**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A21-1643**

State of Minnesota,
Respondent,

vs.

Adrian Dominque Bell,
Appellant.

**Filed September 12, 2022**
**Reversed and remanded**
**Kirk, Judge**[*]

Washington County District Court
File No. 82-CR-20-2652

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

Kevin M. Magnuson, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Kirk, Judge.

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

## NONPRECEDENTIAL OPINION

**KIRK**, Judge

In this direct appeal from the judgment of conviction for first-degree assault, appellant argues that he must be permitted to withdraw his guilty plea because the record does not establish that the plea was voluntary and intelligent. We reverse and remand.

## FACTS

This matter involves appellant Adrian Dominique Bell's plea of guilty to one count of first-degree assault under Minn. Stat. § 609.221, subd. 2(a) (2018). According to the criminal complaint—in June 2020—while Bell was an inmate at the Minnesota Correctional Facility in Stillwater serving a sentence for attempted first-degree murder, Bell stabbed a correctional officer (CO) with a self-made weapon (referred to as a "shank" or "shiv") in the lower right torso and also struck the CO multiple times. Bell was subsequently charged with first-degree assault. Because Bell committed the assault against a "correctional employee," this offense carried a minimum sentence of at least ten years. *Id.*, subd. 2(b) (2018).

A hearing originally scheduled as a pretrial hearing was held electronically via Zoom in May 2021. At the hearing, Bell indicated his desire to plead guilty. Bell's attorney explained that he "went through [Bell's] rights" with him and stated Bell was pleading guilty "despite [his] advice" to the contrary. Bell's attorney indicated that he had advised Bell that (1) the sentence would be presumptively consecutive to his existing attempted-murder sentence, and (2) there would be a mandatory minimum sentence of 120 months. Bell's attorney noted that he therefore advised Bell that the only "viable option" for getting

a lower sentence would be "for him to have a trial where [he] would make a motion for a lesser-included offense." The district court added, "Mr. Bell, I'm not going to talk you out of it, but, you know, [your attorney] has given you very good advice here . . . . [T]he only way you could mitigate your outcomes here is to have a trial and convince a jury of that. But that's up to you." Despite this advice, Bell indicated that he wanted to plead guilty, and he did so.

The district court then asked Bell's attorney to "go over [Bell's] constitutional rights." Bell's attorney inquired into the following facts and issues:

- "I read to you that you [would] be committed to the prison for not less than ten years but not more than 20" by pleading guilty;
- "I told you under the Minnesota Sentencing Guidelines grid and under the statute, you would not be facing a mandatory minimum of 120 months, if we were successful at trial in getting a jury to find you guilty of either Assault II or Assault III, but not Assault I";
- "I advised you not to plead guilty today";
- "The only mechanism that I legally saw viable for us to get you out from under that 120-month mandatory minimum was a jury trial, or a court trial, with a lesser included";
- "Your scheduled release date had been extended because of this offense"; and
- "I've now shown you a couple of times surveillance video from the prison . . . . You raised some concern, or you said out of the video that you received that you didn't believe that was you [in the video] . . . . But you also indicated that you did, in fact, admit that you had a shiv, or a self-made weapon, and you did, in fact, attack a prison guard."

Bell acknowledged and agreed to all these statements. He also indicated that he had agreed to allow his attorney to electronically sign a plea petition for him and that he had decided to plead guilty "freely and voluntarily" despite his attorney's advice to the contrary. These

were all of the rights inquired into during Bell's plea colloquy. Bell's attorney indicated that he would file a written plea petition after the hearing, but no such petition was ever submitted.

Bell then provided a factual basis for the plea, agreeing that in June 2020 he had assaulted with a shiv a CO who was performing his duties as a CO. He acknowledged that a reasonable person would have understood that doing so would create "a substantial risk of death or great bodily harm." The court accepted this factual basis, deferred acceptance of Bell's guilty plea, ordered a pre-sentence investigation, and scheduled a sentencing hearing. Bell was ultimately convicted and sentenced to the mandatory ten-year minimum sentence. This appeal follows.

**DECISION**

On appeal, Bell argues that the record fails to establish that his guilty plea was intelligent and voluntary and that he must therefore be permitted to withdraw his plea. A defendant has no absolute right to withdraw a guilty plea after sentencing. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But withdrawal must be permitted if "necessary to correct a manifest injustice." *Id.* at 94 (quotation omitted). "A manifest injustice exists if a guilty plea is not valid. To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Id.* We review the validity of a guilty plea de novo. *Id.* "The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea." *Id.* at 96.

In support of his argument, Bell relies on Minn. R. Crim. P. 15.01, which sets forth rights which must be inquired into prior to acceptance of a guilty plea. Specifically, rule

15.01 states that "[b]efore the judge accepts a guilty plea, the defendant must be sworn and questioned by the judge with the assistance of counsel as to [certain rights]." Minn. R. Crim. P. 15.01, subd. 1. Citing this requirement, Bell points to the district court's failure to inquire into (1) whether Bell "was satisfied that defense counsel was fully informed of the case or that defense counsel was representing his interests," *see id.*, subd. 1(4)(b); (2) whether Bell "was being threatened by another person or given promises to induce a guilty plea," *see id.*, subd. 1(4)(c); (3) whether Bell "was under the influence of drugs or intoxicating liquor, whether he suffers from a mental disability, or whether he is undergoing medical or psychiatric treatment." *See id.*, subd. 1(5); and (4) whether Bell understood his various trial rights, such as the right to a jury trial, presumption of innocence, the beyond-a-reasonable-doubt requirement, and the right to question and present witnesses, *see id.*, subd. 1(6). Looking at the transcript of Bell's plea, it is clear that none of these rights were mentioned during Bell's colloquy, even in passing.

Bell acknowledges that "failure to interrogate a defendant as set forth in rule 15.01 or to fully inform him of all constitutional rights does not invalidate a guilty plea." *State v. Doughman*, 340 N.W.2d 348, 351 (Minn. App. 1983), *rev. denied* (Minn. Mar. 15, 1984). Rather, "[w]hat is important is not the order or the wording of the questions, but whether the record is adequate to establish that the plea was intelligently and voluntarily given." *Id.* For example, in *Doughman*, we determined that the plea colloquy was "substantial, if not precisely that prescribed by [rule] 15.01," where the state explicitly questioned the defendant regarding the trial rights Bell identifies here, including the right to a jury trial,

the right to call and examine witnesses, and the presumption of innocence. *Id.* Thus, the failure to "precisely" follow rule 15.01 was not fatal. *Id.* at 351-53.

Conversely, there was no such questioning here. Although Bell's attorney placed special emphasis on Bell's decision to plead guilty despite the mandatory minimum sentence and against his counsel's advice, he was still required to undergo the usual rule 15.01 inquiry into the intelligence of the plea itself. Such an inquiry simply did not happen, as evidenced by the transcript of Bell's colloquy.

The state correctly notes that a defendant's prior criminal history, including a history of prior guilty pleas, can supplement the record on this issue. *See id.* at 353 ("[A]ppellant's criminal history makes it unlikely that he was unaware of the consequences of a guilty plea."); *see also State v. Wiley*, 420 N.W.2d 234, 237 (Minn. App. 1988) ("[W]ith five criminal history points, [the defendant] has had extensive exposure to the criminal justice system, a factor which may be considered in determining whether a guilty plea is knowing and intelligent."), *rev. denied* (Minn. Apr. 26, 1988). However, as in *Doughman*, in *Wiley* there was substantial other information in the record which supported a finding of intelligence. 420 N.W.2d at 237-38. In *Wiley*, in addition to the defendant's prior criminal history, the defendant submitted numerous "pre-plea submissions to the court" which were found to "reveal a knowledge of many of the rights subject to rule 15.01." *Id.* at 237. In *Doughman*, as noted above, the defendant was asked "substantial" questions regarding his various constitutional rights which largely tracked the requirements of rule 15.01. 340 N.W.2d at 351.

The record here is comparatively bereft of information relating to Bell's understanding of his constitutional rights. While it is true that Bell affirmed that he went over a plea petition with his attorney, it is unknown what that petition contained and whether it actually informed Bell of the relevant rights or whether it was—like his plea colloquy—deficient. And while it is true that Bell has a prior criminal history, the state cites to no caselaw indicating that prior criminal history *alone* is sufficient to create a presumption that the defendant understands his constitutional rights. *See id.*; *Wiley*, 420 N.W.2d at 235. Here, the only evidence in the record suggesting that Bell understood the rights contained in rule 15.01 are (1) his prior criminal history and (2) the plea petition he went over with his attorney, the contents of which are unknown. The amount of relevant evidence in both *Doughman* and *Wiley* was far more substantial, and the state cites to no case in which a plea was found to be intelligent with this little evidence. The state is correct in arguing that, "had the petition been filed, as counsel said it would be, the record would be clearer," but the petition was not filed.

In sum, despite the state's arguments to the contrary, the record, including Bell's clearly deficient plea colloquy, fails to establish that Bell understood the rights he was waiving as a result of his guilty plea.[1] Therefore, withdrawal of Bell's guilty plea is necessary to avoid a manifest injustice, *Raleigh*, 778 N.W.2d at 94, and we reverse and remand to the district court for Bell to be allowed to do so. Should Bell persist in his desire to withdraw his guilty plea, the district court will not be limited by the ten-year sentence

[1] Because we reverse and remand on this ground, we need not reach Bell's argument that his guilty plea was not voluntary.

imposed in 2021. If he is eventually convicted of assault in the first degree, he will face a presumptive consecutive sentence of ten to 20 years' confinement.

**Reversed and remanded.**