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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0421**

Edward Joseph Loscheider,  
petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed January 13, 2009  
Affirmed  
Crippen, Judge\***

Hennepin County District Court  
File Nos. 27-CR-04-041072; 27-CR-05-002322

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Considered and decided by Schellhas, Presiding Judge; Johnson, Judge; and  
Crippen, Judge.

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

## UNPUBLISHED OPINION

**CRIPPEN**, Judge

Appellant Edward Loscheider challenges the district court's postconviction denial of his request to withdraw his guilty plea, arguing that the court abused its discretion by finding that he received a mental health assessment, as required under the terms of his plea agreement and as a condition of his sentencing. Because appellant is not entitled to postconviction relief on this argument or others advanced in his pro se brief, we affirm.

### FACTS

In 2004 and 2005, appellant was arrested and charged with twelve separate crimes, including attempted first-degree murder. Based on a rule 20 psychological examination report, the district court found that appellant was competent to proceed. *See* Minn. R. Crim. P. 20. Appellant negotiated a plea agreement, allowing him to plead guilty to three crimes in exchange for dismissal of the other charges. The plea agreement also required that the sentencing court order an independent mental health assessment. In accordance with the plea agreement, appellant pleaded guilty, was sentenced to 180 months in prison for the murder attempt, with concurrent time for other offenses, and was ordered to undergo a mental health assessment.

In July 2007, appellant filed a petition for postconviction relief, arguing that he should be allowed to withdraw his guilty plea. The district court summarily denied his petition.

## DECISION

### 1.

There is no merit to appellant's claim that he should be allowed to withdraw his guilty plea because he did not receive the independent mental health assessment that was part of his plea agreement. The petitioner bears the burden of establishing facts that warrant relief. Minn. Stat. § 590.04, subd. 3 (2006). Because the enforcement and interpretation of plea agreements present legal issues, our review of the district court's denial of appellant's petition is de novo. *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000). A sentence that is in accord with the plea agreement provides no basis for withdrawal of the guilty plea. *State v. Hamacher*, 511 N.W.2d 458, 460 (Minn. App. 1994).

Appellant does not dispute that the plea agreement called for the sentencing court to order a mental health assessment and that the court's sentence strictly complies with the plea agreement. Rather, he claims that the mental health assessment did not occur. But authorities cited by appellant deal with the contents of sentencing orders, not subsequent events, and he offers no legal authority to establish that he is entitled to withdraw his plea because the ordered assessment did not subsequently occur. *See, e.g., Kochevar v. State*, 281 N.W.2d 680 (Minn. 1979). Because appellant was sentenced according to his plea agreement, the district court did not err in summarily denying appellant's petition for postconviction relief.

In this circumstance, we have no occasion to further examine the merits of the district court's finding that the assessment in fact occurred. Nor do we reach appellant's

argument that the court wrongfully considered private or confidential information as part of the state's evidence on the occurrence of the exam.

## 2.

In his supplemental brief, appellant argues that the district court abused its discretion because his plea was not accurate, knowing, or intelligent. A valid guilty plea “must be accurate, voluntary, and intelligent (i.e., knowingly and understandingly made).” *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). The absence of any of these three requisites, if shown by the defendant, results in a “manifest injustice” and allows the defendant to withdraw the plea. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

The defendant bears the burden of proving, by a preponderance of the evidence, that the facts warrant withdrawal of the guilty plea. *Lundin v. State*, 430 N.W.2d 675, 679 (Minn. App. 1988), *review denied* (Minn. Dec. 21, 1988). A plea withdrawal request must be premised upon more than bare allegations. *Schleicher v. State*, 718 N.W.2d 440, 444 (Minn. 2006). This court examines only whether the postconviction court's findings are supported by sufficient evidence. *Russell v. State*, 562 N.W.2d 670, 672 (Minn. 1997). We review a summary denial of a postconviction petition for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005).

The accuracy requirement protects the defendant from pleading guilty to a more serious charge than he or she would have been convicted of at trial. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). The requirement that a plea is intelligent insures that

“the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.” *Id.*

Appellant only provides conjecture in support of his arguments. The district court found that appellant was competent to stand trial after his rule 20 examination. The record shows that appellant was represented by counsel and that he had sufficient time to discuss his case with his attorney, was satisfied with his attorney, and understood all the aspects of the negotiated plea agreement. At the plea hearing, appellant testified and demonstrated that he understood the consequences of his actions. Without equivocation, he admitted committing acts that show the elements of the crimes charged. Because appellant has offered only his bare allegations and because the district court’s findings are supported by the evidence in the record, the court did not abuse its discretion in determining that appellant’s plea was accurate, knowing, and intelligent.

### 3.

Appellant also argues that he should be entitled to postconviction relief because he received ineffective assistance of counsel. In order to succeed, appellant “must affirmatively prove that his counsel’s representation ‘fell below an objective standard of reasonableness’ and ‘that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)). There is a strong presumption that “counsel’s performance fell within a wide range of reasonable assistance.” *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). Matters of trial strategy lie within the

discretion of trial counsel and will not be second guessed by appellate courts. *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999).

Appellant claims he received ineffective assistance of counsel because his attorney failed to demand an evidentiary hearing to demand fingerprint evidence on a weapon. But appellant admitted that he modified the weapon and that he was carrying the weapon when he attacked his wife. It is reasonable that counsel would not demand fingerprint evidence when the client has admitted to carrying the weapon and attacking the victim. *See State v. Asfeld*, 662 N.W.2d 534, 546 (Minn. 2003) (holding that representation is reasonable when counsel does not object to properly admitted evidence). Appellant has failed to demonstrate that his counsel's representation fell below an objective standard of reasonableness or that the result of the proceeding would have been different but for his counsel's conduct. The district court properly rejected appellant's claim that he was not adequately represented.

#### 4.

Finally, appellant presents numerous arguments that the district court and the prosecutor acted in a manner constituting misconduct. But appellant offers no proof to support these allegations, and based on the record, there is no evidence of misconduct. The district court thus did not err in denying appellant's postconviction relief petition.

**Affirmed.**