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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0309**

Donald Joseph Hall, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 4, 2012
Affirmed
Chutich, Judge**

Martin County District Court
File No. 46-CR-07-1757

David W. Merchant, Chief Appellate Public Defender, Cathryn Middlebrook, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Terry W. Viesselman, Martin County Attorney, Michael D. Trushenski, Assistant County Attorney, Fairmont, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Chutich, Judge; and Harten,
Judge.*

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

UNPUBLISHED OPINION

CHUTICH, Judge

In this postconviction appeal, appellant Donald Hall argues that his plea was invalid because he did not know that a five-year conditional release term would be imposed if his sentence was executed. Because sufficient evidence shows that Hall was on notice of the conditional release, we affirm.

FACTS

On November 9, 2007, Hall was arrested and subsequently charged with one count of first-degree driving while impaired and one count of refusal to submit to a chemical test. On November 5, 2008, pursuant to a plea agreement, Hall pleaded guilty to the charge of refusal to submit to a chemical test. The district court later sentenced Hall to 48 months, stayed the sentence for seven years, and ordered 180 days of local confinement. The district court stated on the record that a five-year conditional release period would follow any executed sentence, but the conditional release term was not included on Hall's sentencing form.

In 2009, Hall violated his probation and the district court executed his 48-month sentence. The district court subsequently amended its order to add five years of conditional release to Hall's sentence.

Hall filed a petition for postconviction relief to challenge the validity of his guilty plea, arguing that he was never informed about the conditional release. The district court concluded that Hall's plea was intelligent and denied his petition. This appeal followed.

DECISION

We review a district court's decision to deny postconviction relief for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). This court's "scope of review is limited to the question of whether sufficient evidence exists to support the postconviction court's findings." *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). When considering a district court's denial of postconviction relief, we review issues of law de novo and findings of fact for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

A defendant may withdraw a guilty plea at any time, even after sentencing, if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a guilty plea is not voluntary, accurate, and intelligent. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007); *Perkins*, 559 N.W.2d at 688. "The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea." *State v. Raleigh*, 778 N.W.2d 90, 96 (Minn. 2010).

Hall contends that his plea was not intelligent because he was not informed of the conditional release term. The record demonstrates, however, that he was on notice of the conditional release at the time of his plea and sentencing. First, Hall's written plea petition stated that, for felony driving while impaired offenses, a mandatory conditional release period would follow any executed sentences. The specific length of the conditional release was not noted on Hall's petition, but the provision put him on notice that a conditional release period was mandatory. Second, the presentence investigation

report specifically stated that a conditional release term of five years applied if the prison sentence was ever executed. At the sentencing hearing, Hall's counsel objected to several of the report's recommendations, but did not contest the report's conclusion regarding the conditional release.

Most importantly, the conditional release was specifically included in Hall's sentence. At the sentencing hearing, the district court expressly stated that "there will be a conditional release of five years if your sentence is ever executed." Hall did not object when the district court expressed this term even though the specific number of years was not included in his written plea petition. Although the conditional release was not included on Hall's sentencing order, it was a part of his sentence because "an orally pronounced sentence controls over a judgment and commitment order when the two conflict." *State v. Staloch*, 643 N.W.2d 329, 331 (Minn. App. 2002) (quotation omitted).

In a similar case, *State v. Rhodes*, the supreme court rejected the argument that a guilty plea was invalid because a five-year term of conditional release was not mentioned in a plea agreement. 675 N.W.2d at 325–27. In *Rhodes*, the conditional release term was mentioned in the presentence investigation report, by the prosecutor at sentencing, and by the district court at sentencing. *Id.* at 325. The supreme court reasoned that, because the defendant failed to object when the conditional release term was mentioned, the defendant "understood from the beginning that the conditional release term would be a mandatory addition to his plea bargain." *Id.* at 327.

Here, as in *Rhodes*, the presentence investigation report mentioned the conditional release period, the district court included the conditional release in its oral sentence, and

Hall made no objection. Thus, Hall was on notice that the conditional release period was part of his sentence. The postconviction court correctly determined that Hall's plea was intelligent, and it therefore acted within its discretion in denying his petition for postconviction relief.

Affirmed.