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**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-2123**

Justin Dean Jones, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 10, 2008**
**Affirmed**
**Larkin, Judge**

Roseau County District Court
File No. KX-02-757

Lawrence Hammerling, Chief Appellate Public Defender, Ngoc Nguyen, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Lori Swanson, Attorney General, Peter R. Marker, Assistant Attorney General, 445 Minnesota Street, Bremer Tower, Suite 1800, St. Paul, MN 55101; and

Lisa Hanson, Roseau County Attorney, Roseau County Courthouse, 606 Fifth Avenue S.W., Room 10, Roseau, MN 56751 (for respondent)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larkin, Judge.

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

**LARKIN,** Judge

Appellant challenges the district court's order summarily denying his postconviction petition, which requested withdrawal of appellant's guilty plea. He argues that because his plea was neither voluntary nor intelligent, the district court abused its discretion by not allowing appellant to withdraw his plea. Appellant also challenges the district court's order denying his motion for correction of sentence, which requested modification of the Minnesota Offense Code designation on appellant's Criminal Judgment and Warrant of Commitment. He argues that because the Minnesota Offense Code designation does not reflect the crime to which appellant pleaded guilty, the district court erred in refusing to change the designation. We affirm.

## FACTS

Appellant Justin Jones was indicted for the murder of M.P., a 15-month-old child, who died in Roseau County, Minnesota in July 2002. There were three counts to the indictment:

1. Count I, first-degree felony murder under Minn. Stat. §§ 609.185(2) (cause death during criminal sexual conduct), 609.342, subd. 1(a) (first degree criminal sexual conduct with complainant under 13 years of age), 609.343, subd. 1(a) (second degree criminal sexual conduct with complainant under 13 years of age), 609.05 (2000) (aiding and abetting);

2. Count II, second-degree murder under Minn. Stat. §§ 609.19 subd. 1(1) (causes death with intent but without premeditation), 609.05 (2000); and

3. Count III, second-degree felony murder under Minn. Stat. §§ 609.19, subd. 2(1) (causes death without intent but while committing a felony with force), 609.221 subd. 1 (assault with great bodily harm), 609.05 (2000).

In May 2004, appellant pleaded guilty to Count II, pursuant to an *Alford*[1] plea. At the time of his plea appellant was 16 years old. During the plea hearing, appellant testified under oath as follows: (1) he had sufficient time to discuss the case with his attorneys and parents; (2) he was satisfied that his attorneys represented his interests and fully advised him; (3) nobody, including his parents and attorneys, pressured him into pleading guilty or threatened him to plead guilty; and (4) nobody made any promises to him in exchange for his guilty plea, except those contained in the plea agreement. Appellant was told by the prosecutor that he was pleading guilty to a serious crime and that he would go to prison for a long time. After review of all of appellant's rights and options, the prosecutor and the judge each asked appellant whether he still wanted to plead guilty. Appellant responded that he did. Appellant testified that he wished to plead guilty in order to avoid the risk that he would be convicted of first-degree murder.

At the plea hearing, respondent made an offer of proof that included a transcript of the grand jury testimony of J.J. J.J. testified that she was present with M.P., appellant, and appellant's co-defendant at the time of the crime. J.J. heard appellant's co-defendant make a statement that suggested his intent to have sex with M.P. Immediately after appellant's co-defendant made the statement, the co-defendant and appellant took M.P. upstairs, and J.J. heard M.P. screaming. The offer of proof also included an autopsy report outlining the extent of M.P.'s injuries. Appellant answered questions regarding the facts of the case and affirmed that M.P.'s injuries included a tear in her vaginal area, a ruptured stomach wall, and internal bruising and bleeding. Based upon the offer of proof

[1] *North Carolina v. Alford*, 400 U.S. 25 (1970).

and appellant's testimony, the district court found there was a sufficient factual basis to accept appellant's plea.

After considering appellant's departure motion, the district court sentenced appellant. The sentence was recorded on a Criminal Judgment and Warrant of Commitment (CJWC), which listed appellant's Minnesota Offense Code (MOC) designation as "H2105." The MOC describes the offense by using a series of letters and numbers. *State v. Verdon*, 727 N.W.2d 418, 419 (Minn. App. 2007). Appellant and respondent agree that a portion of appellant's MOC characterizes appellant's offense as committing a second-degree murder "while committing a sex offense" with an "unknown weapon."

Appellant filed a postconviction petition with the district court requesting to withdraw his plea. Appellant also moved the district court to modify the MOC on his CJWC. The district court denied appellant's petition and motion. This appeal followed.

**D E C I S I O N**

Appellant argues that the district court abused its discretion by denying his request to withdraw his plea. Appellant argues his plea was neither knowing nor voluntary because his age at the time of his plea prevented him from understanding the legal process and rendered him susceptible to undue pressure and fear. This court reviews the decision of a postconviction court under an abuse of discretion standard. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). On appeal, the scope of review is limited to the question of whether there is sufficient evidence to sustain the findings of the postconviction court. *Id.*

Appellant does not have an absolute right to withdraw his guilty plea. *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007). But a court must allow a defendant to withdraw a guilty plea, even after sentencing, if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. The supreme court has recognized that manifest injustice exists where a guilty plea is invalid. *Butala v. State*, 664 N.W.2d 333, 339 (Minn. 2003). There are three requirements for a valid plea: "it must be accurate, voluntary and intelligent." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

In denying appellant's request to withdraw his plea, the district court noted that appellant was extensively questioned during his plea hearing to establish that his plea was knowing and voluntary. We agree. Appellant asserts only his age as the source of his alleged confusion about the legal system and his fear. This blanket assertion without more is insufficient to negate appellant's signed plea petition and sworn testimony. *See id.* at 718-19 (rejecting claim that plea should be withdrawn to correct a manifest injustice based on claimed coercion by defense counsel where appellant stated during the plea hearing that pleading guilty was his own decision).

Appellant does not allege the existence of any statements that would amount to coercion. Appellant's affidavit in support of his petition asserts his plea was induced by his attorneys' "threat" that he faced life imprisonment and their promise to argue for a downward departure. Appellant knew he risked life imprisonment when he pleaded guilty; it was a real legal risk, which appellant mitigated by pleading guilty. And the record is clear that his attorneys argued for a downward departure. Appellant's pro se brief reiterates these assertions and alleges that his attorneys promised that appellant

would be housed within a juvenile prison facility where he could play videogames. This court need not consider these statements as they were not presented to the postconviction court. *See State v. Manley*, 664 N.W.2d 275, 286 (Minn. 2003). Nevertheless, even if appellant's statements are considered they would not change our conclusion that the district court acted within its discretion by denying appellant's petition to withdraw his guilty plea because appellant's claims of coercion and confusion are rebutted by appellant's extensive sworn testimony to the contrary at the plea hearing.

Appellant also argues that this court should reverse the district court's denial of his motion to change the MOC designation on appellant's CJWC. Appellant argues that the portion of the MOC designation that indicates that appellant committed murder "While Committing CSC 1 or CSC 2" with an "unknown weapon" does not correspond with the elements of the offense to which he pleaded guilty (i.e., second-degree intentional murder). Appellant's request to change his MOC designation was based on Minn. R. Crim. P. 27.03, subds. 8, 9, which state the court may correct "clerical mistakes" and sentences not authorized by law.

The district court concluded that the record contained sufficient evidence to justify the MOC designation. We agree. The record from the plea hearing included grand jury testimony, an autopsy report, and appellant's testimony. Specifically, the record contained evidence that: (1) appellant and his co-defendant took M.P. upstairs after the co-defendant stated an intent to have sex with M.P.; (2) M.P. was then heard screaming; and (3) the autopsy revealed a tear in M.P.'s vaginal area, which appellant acknowledged.

Thus, there was sufficient evidence in the record to support a MOC designation that characterizes appellant's offense as a murder while committing a sex offense.

Appellant nonetheless asserts several arguments in support of his claim that the district court erred in refusing to change the MOC designation on appellant's CJWC. None is persuasive. First, appellant suggests that the MOC designation must be limited to the elements of the offense to which appellant pleaded guilty. Appellant cites no legal authority or argument in support of this proposition. We reject this argument in the absence of supporting legal authority or argument. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994). Second, appellant asserts that the MOC designation is erroneous because appellant made no admission of guilt, citing the nature of appellant's *Alford* plea. While appellant did not offer factual admissions in support of his guilty plea, appellant did agree that the district court would receive an offer of proof from the state as the basis for appellant's plea, in lieu of factual admissions from appellant. The offer of proof included the grand jury transcript and autopsy report described earlier. The district court appropriately considered the grand jury transcript and autopsy report when assigning the MOC designation since those documents were part of the plea hearing record.

Appellant next asserts that the assigned MOC deprives appellant of the benefit of his plea agreement because the designation has resulted in appellant's referral to sex-offender programming in prison. But there is no indication that appellant's plea agreement included a promise that appellant would not be referred to sex-offender programming. Appellant cannot be deprived of a benefit that was never promised as part

of his plea agreement. Finally, appellant argues that the MOC designation has compromised his safety in prison. We do not believe this is a legitimate reason to change a MOC designation that is supported by the record.

Appellant also argues that the MOC designation erroneously characterized appellant's offense as one involving the use of an "unknown weapon." The Minnesota Prosecutors Manual provides the MOC designations. The Manual describes appellant's MOC designation as use of a weapon that is "Unknown/NA," not simply "unknown." Minnesota Prosecutors Manual 4-13 (2008). As "NA" may mean "not applicable," the designation is consistent with appellant's claim that no weapon was used. Even if the designation were only "unknown" the record included evidence sufficient to conclude that M.P.'s injuries or death were caused by an unknown weapon given that "Weapon Use" is defined to include "Hands, Fists, Feet, Etc." for the purpose of a MOC designation. *Id.*

The MOC designation on appellant's CJWC is supported by appellant's plea hearing record and is not erroneous. The district court did not err in denying appellant's motion to change the MOC designation.

**Affirmed.**

Dated: _____

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The Honorable Michelle A. Larkin