STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0478

Shawn Canada, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed November 18, 2013
Affirmed
Chutich, Judge

Olmsted County District Court
File No. 55-CR-10-3516

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

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney, Rochester, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Hudson, Judge; and Chutich, Judge.

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

CHUTICH, Judge

Appellant Shawn Canada challenges the district court's denial of his petition for postconviction relief, arguing that he should be allowed to withdraw his plea because of

manifest injustice. Because Canada's guilty plea to third-degree criminal sexual conduct was accurate, voluntary, and intelligent, we affirm.

FACTS

In January 2010, appellant Shawn Canada invited S.E.A. to his apartment and had sex with her. Canada knew that S.E.A. was mentally impaired.

Canada pleaded guilty to third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(d) (2008).[1] The parties agreed that if Canada were found to be amenable to probation, he would receive a downward departure. If he were not found to be amenable to probation, Canada could still argue for a downward departure, but the state could oppose the departure.

The presentence investigation reported that Canada's presumptive sentence was 62 months' imprisonment and stated that Canada "would not be amenable to supervision in the community." Canada argued at the sentencing hearing for a downward dispositional departure, which the state opposed. The district court, finding no substantial and compelling reasons to depart, imposed the presumptive sentence of 62 months' imprisonment and ten years of conditional release.

On November 19, 2012, Canada petitioned for postconviction relief, seeking withdrawal of his guilty plea on the grounds that it was involuntarily and unknowingly entered because of his "mental capacity issues." The district court found Canada's

[1] Canada also pleaded guilty to felony domestic abuse arising from an unrelated incident. On appeal, Canada does not contest his plea to felony domestic abuse.

petition to be "completely without merit" and concluded that he was not entitled to relief. This appeal followed.

D E C I S I O N

Canada asserts that his plea should be withdrawn because a manifest injustice occurred. "A defendant does not have an absolute right to withdraw a valid guilty plea." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Under subdivision 1 of Minnesota Rule of Criminal Procedure 15.05, the district court must grant the defendant's request to withdraw his guilty plea at any time "upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice."

We review de novo whether a petitioner is entitled to withdraw his guilty plea because withdrawal is necessary to avoid a manifest injustice. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "A manifest injustice exists if a guilty plea is not valid. To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent. . . . Assessing the validity of a plea presents a question of law that we review de novo." *Id.* (internal citations omitted). We defer to the postconviction court's findings of fact and will not reverse them unless they are clearly erroneous. *Shoen v. State*, 648 N.W.2d 228, 231 (Minn. 2002). "A petitioner for postconviction relief has the burden of establishing the facts alleged in the petition by a fair preponderance of the evidence." *Id.*

Canada argues that his guilty plea was not intelligent because he has a low IQ and "only a tenth grade education" and he did not understand the legal process or the possible sentence he was facing. He also asserts that his lack of understanding about the legal process, the consequences of pleading guilty, and the sentencing guidelines "eliminated

the voluntary aspect of [his] plea." Canada submitted his own affidavit in support of his argument, which states that he was coerced into pleading guilty, he is a vulnerable adult, and he believes his IQ is in the range of 57–65. He does not contest the accuracy of his plea.

"A plea is intelligently made if the defendant understands the charges, understands the rights that are waived by pleading guilty, and understands the consequences of the plea." *Williams v. State*, 760 N.W.2d 8, 15 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009). "The voluntariness requirement helps insure that the defendant does not plead guilty because of any improper pressures or inducements." *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989).

The record shows that Canada intelligently and voluntarily pleaded guilty. Canada was represented by counsel throughout the plea hearing and sentencing hearing. The plea petition, which Canada discussed with his attorney and signed, acknowledges the consequences of pleading guilty and the terms of the plea agreement. At the plea hearing, Canada told the district court that his attorney explained to him his rights, the charges, the terms of the plea agreement, and the consequences of pleading guilty and that he had enough time to discuss these issues with his attorney. Canada's attorney explained to him the registration requirement for predatory offenders and the conditional-release term. The district court went over with Canada each of the rights he was waiving by pleading guilty.

Similarly, nothing in the record demonstrates that Canada was coerced or pressured into pleading guilty. Canada testified at the plea hearing that he freely and

voluntarily decided to give up his rights and plead guilty and that no one had threatened, coerced, or forced him to give up his rights.

Canada has failed to establish that his plea is invalid. He submitted no evidence other than his own affidavit that states he is a vulnerable adult and has an IQ in the range of 57–65. Canada's presentence investigation and psychosexual evaluation do not discuss him as being a vulnerable adult or the possibility that Canada lacks understanding of the proceedings or legal system. At the sentencing hearing, Canada's attorney made no mention of Canada's lack of understanding. Canada also spoke at the hearing without bringing up any of these issues that he claims resulted in an invalid plea. His allegations lack factual support and are refuted by the record. *See Williams*, 760 N.W.2d at 14–15 (affirming postconviction court's denial of petition to withdraw plea where defendant submitted no factual proof and her plea petition countered her claims that her plea was not voluntary or intelligent).

Canada appears to also argue that his competency should be evaluated. But because he did not raise this issue in the district court, it is deemed waived. *See Azure v. State*, 700 N.W.2d 443, 447 (Minn. 2005) ("It is well settled that a party may not raise issues for the first time on appeal from denial of postconviction relief." (internal quotation omitted)). Nonetheless, nothing in the record suggests that Canada did not understand the proceedings, was unable to consult with his attorney, or was unable to participate in his own defense. *See* Minn. R. Crim. P. 20.01.

In his supplemental pro se brief, Canada alleges that he was denied effective assistance of counsel. Canada did not raise his ineffective-assistance-of-counsel claim in

the district court. Accordingly, this argument is not properly before this court, and we do not consider it. *See Azure*, 700 N.W.2d at 447.

Affirmed.