STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1917

Guy Israel Greene, a/k/a Ozhawaaskoo Giishig, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 20, 2011
Affirmed
Connolly, Judge

Anoka County District Court
File No. 02-K6-89-14122

Guy I. Greene, Moose Lake, Minnesota (pro se appellant)

Lori A. Swanson, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Robert D. Goodell, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Toussaint, Presiding Judge; Connolly, Judge; and Harten, Judge.*

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

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges the denial of his petition to withdraw his guilty plea, arguing that the petition was not untimely, the plea was not intelligent, and the district court abused its discretion in denying him an evidentiary hearing. Because we see no error of law in the determinations that appellant's petition was untimely and that his plea was intelligent and no abuse of discretion in the denial of a hearing, we affirm.

FACTS

In March 1990, appellant Guy Israel Greene, aka Ozhawaaskoo Giishig[1] pleaded guilty to second-degree criminal sexual conduct. In May 1990, he was sentenced to 44 months in prison.

In June 2005, the office of the Anoka County Public Defender declined to represent appellant in an attempt to withdraw his guilty plea. Acting pro se, appellant filed a motion to withdraw on the ground of manifest injustice. The district court denied his motion on procedural grounds.

In December 2005, Sherburne County petitioned to have appellant committed as a sexually dangerous person (SDP).[2] *In re Commitment of Giishig*, No. A07-0616 (Minn. App. Sept. 11, 2007), *review denied* (Minn. Nov. 13, 2007) affirmed appellant's commitment as a sexually dangerous person.

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[1] Appellant's legal name was changed to Guy Israel Greene on June 28, 2010.

[2] The county also petitioned to commit him as a sexual psychopathic personality, but this petition was dropped at the hearing.

In March 2006, appellant filed a second motion to withdraw his guilty plea. The district court ordered that the motion be forwarded to the public defender for further review for representation, and, if representation was denied, that appellant resubmit his motion with a waiver of his right to counsel. In November 2007, appellant resubmitted the motion but did not file a waiver of the right to counsel. In October 2008, he refiled the motion and also filed a waiver of counsel and requested leave to proceed pro se. The district court granted appellant permission to proceed pro se, ordered him to file a memorandum explaining the grounds for his motion for plea withdrawal, and said a hearing would be scheduled when the memorandum had been received.

In April 2009, appellant filed his memorandum. He asked the district court judge to recuse himself in May 2010, and, in August 2010, the district court judge did so. In September 2010, another district court judge issued an order summarily denying appellant's motion to withdraw his guilty plea.

Appellant challenges that order, arguing that the district court both erred in denying appellant's motion to withdraw his guilty plea as untimely and as not intelligent and abused its discretion in denying appellant an evidentiary hearing.[3]

[3] Appellant also discusses ineffective assistance of counsel, mental illness, sufficiency of the evidence, and the ex post facto clause in relation to his case. But the district court did not address any of these issues in its order, and the record reflects that they were not presented to the district court. Therefore, they are not properly before this court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

D E C I S I O N

The district court analyzed this matter as a petition to withdraw a guilty plea rather than a petition for postconviction relief. This court will reverse a district court's denial of a motion to withdraw a guilty plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

I. The district court did not err in denying the petition to withdraw the guilty plea as untimely.

"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. Such a motion is not barred solely because it is made after sentencing." Minn. R. Crim. P. 15.05, subd. 1. The district court here concluded that appellant's 2005 motion to withdraw his 1990 guilty plea was not "a timely motion."

"Timely" is not defined, but motions to withdraw filed far less than 15 years after a plea have been held untimely. *See, e.g.*, *Doughman v. State*, 351 N.W.2d 671, 675 (Minn. App. 1984) (22 months); *State v. Gray*, 300 Minn. 504, 217 N.W.2d 737 (1974) (more than two years); *Smith v. State*, 596 N.W.2d 661 (Minn. App. 1999) (five-and-a-half years). Appellant provides no support for his view that a motion to withdraw a guilty plea filed 15 years after the plea was entered is "a timely motion."

The district court did not abuse its discretion by denying as untimely appellant's motion to withdraw his guilty plea.

II. The district court did not err in denying the petition to withdraw the guilty plea as not intelligent.

A guilty plea must be accurate, voluntary, and intelligent; without any one of these three, the plea is a manifest injustice. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). Appellant argues that his plea was not intelligent because he did not realize that civil commitment could be a consequence of the plea. But in 1990, when appellant pleaded guilty, the possibility of his civil commitment 15 years later in 2005 would have been far too remote to be considered a consequence of his plea. Sex offenders were civilly committed only after the line of cases begun by *In re Linehan*, 518 N.W.2d 609 (Minn. 1994) (*Linehan I)* and its progeny, *see, e.g.*, *In re Linehan*, 557 N.W.2d 171 (Minn. 1996) (*Linehan III*) *vacated and remanded on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd as modified* 594 N.W.2d 867 (Minn. 1999); *In re Linehan*, 594 N.W.2d 867 (Minn. 1999) (*Linehan IV*), established the constitutionality of civil commitment. Appellant's attorney in 1990 would have had no obligation to inform him of the then-remote possibility of eventual civil commitment as a consequence of pleading guilty.[4]

[4] Because the consequence of civil commitment was remote in 1990, we do not address whether it was a collateral or a direct consequence. In the context of deportation consequences of pleading guilty, *Alanis v. State*, 583 N.W.2d 573 (Minn. 1998) (holding that, because the risk of deportation was a collateral, not a direct, consequence, of a guilty plea, effective assistance of counsel did not require informing a defendant of that risk prior to accepting a guilty plea) was recently overruled by *Padilla v. Kentucky*, 559 U.S. ___,___, 130 S. Ct. 1473, 1486 (2010) (holding that counsel in a criminal matter has an affirmative duty to inform a defendant of whether a guilty plea carries a risk of deportation). *Campos v. State*, ___ N.W.2d ___, ___, 2011 WL 1833091 *3 (Minn. App. May 16, 2011). "In *Padilla*, the United State Supreme Court noted that it had never applied a distinction between direct and collateral consequences to define the scope of

In any event, civil commitment is not a punitive consequence. "[T]here is nothing in the criminal plea bargain to suggest the individual will not later be subject to civil commitment proceedings." *In re Blodgett*, 490 N.W.2d 638, 647 (Minn. App. 1992), *aff'd* 510 N.W.2d 910 (Minn. 1994).

The district court did not abuse its discretion by denying appellant's motion to withdraw his guilty plea on the basis that the plea was not intelligent.

III. The district court did not err in not holding an evidentiary hearing.

A district court has the discretion to deny an evidentiary hearing on a motion to withdraw a guilty plea when a hearing is unnecessary. *Saliterman v. State*, 443 N.W.2d 841, 843 (Minn. App. 1989), *review denied* (Minn. Oct. 13, 1989).

Appellant argues that, "[b]ecause the district court did not have a hearing on the matter, appellant was not given an opportunity to be heard at a meaningful time and in a meaningful manner." The district court concluded that appellant was not entitled to an evidentiary hearing because he placed no material facts in dispute and did not establish either a basis for withdrawing his guilty plea or that a manifest injustice would result if the plea were not withdrawn. *See* Minn. Stat. § 590.04, subd. 1 (2010) (requiring district court to set a hearing on a postconviction petition "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief"); *Berg v. State*, 403 N.W.2d 316, 318 (Minn. App. 1987) (holding that a postconviction evidentiary hearing is required only when the pleadings place material facts in dispute,

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constitutionally effective assistance of counsel under *Strickland [v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984)]." *Id.*

i.e., when the petitioner alleges facts that, if proved, would entitle him to postconviction relief) *review denied* (Minn. May 18, 1987).

Appellant does not indicate any facts that, if proved, would entitle him to withdraw his guilty plea, and the lapse of 15 years between the plea and the petition for its withdrawal show that he is not entitled to relief. The district court did not abuse its discretion in denying him an evidentiary hearing.

Affirmed.