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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0081**

Christopher Hesselbach, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 5, 2008
Affirmed
Lansing, Judge**

Scott County District Court
File No. K-99-02458

John Stuart, State Public Defender, Richard Schmitz, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Special Assistant County Attorney, Scott County Justice Center, 200 West Fourth Street, Shakopee, MN 55379 (for respondent)

Considered and decided by Ross, Presiding Judge; Lansing, Judge; and Crippen, Judge.*

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

UNPUBLISHED OPINION

LANSING, Judge

The district court denied Christopher Hesselbach's postconviction petition for plea withdrawal or sentence modification and Hesselbach appeals. Because the district court acted within its discretion when it determined that Hesselbach's negotiated guilty plea in exchange for a mandatory minimum sentence of thirty-six months was intelligently made and not invalidated by the imposition, at sentencing, of a ten-year conditional-release term, we affirm.

FACTS

Christopher Hesselbach pleaded guilty to one count of third-degree criminal sexual conduct in May 2000 for engaging in sexual penetration with a 15-year-old girl. Following Hesselbach's initial denial of sexual contact, the trial was continued to obtain a paternity test for the baby born after the alleged incident. The district court ordered blood testing and, following the submission of blood samples, Hesselbach entered a guilty plea.

The district court consolidated Hesselbach's plea and sentencing hearings, and Hesselbach waived a presentence investigation. A notation at the bottom of Hesselbach's plea petition stated: "Plea Ct. I 36 Mo. Mand. Min. under 609.344 1.B/ credit time served." At the hearing Hesselbach's attorney asked if Hesselbach understood that he would receive the thirty-six month mandatory minimum sentence and Hesselbach said that he did. He also acknowledged that the "entirety of the plea negotiation" was the thirty-six month mandatory minimum, the waiver of the presentence investigation, credit for time served, and the right to review any restitution order. Hesselbach also

acknowledged that he had a “prior offense of first degree criminal sexual conduct occurring in Hennepin County in August of 1990.”

After accepting Hesselbach’s plea, the judge told him that he would be “committed to the Commissioner of Corrections for a period of 36 months” and that, barring behavioral violations, twelve of the thirty-six months would be served on supervised release rather than in a prison facility. The judge further told Hesselbach that “[p]ursuant to Minnesota Statutes 609.101 subdivision 7 you will also be on conditional release for a period of 10 years, less any time that you serve successfully on supervised release.” *See* Minn. Stat. § 609.109, subd. 7 (1998) (mandating ten-year conditional-release period for person who has previously been convicted for first-degree criminal sexual conduct). Neither Hesselbach nor his attorney objected to these terms at the hearing. The district court’s judgment, which was entered the same day, documented the sentencing terms that included the ten-year conditional-release term.

More than six years after the sentencing hearing, Hesselbach petitioned for postconviction relief. In an affidavit submitted with his petition, Hesselbach contends that his plea was not intelligent because he was unaware that his sentence would include ten years of conditional release. According to the affidavit, Hesselbach is now in prison following a violation of this conditional release. Hesselbach stated that he heard about the conditional-release period for the first time at his sentencing hearing and that, when he asked his attorney what conditional release meant, his attorney told him that “conditional release is like probation or time over [your] head, and as long as [you] did not commit another sex offense, [you have] nothing to worry about.”

The district court denied Hesselbach's petition for postconviction relief without a hearing, and this appeal follows.

DECISION

A petitioner seeking a postconviction remedy has the burden of establishing, by a fair preponderance of the evidence, facts that warrant relief. Minn. Stat. § 590.04, subd. 3 (2006). Denial of a petition without a hearing is appropriate if the record conclusively shows that the petitioner is not entitled to relief. Minn. Stat. § 590.04, subd. 1 (2006). We review the denial of a postconviction petition under an abuse-of-discretion standard. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005).

Once a guilty plea has been entered, a defendant does not have an absolute right to withdraw it. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A defendant may withdraw a guilty plea if withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists when a defendant can show that a guilty plea was not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). A guilty plea is intelligent only if the criminal defendant is aware of the direct consequences of the plea. *Alanis*, 583 N.W.2d at 577. For purposes of our analysis, we accept that a conditional-release term is a direct consequence of pleading guilty. *State v. Henthorne*, 637 N.W.2d 852, 856 (Minn. App. 2002) (accepting conditional-release term as direct consequence of guilty plea), *review denied* (Minn. Mar. 27, 2002).

Hesselbach's argument that his guilty plea was not intelligent relies on the supreme court's holding in *State v. Rhodes*, 675 N.W.2d 323 (Minn. 2004). In *Rhodes*,

the supreme court held that the defendant's plea was intelligent when the defendant failed to object to the addition of a mandatory conditional-release term at sentencing. *Id.* at 324. The supreme court's decision in *Rhodes* was based on two factors.

First, the defendant had constructive notice at the time of his plea that the conditional-release term would be part of his sentence. *See id.* at 327 (discussing applicable statutes and caselaw). Because the conditional-release term for sex offenders was mandatory under Minnesota caselaw and statutes, the defendant was put on notice that the conditional-release term would be a part of his sentence. *Id.*

Second, the circumstances in *Rhodes* permitted an inference that the defendant had actual notice of the conditional-release term at the time of his plea. *Id.* Because the defendant failed to object to the presentence investigation recommending conditional release, the state's request for conditional release, and the district court's imposition of conditional release, the district court could infer that the defendant "understood from the beginning that the conditional release term would be a mandatory addition to his plea bargain." *Id.* Thus, the district court in *Rhodes* did not abuse its discretion when it concluded that the defendant's plea was intelligently made. *Id.*

As in *Rhodes*, the circumstances of this case provide support for both notice factors. The record demonstrates that Hesselbach had constructive notice and also permits an inference that he had actual notice of the conditional-release term.

First, because Hesselbach pleaded guilty to third-degree criminal sexual conduct and had previously been convicted of first-degree criminal sexual conduct, Minnesota statutes and caselaw make the conditional-release term mandatory. *See Minn. Stat.*

§ 609.109, subd. 7 (1998); *State v. Humes*, 581 N.W.2d 317, 319-20 (Minn. 1998). Thus, he had constructive notice of the conditional-release term.

Second, Hesselbach's failure to object to the imposition of the conditional-release term permitted the district court to infer that Hesselbach had actual notice that he would receive a conditional-release term when he pleaded guilty. Hesselbach argues that this inference cannot be made because—unlike in *Rhodes*—there was no presentence investigation and the state did not request conditional release. He also suggests that he did not object because his attorney misled him about the nature of conditional release. His attorney apparently led him to believe that “conditional release is like probation or time over [his] head, and as long as [he] did not commit another sex offense, [he] had nothing to worry about.” This advice, however, was not so inaccurate that it would explain the failure to object to the conditional-release term.

Although the basis for inferring actual notice from the failure to object is not as strong as in *Rhodes*, the terms of Hesselbach's plea agreement provide a substantially stronger basis for an inference of actual notice. The plea agreement in *Rhodes* provided for “a maximum executed sentence of 105 months.” 675 N.W.2d at 325. The conditional-release term extended beyond the maximum-sentence agreement. *Id.* At Hesselbach's sentencing hearing, his attorney stated that the agreement was for the “36 month mandatory minimum pursuant to Minnesota Statutes.” Hesselbach agreed to and received the minimum sentence permitted by law, and, unlike the facts in *Rhodes*, the conditional-release term does not exceed the maximum agreed-to sentence. Although his attorney did not expressly state that Hesselbach would be placed on conditional release,

the attorney did acknowledge that the sentence would be pursuant to Minnesota statutes. Those statutes include the mandatory conditional-release term provided in Minn. Stat. § 609.109, subd. 7. Thus, Hesselbach's statement of the plea agreement provides an even stronger basis for concluding that he was aware of the conditional-release term and that his sentence complied with the plea agreement.

The district court could therefore properly conclude that Hesselbach's plea was accurate, voluntary, and intelligent. Accordingly, we conclude that the district court properly exercised its discretion when it denied Hesselbach's petition for postconviction relief without a hearing.

Affirmed.