

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0023**

Ryan Eugene Loyd, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 10, 2014
Affirmed in part and remanded
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-10-34589

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's denial of his motion to withdraw his guilty plea, and he challenges the restitution award. Because we conclude that appellant's

guilty plea was accurate, voluntary, and intelligent, we affirm the district court's denial of the motion to withdraw the plea, but we remand the issue of restitution for further consideration consistent with this opinion.

FACTS

In July 2010, the Minneapolis police found a man dead from a single gunshot wound. Police subsequently learned that some of the victim's friends were with him when he was shot and that two gunmen participated in the shooting. A grand jury indicted appellant Ryan Loyd on first-degree murder committed for the benefit of a criminal gang, first-degree murder, second-degree intentional murder committed for the benefit of a gang, second-degree intentional murder, attempted first-degree murder committed for the benefit of a criminal gang, and attempted first-degree murder.

On January 10, 2011, Loyd reached a plea agreement with respondent State of Minnesota and pleaded guilty to second-degree intentional murder and attempted second-degree intentional murder. As part of the plea agreement, Loyd testified that he and another man repeatedly fired handguns in the direction of a group of people, intending to kill M.R., but they mistakenly hit and killed the victim. The state agreed that Loyd would not receive a greater sentence than his co-defendant. The district court dismissed the remaining charges against Loyd and sentenced him to consecutive prison terms of 306 months for second-degree intentional murder and 162 months for attempted second-degree intentional murder.

After the district court sentenced Loyd's co-defendant, the court set a hearing in March 2011, to resentence Loyd. Before the resentencing hearing, Loyd informed his

attorney that he was unhappy with his representation and wished to withdraw his guilty plea for that reason. At the resentencing hearing, Loyd's counsel made the plea-withdrawal motion on Loyd's behalf, informing the district court that Loyd was "very unhappy with the representation that he had received." The district court denied Loyd's motion and resentenced him to consecutive sentences of 276 months for second-degree intentional murder and 132 months for attempted second-degree intentional murder. On direct appeal, this court reversed and remanded, stating that Loyd "was entitled to have his motion to withdraw his guilty plea on the basis of ineffective assistance of counsel presented by counsel who had not been representing him when the guilty plea was heard." *State v. Loyd*, A11-1159, 2012 WL 1570077, at *2 (Minn. App. May 7, 2012).

After remand, the district court filed an order for restitution. Shortly thereafter, Loyd appeared before the court with conflict-free counsel and moved to withdraw his guilty plea on the bases that his plea was invalid because (1) his counsel's investigation was insufficient, (2) he did not understand the attempted murder charge when he pleaded guilty, and (3) his plea was not accurate, intelligent, and voluntary.¹ The district court denied this motion.

This appeal follows.

¹ Both before the district court and this court, Loyd addresses only the intelligence and voluntariness of his guilty plea.

DECISION

Denial of Motion to Withdraw Guilty Plea

A defendant may withdraw a guilty plea after he has been sentenced only to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A plea is valid when it is accurate, intelligent, and voluntary. *Id.* The validity of a guilty plea is a question of law, which this court reviews de novo. *Id.*

In January 2011, at a hearing on his petition to plead guilty, [Loyd] testified that, among other things, he was not feeling ill or taking medication, had discussed the consequences of entering a plea with his counsel, and had no unanswered questions. He testified that, in July 2010, he and another defendant intended to kill one person and mistakenly killed another.

Loyd, 2012 WL 1570077, at *1.

Loyd argues that his guilty plea was not intelligent because he did not understand the charges against him when he pleaded guilty. The district court rejected Loyd’s argument because, at the plea hearing, Loyd testified that he understood the charges against him, he had no questions, and he had time to consider the plea. A plea is intelligent if the defendant “understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Raleigh*, 778 N.W.2d at 96. Based on the record before us, we conclude that, when Loyd entered his plea of guilty, he understood the charges against him and that his plea was intelligent.

Loyd argues that his guilty plea was not voluntary because he “believed his only choice was to plead guilty.” He claims that he believed that he was “faced with the choice

of either going to trial with an attorney that he believed would not represent his interests or pleading guilty.” The district court did not directly address Loyd’s voluntariness argument because it construed Loyd’s claim to be one of ineffective assistance of counsel.

When analyzing the voluntariness requirement, a “court examines what the parties reasonably understood to be the terms of the plea agreement. The voluntariness requirement ensures that a defendant is not pleading guilty due to improper pressure or coercion. Whether a plea is voluntary is determined by considering all relevant circumstances.” *Id.* at 96 (citations omitted). Here, the record shows that, under questioning by his attorney when he pleaded guilty on January 10, 2011, Loyd understood all of his trial rights and agreed that he had “met and discussed this case many times” with his attorney; Loyd “had an opportunity to speak with family members”; “ultimately [Loyd had] reached the decision to come before th[e] Court and admit the role that [he] played in this and accept the responsibility”; he had reviewed the plea petition with his attorney “a number of times,” dating back to December 21, 2010; he was not ill and “had an opportunity to clearly understand what [he and his attorney had] talked about”; that “there [had never] been a time where [his attorney had] left [him] where [he] didn’t understand what [they] were talking about”; that he thought that his attorney had answered every question that he had presented to his attorney; and that he was “ready to go forward.” The totality of the circumstances show that Loyd voluntarily pleaded guilty.

Because Loyd has not shown his plea to be unintelligent or involuntary, Loyd fails to show his plea was invalid. He therefore is not entitled to withdraw his plea to correct a manifest injustice under Minn. R. Crim. P. 15.05, subd. 1.

Restitution Award

Loyd argues that this court should vacate the restitution award of \$21,528 because he did not receive notice of the amount of restitution requested and the amount of restitution requested is not supported by the record. Loyd did not challenge the restitution award within 30 days of sentencing, and the record is silent as to whether he received written notice of the restitution amount. Challenges to an award of restitution must be made “by requesting a hearing [in writing and] within 30 days of receiving *written notification* of the amount of restitution requested, or within 30 days of sentencing, whichever is later.” Minn. Stat. § 611A.045, subd. 3(b) (2012) (emphasis added). The state argues that this court should remand the issue of restitution to allow the record to be supplemented for a determination of whether Loyd received notice of the restitution award.

We remand the issue of restitution to the district court for a determination of whether Loyd received written notice of the amount of restitution requested, the threshold issue under Minn. Stat. § 611A.045, subd. 3(b). *See State v. Fader*, 358 N.W.2d 42, 48 (Minn. 1984) (remanding for reconsideration of restitution award when “the record [did] not provide a factual basis for the restitution award”). If the district court finds that Loyd or his attorney received written notification of the amount of restitution requested, the district court should determine whether Loyd waived his challenges because of his failure

to timely request a hearing. If the district court finds that Loyd did not receive written notification of the amount of restitution requested, Loyd's statutory timeline has not yet expired, and Loyd therefore may request an evidentiary hearing to challenge restitution.

Affirmed in part and remanded.