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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1464**

Russel John Martinez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 12, 2008
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. K4-02-2998

Lawrence Hammerling, Chief Appellate Public Defender, Cathryn Middlebrook,
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(for appellant)

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

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County
Attorney, 50 Kellogg Boulevard West, Suite 315, St. Paul, MN 55102 (for respondent)

Considered and decided by Peterson, Presiding Judge; Kalitowski, Judge; and
Halbrooks, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's order denying his postconviction motion seeking to void a five-year conditional-release term that he argues was not part of his plea agreement. Alternatively, appellant asks this court to modify his conditional-release term. Because the postconviction court did not abuse its discretion, we affirm.

FACTS

Appellant Russel John Martinez was charged in Ramsey County with first-degree refusal to submit to chemical testing in violation of Minn. Stat. § 169A.20, subd. 2 (2002). The sentence for violating that statute includes a mandatory five-year conditional-release term. Minn. Stat. § 169A.276, subd. 1(d) (2002). Appellant pleaded guilty on the record on September 26, 2002; at the plea hearing, appellant's counsel noted that he had discussed the five-year conditional-release term with appellant before he made his plea. Appellant's counsel told the district court that "it would be [appellant's] intent to object to the imposition of the conditional release period because it—it may be a violation of Minnesota, U.S. Constitution." The court noted appellant had "preserved [his] right to object," and appellant also preserved his right to withdraw his guilty plea if his sentencing hearing resulted in a presumptive commitment.

Before the sentencing hearing, the Ramsey County Community Corrections Department prepared a pre-sentence investigation report (PSI) to aid the district court. The PSI indicated that Minn. Stat. § 169A.276, subd. 1(d), provided for a conditional-release period of five years. When appellant's counsel was asked if he and appellant had

reviewed the PSI prior to the sentencing hearing, he stated that he had reviewed it and that appellant had “no additions or corrections.” But appellant again objected to the imposition of the five-year conditional-release term and argued that imposition of the conditional-release term would result in a sentence that exceeded the statutory maximum in violation of *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000). The district court sentenced appellant to 48 months and imposed the five-year conditional-release term as required by Minn. Stat. § 169A.276, subd. 1(d). The district court stayed execution of the sentence and placed appellant on probation for seven years.

On November 13, 2003, appellant, having already admitted to violations of his probation, asked the district court to execute his sentence. The district court granted his request and imposed the 48-month commitment and the five-year conditional-release term, giving appellant credit for 352 days. Appellant again objected to the conditional-release term and indicated that he intended to appeal the issue. Appellant subsequently petitioned pro se for postconviction relief on the grounds that the conditional-release term was not included in his plea agreement and that the conditional-release term was not sufficiently discussed at either the plea or sentencing hearings. Because he claimed that he was not aware of the consequences of his plea, appellant asked the postconviction court to allow him to withdraw the guilty plea. The postconviction court denied appellant’s petition. This appeal follows.

D E C I S I O N

“A petition for postconviction relief is a collateral attack on a judgment which carries a presumption of regularity and which, therefore, cannot be lightly set aside.”

Pederson v. State, 649 N.W.2d 161, 163 (Minn. 2002). On a postconviction petition, the petitioner has the burden of establishing, by a fair preponderance of the evidence, facts which warrant relief. *State v. Warren*, 592 N.W.2d 440, 449 (Minn. 1999). We review the record to determine whether there are sufficient facts to sustain the postconviction court's findings and will not disturb these findings absent an abuse of discretion. *Id.* at 449-50. An evidentiary hearing is not required if the petition and record "conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2006).

A reviewing court will reverse a postconviction court's determination of whether to permit withdrawal of a guilty plea only if the postconviction court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). A postconviction court does not abuse its discretion if the record contains sufficient evidence to sustain the district court's findings. *State v. Rainer*, 502 N.W.2d 784, 787 (Minn. 1993).

A defendant has the right to withdraw a guilty plea after sentencing if the defendant makes a timely petition and demonstrates that "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. If a guilty plea is not "accurate, voluntary, and intelligent (i.e., knowingly and understandingly made)," a manifest injustice occurs and the plea may be withdrawn. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). A plea is intelligent when the defendant understands the charges, his or her rights, and the consequences of pleading guilty. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A plea is considered voluntary if it is not made in response to improper pressures, inducements, or promises. *Id.*

Appellant now asserts that he was unaware of the five-year conditional-release term and the consequences of his guilty plea and contends that *State v. Wukawitz*, 662 N.W.2d 517 (Minn. 2003), and *State v. Jumping Eagle*, 620 N.W.2d 42 (Minn. 2000), support his claim. Appellant contends that his plea agreement involved a maximum sentence that did not include the five-year conditional-release term which, under *Jumping Eagle* and *Wukawitz*, would limit the maximum length of his total sentence and exclude the conditional-release term. These cases are factually distinguishable. In *Jumping Eagle*, the mandatory conditional-release term was not mentioned at sentencing and was not imposed until five years after sentencing. 620 N.W.2d at 43. In *Wukawitz*, the conditional-release term also was not discussed at the plea or sentencing hearings and was added two years after the defendant pleaded guilty. 662 N.W.2d at 520. In both cases, the Minnesota Supreme Court determined that imposition of the conditional-release term violated the plea agreement because the defendants had already received the maximum sentence agreed to under the plea agreement plus a term of conditional release. *Wukawitz*, 662 N.W.2d at 526; *Jumping Eagle*, 620 N.W.2d at 44-45.

Here, both the charging document and the PSI indicated that a five-year conditional-release term applied to the sentence. In addition, appellant's counsel advised the district court at the plea hearing that he and appellant had discussed the term and that appellant understood its implications. At the sentencing hearing, the state asked the district court to impose the mandatory conditional-release term, and the district court did so on the record. While appellant objected to the imposition of the term, it was not based on any lack of understanding of the consequences of his plea agreement. Appellant

agreed on the record to the presumptive guideline sentence that included the mandatory five-year conditional-release term he received. *Wukawitz* and *Jumping Eagle* do not support appellant's claim that we should modify his sentence because imposition of the conditional-release term would exceed the maximum sentence contained in his plea agreement. Appellant's claim that his plea was not made knowingly, intelligently, and voluntarily is unsupported by the record. Therefore, the postconviction court acted within its discretion by denying appellant's request to withdraw his guilty plea.

Affirmed.