STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1185

Brock Lawrence Altringer, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed March 17, 2014
Affirmed
Kirk, Judge

Crow Wing County District Court
File No. 18-CR-08-7035

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

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

Donald F. Ryan, Crow Wing County Attorney, David Hermerding, Assistant County Attorney, Brainerd, Minnesota (for respondent)

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

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

KIRK, Judge

In this appeal from the district court's denial of his petition for postconviction relief, appellant argues that his guilty plea was involuntary. We affirm.

FACTS

In August 2009, appellant Brock Lawrence Altringer pleaded guilty to second-degree possession of a controlled substance as part of a plea agreement. The charge arose from a November 2008 incident where police stopped a vehicle that appellant was driving and found methamphetamine after searching the car. The district court accepted appellant's guilty plea and sentenced him, in accordance with the plea agreement, to 105 months in prison, but stayed execution of the sentence and placed him on probation.

In February 2012, the district court held a probation-violation hearing and found that appellant violated the terms of his probation when he failed to remain law-abiding. The district court revoked appellant's probation and executed the sentence that it had imposed in August 2009.

Appellant filed a petition for postconviction relief in May 2013. He argued that he involuntarily pleaded guilty because his attorney told him that if he was acquitted at trial, the other counties that he drove through during the alleged incident could prosecute him. The district court denied appellant's petition, finding that appellant pleaded guilty on his own accord, voluntarily waived his constitutional rights, and pleaded guilty to accept an offer from the state. The district court concluded that appellant "failed to show with reasonable probability that but for the erroneous advice he allegedly received, he would not have pleaded guilty. [Appellant] admitted his guilt and wanted to take advantage of the [s]tate's offer to depart from the sentencing guidelines." This appeal follows.

D E C I S I O N

Appellant challenges the district court's denial of his postconviction petition, arguing that his guilty plea was not voluntary. This court reviews a district court's ultimate 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). However, we review issues of law de novo. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). Because the validity of a guilty plea is a question of law, we apply de novo review. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

A defendant may withdraw a guilty plea at any time, even after sentencing, if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs 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. The requirement that a guilty plea be made voluntarily "insures the defendant is not pleading guilty because of improper pressures." *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). Whether or not 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 contends that his guilty plea was involuntary because his attorney inaccurately advised him that if he was acquitted of the current charge, the other counties that he drove through could prosecute him. *See State v. Hanson*, 543 N.W.2d 84, 86 (Minn.

1996) ("The Double Jeopardy Clauses of the United States Constitution and the Minnesota Constitution protect a criminal defendant from three distinct abuses: a second prosecution of the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense."). Appellant argues that he decided to plead guilty so that he did not have to endure multiple prosecutions.

We are unpersuaded by appellant's argument. While we agree that the advice appellant contends that his attorney provided was inaccurate, sufficient evidence in the record supports the district court's finding that appellant's guilty plea was voluntary. The transcript of the plea hearing reveals that appellant's counsel thoroughly reviewed with appellant the rights he was giving up by pleading guilty, and appellant signed a plea petition on the record. Appellant's counsel and the prosecutor both questioned appellant about his decision to accept the plea agreement that included a 105-month stayed sentence rather than the alternative offer of a 39-month executed sentence. In response to that questioning, appellant indicated that he was accepting the stayed sentence because he believed he could be successful on probation. Appellant's counsel also noted on the record that the plea agreement included an agreement that Beltrami County would not charge appellant "with regard to controlled substances for the time period which is prior to this." It is unclear from the record when that incident occurred, but appellant's counsel's wording implies that the incident occurred prior to the November 2008 offense to which appellant was pleading guilty. Further, the only evidence that appellant presented to support his argument that his attorney gave him inaccurate advice was his own affidavit; he did not submit an affidavit from his attorney or any other evidence to support his assertions.

Finally, in a pro se supplemental brief, appellant explains that he believed he could be prosecuted in all of the counties he drove through in November 2008. He asserts that he did not realize he could not be prosecuted more than once for the offense until he spoke to his attorney for this appeal. This is essentially the same argument that appellant's counsel makes in his brief on appeal and, as previously discussed, sufficient evidence supports the district court's finding that appellant's plea was voluntary. To the extent that appellant makes an ineffective assistance of counsel argument, we reject that argument because he has not established that he would not have accepted the plea agreement if he knew that he could not be prosecuted in other counties for the same offense. *See Ecker*, 524 N.W.2d at 718 (stating that to establish ineffective assistance of counsel a defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" (quotation omitted)).

Appellant also argues that police officers illegally attached a GPS tracker to his vehicle. However, we decline to consider this issue because it was not raised to and decided by the district court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

Accordingly, we conclude that the district court did not abuse its discretion by denying appellant's motion for postconviction relief.

Affirmed.