STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1842

Jeremy J. Coppage, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 25, 2009
Affirmed
Collins, Judge[*]

Hennepin County District Court
File No. 27-CR-05-034095

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

Michael O. Freeman, Hennepin County Attorney, Alan J. Harris, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

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

Considered and decided by Worke, Presiding Judge; Minge, Judge; and Collins, Judge.

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

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

COLLINS, Judge

Appellant Jeremy Coppage argues that the postconviction court erred by denying his request to withdraw his guilty plea because the district court improperly injected itself into the plea negotiations. Because the record does not establish that the postconviction court abused its discretion, we affirm.

FACTS

Coppage was charged with first-degree attempted murder, second-degree attempted murder, drive-by shooting, and second-degree assault. At a plea hearing on October 3, 2005, Coppage entered an *Alford*[1] guilty plea to first-degree attempted murder with the expressed hope that the district court would grant a dispositional departure resulting in only a probationary sentence. Pursuant to the *Alford* plea, the other charges were dismissed. Despite the unfavorable presentence investigation report recommendation, the district court gave Coppage a stayed sentence of 180 months and five years' probation, with conditions including 365 days in the workhouse.

In July 2006, based on allegations of criminal violations, the state moved the district court to revoke one year of Coppage's probation. Coppage admitted violating the terms of his probation and was sentenced to one additional year in the workhouse. In August 2007, based on another allegation of criminal conduct, a second, two-day contested probation-revocation hearing was held. Thereafter, Coppage's probation was revoked and the remaining time on his 180-month sentence was executed.

[1] *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970).

On May 15, 2008, Coppage moved for postconviction relief seeking to withdraw his guilty plea, arguing that the district court had improperly injected itself into the plea negotiations. The postconviction court denied Coppage's motion, finding that

> [a]n examination of the Arraignment/Plea transcript as a whole clearly shows that there was no sentencing agreement prior to the time of [Coppage's] sentencing.
>
> . . . .
>
> [Coppage] has not shown that the Court engaged in improper plea negotiations with [Coppage] or promised [Coppage] a particular sentence in advance of sentencing.

This appeal followed.

D E C I S I O N

Coppage asserts that the postconviction court erred by denying his request to withdraw his guilty plea, arguing that his "guilty plea was unquestionably the product of an offer—by the district court—to give a probationary sentence."

"[We] will reverse a postconviction [court's] decision only for an abuse of discretion, and while we give de novo review to its legal determinations, we will reverse its factual findings only if clearly erroneous. The [postconviction] court abuses its discretion if it misinterprets or misapplies the law." *State v. Jedlicka*, 747 N.W.2d 580, 582 (Minn. App. 2008) (citations and quotation omitted). A postconviction court's denial of a request to withdraw a plea will be reversed only if the postconviction court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

The "district court judge has a delicate role in a plea negotiation and necessarily plays a part in any negotiated guilty plea." *State v. Anyanwu*, 681 N.W.2d 411, 415

(Minn. App. 2004). The proper role of the district court is to determine whether a proffered plea bargain is appropriate and to ensure that a defendant has not been improperly induced to plead guilty to a crime or permitted to bargain for a plea that is excessively lenient. *State v. Johnson*, 279 Minn. 209, 215-16, 156 N.W.2d 218, 223 (1968). A defendant's plea of guilty is "per se invalid" if the district court impermissibly participates in plea negotiations. *Anyanwu*, 681 N.W.2d at 414-15; *State v. Vahabi*, 529 N.W.2d 359, 360-61 (Minn. App. 1995). "Impermissible participation includes such things as the court's direct involvement in the negotiations, its imposition of a plea agreement, or its promise to impose a particular sentence." *Anderson v. State*, 746 N.W.2d 901, 905 (Minn. App. 2008). "It is improper for a district court to promise a particular sentence in advance." *Anyanwu*, 681 N.W.2d at 414.

In support of his position that the district court acted improperly, Coppage points us to several places in the plea-hearing record that, he asserts, establish that the district court improperly induced him to plead guilty. Each will be discussed in turn. First, Coppage states that it is clear from the plea hearing that his *Alford* plea was "made 'with an eye towards the Court giving [Coppage] a workhouse sentence.'" And that the district "court was 'going to give [Coppage] a sentence within the framework of what we discussed earlier.'" But the postconviction court, referring to the record, observed that

> defense counsel asks his client questions and **counsel states** . . . ". . . I'm asking you to plead under the State versus Alford with an eye towards the Court giving you a Workhouse sentence." This statement alludes only to what Defense counsel was hoping for, not what the Court had agreed to give [Coppage].

In this instance, defense counsel's statements indicate that the district court had not promised a particular sentence in advance, but that Coppage was hoping that in exchange for the *Alford* plea he would receive a favorable departure from the presumptive 180-month sentence and from the 36-month executed sentence proposed by the state. This interpretation is supported by defense counsel's follow-up statement that the district court "hasn't promised you anything." And although Coppage asserts that "at the plea hearing, [Coppage] was told that unless a presentence investigation revealed unknown previous convictions of a particular nature, the court was 'going to give [Coppage] a sentence within the framework of what we discussed earlier,'" on appeal Coppage's reliance on the statement is misplaced. That statement was made during a colloquy between defense counsel and Coppage. It is unclear whether the "we" in that sentence refers to the district court and Coppage or defense counsel and Coppage. Moreover, stating that the district court would impose a sentence "within the framework of what [was] discussed earlier" is insufficient to establish that the district court promised to impose a particular sentence.

Second, Coppage maintains that the district court told him that his stayed sentence would be "at least 150 months and subject to conditions of probation." As pointed out by the postconviction court, the complete exchange between defense counsel and Coppage sheds a different light on the excerpt isolated by Coppage on appeal. At the plea hearing, the following exchange occurred:

> DEFENSE COUNSEL: You understand that you're going to be on probation to this Court for a term of at least 150 months. Do you understand that?
> THE DEFENDANT: Yes.
> DEFENSE COUNSEL: That means if this Court were to find that you violated the terms and conditions of your probation, *whatever that probation* will be you'd be coming back in front of this Court and, if the prosecution could prove you violated the terms and conditions of your probation, you'd be looking at doing 150 months. Do you understand that?
> THE DEFENDANT: Yes.

(Emphasis added). The postconviction court held that "this shows defense counsel's and Petitioner's hope. Additionally, the Court did not indicate that Petitioner would get such a sentence, defense counsel did."

Although the colloquy suggests that there had been some discussion about the possibility of a probationary sentence, as stated by the postconviction court, the exchange is insufficient to establish that any promise was made by the district court. The district court never stated a commitment to impose such a sentence on the record. This view of the record is further supported by the fact that defense counsel is unclear about how much, if any, probation the district court would impose.

Coppage also contends that the district court's comments at the sentencing hearing clearly establish that an agreement between the district court and Coppage was preordained. Specifically, Coppage relies on an excerpt from the following colloquy:

> THE COURT: Since that time, we've had the opportunity to have Mr. Coppage interviewed by probation and also to come back here today. I've had the chance to look at the report . . . and it would be kind to say that it's a less-than-favorable report. . . . The presumptive sentence for this is . . . 180-month commit. I indicated that I would depart and one of the primary reasons why I was going to depart was

> because of the reluctance of the victims and other witnesses to testify in this matter. That, quite frankly, created some very serious potential evidentiary shortcomings, and I believe the departing on that basis is probably warranted under the other substantial grounds which tend to—well, that actually doesn't excuse or mitigate offender's culpability though not amounting to a defense. The fact of the matter is that Mr. Coppage's position on this is that it wasn't him, as well?
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> DEFENSE COUNSEL: That's correct.
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> THE COURT: And we're looking at having a trial without the most cooperative witnesses because of their apparent concerns for their safety. I'm going to depart. I also understand that Mr. Coppage may be amenable to probation and I'm counting on this amenability to probation developing that, in fact, if he screws up he can plan on a 180 month vacation. Do you understand?
>
> THE DEFENDANT: Yes, sir.

The postconviction court stated: "An examination of the Arraignment/Plea transcript as a whole clearly shows that there was no sentencing agreement prior to the time of Petitioner's sentencing. Therefore, the quote above . . . must refer to a statement the Court made after receipt and review of the presentence investigation report and speaking with counsel on the date of sentencing."

Although the postconviction court's analysis on this point is cursory and assumes that the statement that "I indicated that I would depart . . ." referred to something other than a prearranged agreement with Coppage, that assumption is supported by the fact that nothing else in the record—neither the plea hearing transcript nor sentencing hearing transcript—supports a finding that the district court promised Coppage, explicitly or reasonably implicitly, a particular sentence. Having carefully reviewed the entire record, we cannot conclude that the postconviction court abused its discretion by finding that the

district court did not improperly inject itself into plea negotiations and deny Coppage's request to withdraw his guilty plea.

Affirmed.