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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-661**

Chuck Thomas Considine,  
petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed November 14, 2011  
Affirmed  
Harten, Judge\***

Isanti County District Court  
File No. 30-CR-09-665

David W. Merchant, Chief Appellate Public Defender, Ngoc Lan Nguyen, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

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

Jeffrey R. Edblad, Isanti County Attorney, Stacy A. St. George, Assistant County  
Attorney, Cambridge, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Harten,  
Judge.

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

## UNPUBLISHED OPINION

**HARTEN**, Judge

Appellant challenges the denial of his postconviction petition to withdraw his guilty plea. Because we see no abuse of discretion in the denial, we affirm.

### FACTS

In March 2010, appellant Chuck Considine pleaded guilty by entering *Alford* pleas to amended charges of first- and second-degree criminal sexual conduct resulting from an incident in November 2005 and to a charge of terroristic threats resulting from an incident in July 2009. The plea agreement provided for concurrent sentences and dismissal of all remaining associated charges from those two incidents and from a June 2004 incident. The district court sentenced appellant to the guideline sentences of 156 months for each of the criminal sexual conduct offenses and to 21 months for the terroristic threats, all concurrent.

The district court summarily denied appellant's postconviction petition for withdrawal of his guilty plea. He challenges the denial, arguing that the guilty plea was not knowing and intelligent because he was misinformed by his attorneys. Appellant does not challenge the failure to hold a hearing on his petition.

### DECISION

A summary denial of a postconviction petition is reviewed for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). The decisions of a postconviction court will not be disturbed unless the court abused its discretion. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). Similarly, the district court's determination

on permitting the withdrawal of a guilty plea will not be disturbed unless the district court abused its discretion. *Barragan v. State*, 583 N571, 572 (Minn. 1998).

Withdrawal of a guilty plea is allowed to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if the plea is not accurate, voluntary, and intelligent. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). The defendant has the burden of proving that a plea was invalid. *Id.* The district court dismissed appellant's petition without a hearing because he "failed to make a factual showing that he [was] entitled to relief."

In the affidavit supporting his petition, appellant said his attorneys informed him that "[he] had a minimal chance of success at trial and [he] should take the state's plea offer and plead guilty" and that "the [district] court denied [the attorneys'] request for a continuance and there was a time constraint to properly investigate and subpoena the documents and witnesses necessary for trial."

Both assertions are contradicted by the record. As appellant clearly acknowledged during the plea hearing, the state's witnesses were likely to convince a jury that appellant was guilty of the three crimes with which he was charged. Thus, appellant effectively conceded that he had only "a minimal chance of success at trial" and, by pleading guilty, he eliminated several other charges.

The transcript of the hearing on appellant's request for a continuance shows that the continuance was requested because of "recently disclosed information regarding [possible testimony of] a potential jailhouse snitch on [appellant's] matter" and that the district court denied the continuance because appellant's case "is a significant case and

it's [in] everybody's best interest if we . . . get it going." But the district court also ordered that, if the state chose to call the newly discovered witness, he would not be called until 17 days later, thus giving appellant's attorneys "the full opportunity to investigate [criminal history and reputation evidence], should they choose to do so."

The district court did not abuse its discretion in concluding that appellant had not presented any factual basis for relief and properly dismissed his petition.

**Affirmed.**

Dated: 3 November 2011

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/s/  
James C. Harten, Judge