STATE OF MINNESOTA
IN COURT OF APPEALS
A10-321

Jonathan Scott Pletan, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 28, 2010
Affirmed
Muehlberg, Judge[*]

Washington County District Court
File No. 82-K3-06-2810

David W. Merchant, Chief Appellate Public Defender, Cathryn Middlebrook, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Doug Johnson, Washington County Attorney, Sarah E. Kerrigan, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Johnson, Judge; and Muehlberg, 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

MUEHLBERG, Judge

In this postconviction appeal, appellant seeks to withdraw his 2006 guilty plea to fourth-degree criminal sexual conduct. He argues that he did not understand the meaning or consequences of the five-year conditional release term that was added to his sentence. Because the conditional release term was specifically included in the written petition to plead guilty, added to appellant's presentence investigation prior to sentencing, and imposed by the district court at sentencing, we affirm.

FACTS

In April 2006, appellant Jonathan Scott Pletan had sexual contact with a fifteen-year-old girl. At the time, appellant was twenty years old. He was charged by amended complaint with third- and fourth-degree criminal sexual conduct under Minn. Stat. §§ 609.344, subds. 1(b), 2, .345, subds. 1(b), 2 (2004 & Supp. 2005).

In July 2006, appellant signed a written petition to plead guilty that included a five-year conditional release period. The petition set out the terms of the plea agreement, which anticipated that appellant would plead guilty to fourth-degree criminal sexual conduct. In exchange, the count alleging third-degree criminal sexual conduct would be dismissed, and appellant would receive a 21-month stayed sentence and be placed on probation for ten years. At the plea hearing, appellant acknowledged that he understood the plea petition and that his attorney had "read . . . every line" to him.

The conditional release period was again mentioned at the beginning of the sentencing hearing, when it was noted that the probation officer who prepared the

presentence investigation report (PSI) "forgot to add [that] if the subject's sentence is executed he would be required to comply with the five year conditional release period." The district court sentenced appellant to a stayed, 21-month term, and placed him on probation for ten years. The district court further stated: "In addition I will impose, if [you are] ever incarcerated in a correctional facility, a state correctional facility, that five year conditional release period, which would be added to any prison sentence that I currently stayed at this point." Appellant did not object to imposition of the conditional release period.

In 2007, after appellant violated the terms of his probation, the district court executed his 21-month sentence and imposed a five-year conditional release term.[1] In 2009, appellant filed a postconviction petition, seeking withdrawal of his guilty plea.

D E C I S I O N

We review a district court's decision to deny postconviction relief for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). The scope of our review is limited to determining whether there is sufficient evidence to support the findings of the postconviction court. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

[1] We note that because appellant's offense occurred in April 2006, it appears possible that a ten-year conditional release term should have been imposed on him, not a five-year term. In 2005, the legislature repealed sections 609.108, subdivision 2, and .109, subdivision 7, and amended the conditional release provisions to provide for a ten-year conditional release term for most first-time sex offenses. *See* 2005 Minn. Laws ch. 136, art. 2, §§ 21, 23, at 929–33 (repealing Minn. Stat. §§ 609.108, subd. 2, .109, subd. 7, and enacting Minn. Stat. § 609.3455, applicable to crimes committed on or after August 1, 2005). But this issue was not raised, and our comment here should not be construed as an expression of opinion on the merits of the issue.

A defendant may withdraw a guilty plea if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. "A manifest injustice occurs when a guilty plea is not accurate, voluntary and intelligent." *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A plea is intelligent when "the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty." *Id*. A plea is voluntary when it is made without "improper pressures or inducements." *Id*. "The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial." *Id.*

Appellant claims that his plea was not intelligently made because he did not understand the meaning or consequence of the mandatory conditional release term. But the five-year conditional release period was specifically included in appellant's written plea petition. At the plea hearing, appellant acknowledged that he understood the plea petition and that his attorney had read every line to him. The conditional release period was again mentioned at the beginning of the sentencing hearing, when it was noted that the probation officer who prepared the PSI "forgot to add [that] if the subject's sentence is executed he would be required to comply with the five year conditional release period." Appellant did not object when the conditional release term was mentioned and verbally added to the PSI. Nor did appellant object when the district court imposed sentence with the following as one of the conditions: "In addition I will impose, if [you are] ever incarcerated in a correctional facility, a state correctional facility, that five year conditional release period, which would be added to any prison sentence that I currently stayed at this point."

In *Rhodes*, 675 N.W.2d at 324, the supreme court held that the defendant was not entitled to withdraw his plea, even though he was not made aware of the conditional release term during the plea negotiations or at the plea hearing, because the term was included in the PSI recommendations and noted at sentencing. The court concluded that the district court did not abuse its discretion in determining that the defendant's plea was intelligently made because, among other things, the "court could infer from [the defendant's] failure to object to the presentence investigation's recommendation, the state's request at the sentencing hearing and the court's imposition of the sentence, that [the defendant] understood from the beginning that the conditional release term would be a mandatory addition to his plea bargain." *Id.* at 327.

Similarly, here, the district court did not abuse its discretion in concluding that appellant knew about the conditional release term because it was referred to several times, and in determining that he understood the meaning and consequences of the term because he expressly indicated that he understood the terms of the plea agreement and plea petition. Furthermore, he failed to object at the plea hearing or at sentencing when the conditional release term was mentioned. Thus, the district court did not abuse its discretion in concluding that appellant's plea was intelligently made.

Appellant also appears to claim that imposition of the conditional release period violated the terms of his plea agreement. But nothing in the record suggests that the lack of a conditional release period was an integral part of the negotiated plea agreement between appellant and the state. At the plea hearing, appellant's counsel stated the terms of the plea agreement and acknowledged that appellant would "be ordered to comply

with *all other statutory requirements of this type of offense* which includes a registration requirement and a sex offender assessment and follow through with the recommendations of that assessment." (Emphasis added.) Conditional release is a mandatory part of appellant's sentence, and the state had no authority to exempt appellant from it.

Because appellant understood the meaning and consequences of his plea, the district court did not abuse its discretion in denying his petition for postconviction relief.

Affirmed.