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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-175**

State of Minnesota,
Respondent,

vs.

Alan Ray Rick,
Appellant.

**Filed January 3, 2012
Affirmed
Ross, Judge**

Pine County District Court
File No. 58-CR-10-14

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

John K. Carlson, Pine County Attorney, Steven C. Cundy, Assistant County Attorney,
Pine City, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Alan Rick appeals from his convictions of receiving stolen property and fifth-degree possession of a controlled substance. Rick argues that he is entitled to withdraw

his guilty pleas or to specific performance of the plea agreement he made with the state because his guilty pleas were induced by and conditioned on the unkept promise of limited restitution. Because the plea agreement did not limit Rick's restitution, no manifest injustice exists that would have required the district court to allow him to withdraw his pleas. We therefore affirm.

FACTS

A police officer detained Alan Rick in the parking lot at Grand Casino in Hinkley after a security guard identified Rick as an identity-theft suspect who was possibly armed and dangerous. Rick identified himself as Patrick Michael Davis and provided a South Dakota driver's license. He did not look like the person photographed on the license. The officer checked the registration information on a nearby pickup truck with South Dakota plates and discovered that it was stolen and the owner was Patrick Michael Davis. The officer arrested and searched Rick, finding \$2,895 in cash and keys to the stolen truck. Police searched Rick's hotel room and found methamphetamine and a pipe.

The state charged Rick with receiving stolen property, fifth-degree possession of a controlled substance, and giving a false identification to a police officer. Rick agreed with the state to plead guilty to one count of receiving stolen property and one count of fifth-degree controlled substance possession. According to the written agreement, the state would "dismiss all other charges, including two pending criminal complaints in Becker County, with [Rick] agreeing to pay \$100 in restitution," in return for his guilty pleas. The plea agreement also stated, "This will be a guidelines sentence bottom box.

State agrees to return all cash (\$2,895) [and] property seized, except drugs or other contraband.”

At the plea hearing, Rick’s attorney recited the terms of the plea agreement to the court, stating:

[M]y client will plead guilty to receiving stolen property and fifth-degree controlled substance crime. The state agrees to dismiss all other charges, including two pending criminal complaints in Becker County. The defendant agrees to pay \$100 in restitution, and apparently there is an order to that effect today. This will be a guidelines sentence. The state has agreed to a bottom of the box guidelines sentence. The state also agrees to return all property seized except for contraband back to my client.

The prosecutor responded by saying, “The only other items, Judge, is the State as always would contemplate a Chemical Use Assessment and restitution.” Rick indicated that he’d had enough time to speak to his attorney, that he intended to accept the state’s offer, and that he didn’t have any questions. Rick pleaded guilty.

Rick later discussed the return of his money and personal property. He told the judge that “the money was to be returned to me today, the \$2,895 in cash that was taken, and if that is not part of the agreement, with all due respect to you, Your Honor . . . then I withdraw everything.” The court told Rick that he could withdraw his pleas if he wanted to and go to trial, but it also explained,

You’re not getting your money back from me until the date of sentencing. I am not in a position to do that. I will not do that. Everything happens at sentencing. That’s the trigger date for the appeal. That’s the date when the court formally accepts your plea. . . . [U]ntil the court formally accepts your plea and actually proceeds on the basis of the terms of the plea agreement, there is no court order giving you anything back.

Rick then temporarily withdrew his guilty pleas. But later, after speaking with his attorney, he returned and reinstated his guilty pleas.

A different district court judge sentenced Rick to 21 months on each offense to run concurrently. An assistant county attorney not involved in the plea negotiation appeared for the state at sentencing. The district court ordered restitution in “the amount of \$250 for out-of-pocket expenses for Patrick Davis and \$1,695 for Progressive Insurance.” It imposed a fine of \$50 for each of the offenses. The state asked that the restitution be drawn from the \$2,895 seized during the arrest. In response, Rick indicated to the court that he wanted “to state on the record that if you make the decision to take the money and put it towards [the restitution of \$1,945], I want to state on the record that I think I have every right to withdraw my guilty plea[s].” The state explained that it did not object to returning the \$2,895 to Rick, but that the court should still order restitution because Rick could pay it.

The district court ordered that Rick pay restitution of \$1,945, that the \$2,895 seized would be returned to him, and that he pay the restitution and \$100 fine out of the \$2,895. It did not address Rick’s contention that he was entitled to withdraw his plea.

Rick appeals.

DECISION

I

Rick argues that the district court erred by imposing restitution of \$1,945 because he was promised limited restitution of \$100 in the plea agreement. The determination of

what the parties agreed to in a plea bargain is a factual question. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). A district court's restitution order will not be reversed unless it arises from an abuse of discretion. *State v. Tenerelli*, 598 N.W.2d 668, 672 (Minn. 1999).

The district court did not believe that the plea agreement limited Rick's restitution to \$100. Plea agreements represent a bargained-for understanding between the state and a defendant "in which each side forgoes certain rights and assumes certain risks in exchange for a degree of certainty as to the outcome" of the criminal matter. *State v. Meredyk*, 754 N.W.2d 596, 603 (Minn. App. 2008).

The plea agreement here is ambiguous. Restitution is mentioned only in one sentence, which reads, "The state agrees to dismiss all other charges, including two pending criminal complaints in Becker County, with [Rick] agreeing to pay \$100 in restitution." It is unclear from the face of the agreement whether it required Rick to pay only \$100 total in restitution or to pay \$100 in restitution for the Becker County offenses. So we look to statements made at the plea hearing. *See State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983). After Rick's attorney had recited the plea agreement, the state clarified by stating, "The only other items, Judge, is the State, as always would contemplate a chemical use assessment and *restitution*." (Emphasis added). Rick did not object. This clarification supports the district court's view that the restitution contemplated was \$100 for the Becker County offenses plus additional restitution for Rick's extant offenses, to be calculated later.

Rick insists that, throughout the plea hearing discussions regarding the return of his \$2,895, the full amount was always assumed, so that no restitution past \$100 was contemplated. But the district court never stated that Rick was to receive his entire \$2,895, it stated only that he was not going to receive any money back until sentencing.

Although the plea agreement did indicate that the state would return all of Rick's cash, the district court could still order that restitution be paid from that money. Because the plea agreement contemplated restitution of \$100 for the older Becker County offenses and additional restitution for Rick's new offenses, the district court did not abuse its discretion by imposing \$1,945 in restitution. This holding also defeats Rick's argument that he is entitled to specific performance of the plea agreement because his pleas were induced by and conditioned upon the unfulfilled promise of \$100 restitution.

II

Rick alternatively argues that he is entitled to withdraw his guilty pleas. The argument prevails only if he can establish that withdrawal is necessary to correct a manifest injustice. *See* Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists when a guilty plea is invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). We see no manifest injustice in Rick's pleas. Rick was on notice that the state would seek restitution in excess of \$100 for his current offenses because the prosecutor mentioned it at his plea hearing. We add that we construe Rick's statement at sentencing, "[I]f you make the decision to take the money and put it towards [the restitution of \$1,945], I want to state on the record that I think I have every right to withdraw my guilty plea[s]," as his promise or threat to assert a motion. Rick never brought the motion after restitution was

ordered. We therefore have no concern that the district court was required to respond to his statement; it was not a motion. We affirm Rick's conviction.

Affirmed.