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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1765**

Vicky Vo, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 22, 2010
Reversed and remanded
Toussaint, Chief Judge**

Olmsted County District Court
File No. 55-CR-08-9316

Beau D. McGraw, McGraw Law Firm, P.A., Oakdale, Minnesota (for appellant)

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

Terry L. Adkins, Rochester City Attorney, Paul D. Sellers, Assistant City Attorney,
Rochester, Minnesota (for respondent)

Considered and decided by Toussaint, Chief Judge; Bjorkman, 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.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Vicky Vo contends that the district court abused its discretion in denying her postconviction motion to withdraw her guilty plea. Because appellant's plea was not given intelligently or voluntarily and resulted in manifest injustice, we reverse and remand.

FACTS

Appellant, with the other defendants scheduled to appear in court on the same day, was shown a video prior to appearing before a judge that stated her constitutional rights. When her case was called, the charges against her were read out loud, and she was asked if she understood them. She responded that she understood. The district court established that appellant was present "when rights were announced" but did not inquire as to whether appellant understood her constitutional rights or had questions about them. The district court then asked her, "What are you going to do about a lawyer?" to which appellant replied, "I don't need a lawyer. Please, guilty." After pleading guilty to one count each of theft and theft by swindle, she was sentenced.

Appellant subsequently retained counsel and filed a motion to withdraw her guilty plea, asserting that she had been denied her right to the assistance of counsel and that her plea was not given accurately, intelligently or voluntarily. After a hearing, the district court denied the motion, holding that appellant had been properly informed of her rights and had properly waived them.

Appellant challenges the denial, arguing that withdrawal of her plea is necessary to correct a manifest injustice because the plea was not voluntary and intelligent.¹

DECISION

The denial of a defendant's motion to withdraw a guilty plea is reviewed on appeal for an abuse of discretion. *State v. Hayes*, 276 Minn. 384, 386, 150 N.W.2d 552, 553 (1967).

With a timely motion, a defendant has the right to withdraw a guilty plea before or after sentencing, if the defendant can prove "to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. "Manifest injustice occurs if a guilty plea is not accurate, voluntary, and intelligent." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). "If a plea fails to meet any one of these requirements, it is invalid." *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). A plea is not considered voluntary if the district court does not adequately inquire into the defendant's waiver of constitutional rights. *See State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994) (concluding that district court "conducted a thorough standard Rule 15.01 inquiry" to support its determination that there was no manifest injustice).

A district court may use a recorded statement to inform a group of defendants of their constitutional rights and the consequences of a plea. Minn. R. Crim. P. 15.03, subd.

¹ Respondent argues that appellant's motion was untimely. But the timeliness requirement for a motion to withdraw a guilty plea was not argued at the district court level by either party, nor did the district court address timeliness in its decision. Therefore, we do not now consider the timeliness of appellant's motion. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (concluding that defendant's failure to raise issue before district court precluded its litigation on appeal).

1. Appellant does not dispute that the group advisory rights given to her via video were adequate. But even when a group of defendants is collectively advised as to their constitutional rights, each defendant “must then be questioned on the record as to the remaining matters specified in Rule 15.02, subd. 1, [providing questions required before a guilty plea].” Minn. R. Crim. P. 15.03, subd. 1. These questions include whether the defendant (1) understands the rights being waived, (2) understands the nature of the offense charged, and (3) believes that he or she is pleading guilty because his or her actions resulted in the offense. Minn. R. Crim. P. 15.02, subd. 1.

Here, the district court merely asked appellant if she was present “in court when rights were announced.” The district court did not ask whether appellant heard and understood the statement of rights, or provide an opportunity for appellant to ask questions about her rights. *See State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983) (determining that purpose of intelligent requirement is to confirm that defendant “understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea”); *see also State v. Motl*, 337 N.W.2d 664, 666 (Minn. 1983) (finding that “bare minimum” for group rights advisory situation includes inquiry as to whether defendant was aware of constitutional rights and had any questions). The transcript shows that appellant’s plea fell short of being fully voluntary and intelligent, resulting in manifest injustice. Thus, the district court abused its discretion in denying appellant’s motion to withdraw her guilty plea.

Reversed and remanded.