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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0623**

State of Minnesota,
Respondent,

vs.

Michael Peter Henderson,
Appellant.

**Filed March 11, 2013
Affirmed
Ross, Judge**

Anoka County District Court
File No. 02-CR-11-7469

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

Anthony C. Palumbo, Anoka County Attorney, Robert D. Goodell, Assistant County
Attorney, Anoka, Minnesota (for respondent)

Michael Peter Henderson, Zimmerman, Minnesota (pro se appellant)

Considered and decided by Kirk, Presiding Judge; Ross, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Michael Henderson appeals from his conviction of and sentence for escape from
custody. He argues that he was denied proper venue, that the escape statute is

unconstitutional as applied to him, that the district court should have allowed him to withdraw his *Alford* plea, and that his sentence exceeds the limits outlined in his plea agreement. We affirm because the district court had jurisdiction and venue was proper, Henderson waived his constitutional arguments, the district court properly denied his motion to withdraw his *Alford* plea, and he expressly agreed to the terms of his sentence.

FACTS

In September 2011, Michael Henderson was being held in the Anoka County jail on drug charges. The district court granted him a furlough to attend a residential drug-treatment program at a Salvation Army facility in Minneapolis. Henderson left the program without completing it but did not return to the Anoka County jail as ordered. Police arrested Henderson a few days later in Anoka County, and the state charged him with escape from custody in violation of Minnesota Statutes sections 609.485, subdivision 2(1), 609.485, subdivision 4(a)(1), and 609.101 (2010).

Henderson entered an *Alford* plea, maintaining his innocence while acknowledging that the state would probably convict him at trial. *See North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970) (allowing defendants to plead guilty while refusing to admit to the crime); *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (adopting *Alford* pleas in Minnesota). He told the district court that he was entering the *Alford* plea to receive the benefits of a plea agreement, and he acknowledged that his plea might make appeal difficult. Under the agreement, Henderson was required to complete a treatment program while on a jail furlough that would begin immediately after sentencing. The district court warned Henderson that violating the terms of his stay

would result in an executed prison sentence of 15 months under the Minnesota Sentencing Guidelines, and Henderson indicated that he understood. The state dismissed the drug charges as part of the agreement. Henderson signed a plea petition memorializing the terms of his plea.

Henderson moved the district court to withdraw his *Alford* plea. At his sentencing hearing, he argued that he had been subjected to a manifest injustice because he was not in custody while on furlough and therefore could not have escaped from custody. He also argued that the plea agreement was unfair because it imposed a guidelines sentence plus 180 days and he complained, “I’m not getting this great deal.” The district court parried, highlighting that the plea agreement also included dismissal of drug charges carrying a maximum 144-month sentence, making his 15-month stayed sentence “a good deal.” He also asserted that the statute was unconstitutionally vague and that the district court lacked jurisdiction. The district court denied the motion after it found no showing of manifest injustice in the plea agreement and held that it would not be fair and just to allow Henderson to withdraw his plea.

Henderson appealed. This court stayed the appeal pending several motions that Henderson filed in the district court, but we reinstated the appeal after the district court denied Henderson’s motions.

DECISION

I

Henderson argues that the district court in Anoka County lacked jurisdiction over the case because any escape was committed when he left the treatment program in

Hennepin County, not in Anoka County. His argument confuses venue with jurisdiction. “Jurisdiction is a threshold inquiry that must be established before the question of venue is reached.” *State v. Smith*, 421 N.W.2d 315, 320 (Minn. 1988). Jurisdiction requires only that some triggering event occur within the territory of Minnesota. *Id.* at 319. Both Henderson’s departure from the treatment program and his failure to return to jail occurred in Minnesota, so there is no basis for a jurisdictional argument.

The argument fares no better when we construe it as a venue challenge. We review venue challenges de novo. *State v. Daniels*, 765 N.W.2d 645, 648–49 (Minn. App. 2009), *review denied* (Minn., Aug. 11, 2009). When elements of a crime take place in more than one county, venue is proper in any county where at least one element took place. *Id.* at 649. Henderson argues that if he committed any crime at all by leaving the treatment program, he did so in Hennepin County rather than Anoka County. But escape from custody “includes departure without lawful authority *and* failure to return to custody following temporary leave granted for a specific purpose.” Minn. Stat. § 609.485, subd. 1 (2010) (emphasis added). And a defendant remains in custody while on furlough to a treatment program. *Headbird v. State*, 375 N.W.2d 90, 92 (Minn. App. 1985), *review denied* (Minn. Dec. 13, 1985). So we need not address whether Henderson committed the escape in Hennepin County by leaving the treatment program without authority, because he committed the escape in Anoka County by failing to return to the county jail after the purpose of his furlough ended by his departure. Escape is also a continuing offense, *State v. Burnett*, 292 Minn. 484, 484, 195 N.W.2d 189, 189 (1972), so Henderson continued to commit the escape when he returned to Anoka County without returning to jail.

II

Henderson also claims that the escape-from-custody statute is unconstitutionally vague and that its application to a defendant on pretrial furlough violates the constitutional prohibition on excessive bail. But we decline to address these constitutional claims because the district court did not decide them and because Henderson did not notify the Attorney General as required by Minnesota Rule of Civil Appellate Procedure 144. *See State v. Kager*, 357 N.W.2d 369, 370 (Minn. App. 1984).

III

Henderson argues that the district court erred when it refused to allow him to withdraw his *Alford* plea using only one of two available standards. His argument misrepresents the record. The district court may allow a defendant to withdraw an *Alford* plea for the same reasons it allows a defendant to withdraw a conventional guilty plea—“to correct a manifest injustice” or “if it is fair and just to do so.” *See* Minn. R. Crim. P. 15.05, subd. 1, 2; *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). We review de novo the district court’s decision to deny withdrawal because the plea was valid and reflected no manifest injustice. *Id.* But we apply an abuse-of-discretion standard when reviewing the district court’s decision to deny withdrawal based on the fair-and-just test. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). Henderson argues that the district court abused its discretion by analyzing his motion to withdraw his plea under the manifest-injustice standard but not under the fair-and-just standard. But the record shows that the district court considered the motion under both standards. The argument therefore fails.

IV

Henderson's sentence challenge is factually flawed. He argues that the district court violated his plea agreement by sentencing him to a 15-month stayed prison sentence when his plea agreement limited jail time to 180 days. We review the interpretation and enforcement of plea agreements de novo. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). Under the plain terms of the agreement, the 180-day limit applied to the jail time that Henderson would serve as a condition of the stayed sentence, not to the prison time that he would face if he violated the probationary terms of his stayed sentence. The plea agreement also stated that his stayed sentence would be in accord with the Minnesota Sentencing Guidelines, which indicates a presumptive prison sentence of 15 months. The district court emphasized at the plea hearing that Henderson would serve 15 months if his sentence was executed.

We have carefully considered Henderson's other arguments and find that they do not merit further discussion.

Affirmed.