STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0321

Larry Dean Nagel, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 20, 2012
Affirmed
Worke, Judge

Douglas County District Court
File No. 21-CR-08-3404

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

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

Chad M. Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Hooten, Judge.

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

WORKE, Judge

Appellant argues that the district court abused its discretion by denying his postconviction request to withdraw his guilty plea to third-degree criminal sexual conduct. We affirm.

D E C I S I O N

Appellant Larry Dean Nagel argues that the district court abused its discretion in denying his petition for postconviction relief. We review a district court's decision to deny postconviction relief for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). Generally, the "scope of review is limited to the question of whether sufficient evidence exists to support the postconviction court's findings." *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). When considering a district court's denial of postconviction relief, we review issues of law de novo and findings of fact for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

Appellant asserts that the district court should have allowed him to withdraw his August 13, 2009 guilty plea to third-degree criminal sexual conduct. The district court's denial of a motion to withdraw a guilty plea will be reversed "only in the rare case" in which the reviewing court can conclude that the district court abused its discretion. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010)(quotation omitted).

A defendant does not have an absolute right to withdraw a guilty plea. *Perkins*, 559 N.W.2d at 685. But a defendant may withdraw a guilty plea when it is "necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists if a guilty plea is invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A guilty plea is valid if it is voluntary, accurate, and intelligent. *Perkins*, 559 N.W.2d at 688. A voluntary plea is made without improper pressure or inducement; a plea is intelligent when the defendant understands the charges, his legal rights, and the consequences of pleading guilty. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). Whether a plea is

voluntary is determined by "considering all of the relevant circumstances surrounding it." *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994).

Appellant claims that his plea was involuntary because his attorney pressured him into pleading guilty by telling him that he "did not have a fighting chance on an acquittal." But the record shows that appellant's plea was valid. First, the only support for appellant's claim that his plea was coerced is his self-serving affidavit. *See Davis v. State*, 784 N.W.2d 387, 391 (Minn. 2010) (stating that allegations in a postconviction petition must be more than argumentative assertions without factual support).

Second, appellant asserts that his attorney told him to remain quiet during the court proceedings and to take the plea "because it is already over." He further asserts that he requested to withdraw his plea prior to sentencing, but his attorney refused to present a letter that appellant prepared to the court, telling him that the district court would not allow him to withdraw his guilty plea. But the district court specifically addressed appellant and offered appellant several opportunities to voice his questions and concerns. When appellant pleaded guilty, the district court asked appellant if that was how he wanted his case to be handled. Appellant replied, "Yes, Your Honor, I would." After pleading guilty, appellant testified that he understood his trial rights and the state's burden of proving him guilty beyond a reasonable doubt; that nobody threatened him or induced him to plead guilty; that he reviewed the information provided by the state; and that he had enough time to discuss the case with his attorney. Prior to sentencing, the district court asked appellant if he wanted to say anything. Appellant replied, "No, Your

Honor." And after sentencing, the district court asked appellant if he had any questions. Again, appellant stated that he did not have any questions.

Third, appellant asserts that he did not want to plead guilty but he did so because he was hopeless and scared. But by the time he pleaded guilty, appellant was 25 years old. His criminal history dates back to 1997 when he was adjudicated delinquent at least three times. As an adult, appellant is familiar with the criminal justice system, having been convicted several times of offenses such as robbery, terroristic threats, second-degree burglary, criminal damage to property, and violation of a harassment restraining order. Noteworthy, is an additional conviction for contempt of court—breach of the peace for interrupting a judicial proceeding, which was appellant's first appearance for the current offense. Appellant was not fearful to express himself at an earlier proceeding; thus, his claim that he was scared is contradicted by the record. Appellant was familiar with the system and his claim of feeling hopeless and scared is not credible.

Fourth, even if appellant's attorney told him that he had no chance of an acquittal, this is not necessarily coercion, but rather, a realistic assessment of appellant's case. Appellant was charged with third-degree criminal sexual conduct. A person who engages in sexual penetration with another person is guilty of third-degree criminal sexual conduct when the victim is at least 13 but less than 16 years of age and the actor is more than 24 months older. Minn. Stat. § 609.344, subd. 1(b) (2008). When he pleaded guilty, appellant admitted that he sexually penetrated K.L. when she was 15 years old and he was at least 22 years old; that he fathered K.L.'s child, who was conceived in 2007 when K.L. was 15 years old; and that he knew in 2007 that K.L. was 15 years old. On August

9, 2008, K.L. gave birth to appellant's child. Appellant seems to rely heavily on his belief that the contact was consensual. However, consent by the victim is not a defense. *See id.* Thus, appellant's attorney informing him that he did not have a chance of an acquittal is not an unreasonable statement.

Finally, appellant asserts that his attorney failed to present a victim-impact statement. It is unclear how this failure coerced appellant into pleading guilty. Furthermore, the record shows that K.L.'s statement would not have benefited appellant. K.L.'s mother prepared a statement dated September 24, 2009, in which she indicated that appellant's sentence may be too harsh. However, K.L.'s mother prepared a second statement dated May 11, 2010, in which she withdrew her initial statement. She claimed that K.L. felt badly for appellant until he sent K.L. hurtful letters. This second statement was received prior to appellant's sentencing. Therefore, appellant's assertion that his plea was coerced because his attorney failed to present a victim-impact statement to the district court makes little sense.

The record shows that appellant's guilty plea is valid; therefore, the district court did not abuse its discretion in denying appellant's petition for postconviction relief.

Affirmed.