea by considering what knowledge and understanding the defendant had at the time of the plea. *Id.*; *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)). “‘Consequences’ refers to a plea’s direct consequences.” *Raleigh*, 778 N.W.2d at 96. Direct consequences are those “which flow definitely, immediately, and automatically from the guilty plea—the maximum sentence and any fine to be imposed.” *Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998).

In this case, at the time that he entered into the plea agreement, Kellen was unaware of the statutory prohibition on dispositional departures when a person is convicted of assaulting a police officer. *See* Minn. Stat. § 609.221, subd. 2(b). While he acknowledged that his request for probation was not guaranteed, he did not know that such departures were prohibited. Instead, he pleaded guilty on the condition that he would have the opportunity to request probation. Because Kellen did not understand that the district court could not legally grant this request, he was unaware of a direct consequence of his plea agreement. His guilty pleas were, therefore, unintelligent and invalid. We vacate the conviction and remand for further proceedings.

Reversed and remanded; motion granted.