

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2008).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0015**

State of Minnesota,
Respondent,

vs.

Kagalee Brown, petitioner,
Appellant.

**Filed January 6, 2009
Reversed and remanded
Stoneburner, Judge**

Hennepin County District Court
File No. 27CR93030367

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Donna J. Wolfson, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Kagalee B. Brown, MCF – Rush City, 7600 525th Street, Rush City, MN 55069 (pro se appellant)

Considered and decided by Kalitowski, Presiding Judge; Halbrooks, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the denial of his petition for postconviction relief to correct sentencing for his conviction of second-degree assault. In his negotiated plea agreement,

appellant agreed that a guidelines sentence would be imposed to run consecutively to the sentence he was already serving. Appellant argues that the district court erred in using a criminal-history score of two to determine the length of the consecutive sentence because, under the sentencing guidelines, the length of the sentence should have been determined using a criminal-history score of zero. We agree. We reverse the sentence imposed and remand for resentencing consistent with this opinion.

FACTS

In 1995, appellant Kagalee Brown, charged with attempted first-degree murder, pleaded guilty to second-degree assault under a plea agreement that called for a “guidelines sentence, [t]o be served consecutive to the [306-month] sentence [that Brown was then] serving.” Although Brown’s written plea petition was silent regarding the length of sentence to be imposed, at the time of sentencing, the prosecutor placed on the record the agreement that Brown would “receive a guidelines sentence of 30 months executed consecutive to the sentence he is currently serving.” Brown’s plea was accepted, and he was sentenced to 30 months to be served consecutive to his 306-month sentence.

In 2007, Brown sought postconviction relief reducing the sentence from 30 to 21 months, arguing that because he received a consecutive sentence, a criminal-history score of zero, rather than two, should have been used to determine the appropriate guidelines sentence. The state argued that the 30-month sentence was imposed pursuant to a valid plea agreement that, at the time of sentencing, was a sufficient basis for a departure from the guidelines. The district court agreed and denied the petition. This appeal followed.

DECISION

This court reviews the denial of a postconviction petition under an abuse-of-discretion standard. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). A reviewing court will consider only whether a postconviction court's conclusions are supported by sufficient evidence. *Shoen v. State*, 648 N.W.2d 228, 231 (Minn. 2002). Determining what the parties agreed to in a plea bargain is a factual inquiry for the postconviction court to resolve. *See Kochevar v. State*, 281 N.W.2d 680, 687 (Minn. 1979). But the interpretation and enforcement of plea agreements present issues of law subject to de novo review. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). A guilty plea must be accurate, voluntary, and intelligent. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

Brown does not challenge consecutive sentencing: he argues only that the length of sentence that he agreed to was a guidelines sentence and that the guidelines called for determination of the length of sentence using a criminal-history score of zero. We agree.

The state agrees that the applicable guidelines sentence in this case would ordinarily call for a criminal-history score of zero to be used to calculate the length of sentence. But, the state argues, by failing to object to the 30-month sentence imposed, Brown agreed to a guidelines departure as part of a negotiated plea that was beneficial to him. And, the state points out, at the time Brown was sentenced, a plea agreement standing alone justified a sentencing departure under the guidelines. Not until 2002, did the Minnesota Supreme Court announce a new rule of law that a plea agreement, standing alone, would not justify a departure absent a determination that aggravating or mitigating

circumstances warranted the departure. *State v. Misquadace*, 644 N.W.2d 65, 71 (Minn. 2002) (stating that the rule announced was to be applied only prospectively).

Although the state has correctly stated the status of the law prior to *Misquadace*, the record in this case shows that the plea agreement called for a guidelines sentence; therefore Brown did not negotiate away his right to a proper guidelines sentence. The prosecutor told the sentencing court that 30 months was the appropriate guidelines sentence, and no one objected, making it appear that the parties and the district court were all under the false impression that 30 months was the appropriate guidelines sentence.

Because Brown did not negotiate away his right to a guidelines sentence, we conclude that Brown is entitled to a corrected sentence of 21 rather than 30 months. We therefore reverse and remand for correction of the sentence.

Reversed and remanded.