

*This opinion is nonprecedential except as provided by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
A21-0977**

State of Minnesota,
Respondent,

vs.

Andrew Thomas Cocherell,
Appellant.

**Filed April 4, 2022
Affirmed
Larkin, Judge**

Anoka County District Court
File No. 02-CR-20-6028

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Worke, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this appeal, appellant contends that the district court must allow him to either withdraw his guilty plea to felony violation of a domestic-abuse no-contact order or

resentence him in accordance with the underlying plea agreement. Because the plea agreement was conditional and appellant violated its conditions, we affirm.

FACTS

Respondent State of Minnesota charged appellant Andrew Thomas Cocherell with felony violation of a domestic-abuse no-contact order (DANCO). In October 2020, Cocherell appeared before the district court with his attorney, who informed the district court that the parties had reached a plea agreement. Defense counsel described the plea agreement as follows:

Mr. Cocherell will plead guilty to the sole count in [this file]. [A case from a different file] will be dismissed at sentencing. Mr. Cocherell will complete a [presentence investigation report (PSI)], return for sentencing. Defense can argue for a departure at sentencing. The State agrees to a cap at the low end of the box, which we believe will be 23 months. Restitution open until sentencing. The Court will accept the plea today. Mr. Cocherell will be released pending sentencing back on [Intensive Domestic Assault Pretrial Program (IDAPP)] and will remain law-abiding. That is the extent of our agreement, Your Honor.

The prosecutor and Cocherell told the district court that defense counsel had accurately described the plea agreement.

Cocherell's petition to plead guilty explained the plea agreement in similar terms:

Plead guilty to sole count, dismiss [a case from another file], PSI, return for sentencing, defense can argue for departure, State agrees to cap at low end of the box—anticipated at 23 months, restitution open until sentencing, Court accepts plea today, release pending sentencing, back on IDAPP, remain law abiding.

Before Cocherell entered his plea, the parties discussed the anticipated sentence. The prosecutor was “fairly confident” that a 23-month sentence was at the low end of the presumptive-sentence range based on Cocherell’s criminal-history score. The district court warned Cocherell that if he pleaded guilty and the low end of the presumptive range turned out to be more than 23 months, he would not be able to withdraw his plea. The district court received Cocherell’s petition to plead guilty and accepted his guilty plea at the hearing. Subsequently, the district court received a sentencing worksheet indicating that the low end of the presumptive-sentence range was 23 months, as the parties had anticipated.

Shortly after the plea hearing, Cocherell was discharged from IDAPP for failing to abide by GPS monitoring expectations. A warrant issued for his arrest, and he was arrested on the warrant in Anoka County. Cocherell was later transferred to another county on a different warrant for a new felony DANCO violation, which allegedly had occurred in November 2020. Cocherell was furloughed from custody to participate in chemical-dependency treatment, where he completed intensive outpatient treatment and transitioned to an extended-care program. As a result of those developments, the sentencing hearing in the underlying case was continued twice.

The parties appeared for sentencing in May 2021. Cocherell had been discharged from chemical-dependency treatment a few days earlier for insulting staff. And a warrant had been issued for Cocherell’s arrest because he did not return to jail after being discharged from treatment while on furlough status. The district court continued the

sentencing hearing until later that day, so Cocherell could turn himself in and be processed on the arrest warrant.

When the sentencing hearing resumed, Cocherell moved for a downward dispositional departure. The district court denied that motion. In denying the motion, the district court noted that, after pleading guilty, Cocherell failed to cooperate with the PSI, violated the IDAPP rules, was charged with a new felony DANCO violation in a different county, tested positive for methamphetamine twice, and was discharged from an extended-care program. The district court entered judgment of conviction and sentenced Cocherell to 27 months' imprisonment, the middle of the presumptive-sentence range. Because that sentence differed from the sentence the parties had agreed to, the prosecutor asked the district court about the terms of the plea agreement:

PROSECUTOR: Your Honor, I think when we reached the plea agreement, the State did agree that if it was a commit, we would do the low end of 23 months. I understand that he may not have complied, so that might be the Court's basis for doing the middle of the box.

THE COURT: That is the Court's basis for that, but thank you.

Cocherell appeals.

DECISION

Cocherell contends that his 27-month prison sentence was inconsistent with the parties' plea agreement. He asks this court to remand the case for the district court to either allow him to withdraw his guilty plea or to impose the 23-month prison sentence contemplated under the plea agreement.

“At any time 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.” Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists if a guilty plea is not 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.* Whether a plea is valid is a question of law that we review de novo. *Id.*

The voluntariness requirement ensures that a defendant is not pleading guilty due to improper pressure or inducements. *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). The voluntariness of a plea is called into question when the defendant pleads guilty based on an agreement with the state and the state breaches that agreement. *See id.*

When a plea is entered, the district court must either “reject or accept the plea of guilty on the terms of the plea agreement.” Minn. R. Crim. P. 15.04, subd. 3(2). “If the court rejects the plea agreement, it must advise the parties in open court and then call upon the defendant to either affirm or withdraw the plea.” *Id.* If a plea agreement has been breached, “the court may allow withdrawal of the plea, order specific performance, or alter the sentence if appropriate.” *Brown*, 606 N.W.2d at 674.

Cocherell argues that the district court rejected the parties’ plea agreement when it imposed a 27-month prison sentence, instead of the 23-month sentence mentioned in the plea agreement. The state counters that Cocherell has waived that issue by failing to request plea withdrawal in the district court.

A defendant may appeal directly from a judgment of conviction and argue that his guilty plea is invalid based on the record. *Brown v. State*, 449 N.W.2d 180, 182 (Minn.

1989). This court has considered a defendant's argument that he should be allowed to withdraw his guilty plea because his sentence violated a plea agreement, even though the defendant did not raise that argument in the district court or petition for postconviction relief. *State v. Montez*, 899 N.W.2d 200, 203 n.2 (Minn. App. 2017). We therefore consider the merits of Cocherell's argument.

When the state makes an "unqualified promise" regarding the sentence to be imposed, the defendant must be allowed to withdraw his guilty plea if that promise is not fulfilled. *State v. Kunshier*, 410 N.W.2d 377, 379 (Minn. App. 1987), *rev. denied* (Minn. Oct. 21, 1987). But if a plea agreement includes conditions and the defendant does not abide by those conditions, then the district court is not required to sentence in accordance with the agreement and the defendant is not entitled to withdraw his guilty plea. *Montez*, 899 N.W.2d at 204. Thus, the crux of the issue here is whether the parties' plea agreement was conditional or unconditional.

Cocherell contends that the plea agreement was conditioned only on the low end of the presumptive-sentence range being 23 months. The state, on the other hand, contends that the plea agreement was conditioned on Cocherell remaining law abiding and complying with IDAPP. The state argues that Cocherell breached the plea agreement by being charged with a new DANCO violation and by violating the IDAPP rules relating to GPS monitoring.

When determining whether a plea agreement was violated, "courts look to what the parties to the plea bargain reasonably understood to be the terms of the agreement." *Brown*, 606 N.W.2d at 674 (quotation omitted). What the parties agreed to is an issue of fact, but

the interpretation of a plea agreement is an issue of law that we review de novo. *Id.* The parties do not address whether the issue here is one of fact or law and thus, whether our review is for clear error or de novo. *See State v. Robledo-Kinney*, 615 N.W.2d 25, 32 (Minn. 2000) (stating that we review a district court’s findings of fact regarding plea agreements for clear error). But we need not resolve that issue because, for the reasons that follow, the record supports a conclusion that the state did not breach the plea agreement under either standard.

First, the record shows that both parties referenced—in the context of the terms of the plea agreement—the requirements that Cocherell remain law abiding and comply with IDAPP. For example, Cocherell’s petition to plead guilty described the terms of the plea agreement as follows: “release pending sentencing, back on IDAPP, remain law abiding.” In addition, when explaining the terms of the plea agreement to the district court, defense counsel said, “Mr. Cocherell will be released pending sentencing back on IDAPP and will remain law-abiding. That is the extent of our agreement, Your Honor.” Those statements indicate that the plea agreement was conditioned on Cocherell remaining law abiding and complying with IDAPP.

Second, the parties’ responses to the district court’s questions at the plea hearing regarding release conditions indicate that the plea agreement was conditional.

THE COURT: Okay. And I just wanted -- I wanted to verify, Counsel, was there any agreement regarding release conditions at all contingent upon this plea?

....

DEFENSE COUNSEL: Just that he would be released back on IDAPP.

THE COURT: Okay. So on -- to cover both files?

DEFENSE COUNSEL: Yes, Your Honor.

PROSECUTOR: Yeah. I think right now it's just an unconditional amount on the DANCO violation, but the intent is on both files that he be RPR'd on to IDAPP.

THE COURT: Okay.

PROSECUTOR: With the standard straight plea language that he has to abide by that, remain law-abiding; otherwise, it's essentially the straight plea.

The district court's question regarding whether there was "any agreement regarding release conditions . . . contingent upon this plea," suggests that Cocherell's release was conditioned on his entry of a guilty plea. However, the state's response that Cocherell would be released back on IDAPP "[w]ith the standard straight plea language that he has to abide by that" and "remain law-abiding" suggests that the plea agreement was conditioned on compliance with conditions of release.

Third, defense counsel—who negotiated the plea agreement and presented it to the district court—did not object when the state informed the district court that a "straight plea" would result if Cocherell did not comply with IDAPP or remain law abiding. And defense counsel did not object when the district court sentenced Cocherell to 27 months in prison, instead of 23 months. That failure to object suggests that the parties understood that remaining law abiding and complying with IDAPP were conditions of the plea agreement. *Cf. State v. Rhodes*, 675 N.W.2d 323, 327 (Minn. 2004) (concluding that defendant's failure to object to state's request for a conditional-release term at sentencing implied that defendant understood that a conditional-release term would be added to the sentence in his plea agreement).

Lastly, when the prosecutor asked the district court to clarify why it had not sentenced Cocherell to 23 months, the district court responded that it was because Cocherell had not “complied.” It is undisputed that Cocherell had not complied with his release conditions. Thus, the district court’s explanation for its departure from the plea agreement indicates that the district court also understood that compliance with release conditions was a condition of the agreement.

Cocherell notes that, “in close cases, plea agreements should be construed to favor defendants.” *In re Ashman*, 608 N.W.2d 853, 858 (Minn. 2000). Although an express statement that a plea agreement is conditional is the best practice, the relevant standard of review allows for imperfect language. Again, when determining whether a plea agreement was violated, we “look to what the parties to the plea bargain reasonably understood to be the terms of the agreement.” *Brown*, 606 N.W.2d at 674 (quotation omitted).

In this case, Cocherell did not pursue a postconviction hearing to further develop the record regarding the parties’ understanding of the plea agreement. Thus, our review and decision is limited to the record of the district court proceedings. And that record as a whole satisfies us that the parties—as well as the district court—reasonably understood the plea agreement to be conditioned on Cocherell remaining law abiding and complying with IDAPP. Because Cocherell did not satisfy those conditions, the district court’s imposition of a presumptive sentence of 27 months did not deprive him of a promised sentence under the plea agreement. We therefore affirm.

Affirmed.