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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1597**

Dal Christian Rondeau, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 4, 2012
Affirmed
Rodenberg, Judge**

Anoka County District Court
File No. 02CR0810334

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

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

Anthony C. Palumbo, Anoka County Attorney, Marcy S. Crain, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Ross, Judge; and Harten, Judge.*

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

UNPUBLISHED OPINION

RODENBERG, Judge

In this postconviction appeal challenging his 2009 conviction, appellant argues that the district court erred in denying his petition to withdraw his guilty plea as not having been voluntary, knowing, or intelligent. An evidentiary hearing was held on appellant's petition. Because the district court did not abuse its discretion in denying appellant's petition, we affirm.

FACTS

In October 2008, appellant Dal Christian Rondeau pleaded guilty to felony criminal vehicular operation in violation of Minn. Stat. § 609.21, subds. 1(2)(ii) and 1a(b) (2008); gross-misdemeanor criminal vehicular operation in violation of Minn. Stat. § 609.21, subds. 1(2)(ii) and 1a(d) (2008); and felony fleeing a police officer in violation of Minn. Stat. § 609.487, subd. 3 (2008). In exchange, two additional counts of criminal vehicular operation were dismissed. The plea petition provided that "all terms including probationary jail" would be left to the discretion of the court.

Appellant was sentenced on January 27, 2009. Corrections recommended that appellant's sentence include the 59 days' jail time previously served. The state argued strenuously that appellant should serve additional time in jail as a condition of probation. Although appellant's trial attorney did not explicitly request or argue a stay of imposition, he did vigorously advocate that appellant's sentence should not include additional executed jail time. Appellant moved for reconsideration of sentence shortly after the

sentencing hearing, and the sentence was modified. The modifications are not an issue on this appeal.

At the conclusion of the resentencing hearing, appellant's sentence was pronounced as follows: 18 months in the custody of the Commissioner of Corrections, execution of sentence stayed, and five years of probation for felony criminal vehicular operation; one year in jail, 240 days stayed, 59 days jail credit, and five years of probation for gross-misdemeanor criminal vehicular operation; and twelve months and one day in the custody of the Commissioner of Corrections, execution of sentence stayed, and three years of probation for felony fleeing a police officer. All probationary periods were to run concurrently; however, if appellant violated the terms of his probation, the prison time for the felony fleeing charge would be consecutive to the other two sentences. No direct appeal was taken.

Nearly two years after sentencing, appellant submitted a petition for postconviction relief, alleging that his plea was not voluntary, knowing or intelligent. At the time the petition was submitted, the attorney who had represented appellant during the plea and sentencing hearings had been replaced by a different public defender. In his postconviction petition, appellant alleged that his original attorney had advised him that the plea agreement called for a stay of imposition of sentence and that he had relied on that statement when entering his guilty plea. Appellant also contends that he was "not of sound mind" when he entered the plea because he was desperate to leave jail, had recently separated from his wife, was in the process of losing his home, had a failing business, and was detoxifying from extensive drug use.

An evidentiary hearing was held by the postconviction court on appellant's petition. Both appellant and his original attorney testified. On July 11, 2011, the postconviction court issued an order denying appellant's petition, finding that appellant had failed to meet his burden of proving that his guilty plea was not accurate, voluntary, and intelligent.

In its order denying appellant's petition, the postconviction court found that appellant's testimony was not credible because (1) appellant first testified that his trial attorney said they were "going for" a stay of imposition and then stated that the trial attorney told him the plea agreement was for a stay of imposition and (2) appellant referred to the judge at the plea hearing as "him" when the judge at the plea hearing was female. The postconviction court found that the attorney's testimony was credible because (1) he is an experienced attorney who has handled numerous felony plea petitions and (2) he correctly recalled the verifiable details of the plea hearing.¹

With respect to appellant's argument that he was improperly induced to plead guilty by his strong desire to get out of jail, the postconviction court noted that the plea petition states that appellant was not making "the claim that the fact that I have been held in jail since my arrest . . . caused me to decide to plead guilty in order to get the thing over with rather than waiting for my turn at trial."

With respect to appellant's assertion that he had been told that his plea would result in a stay of imposition, the postconviction court noted that the plea petition instead

¹ The plea transcript was not a part of the record before the postconviction court, is not contained in the district court file, and is not a part of the record on appeal.

stated that appellant was pleading guilty to three counts with “all terms and probationary jail to the court.” The postconviction court found that the attorney informed appellant “that he would be arguing for a stay of imposition, not that it was an absolute certainty.”

With respect to appellant’s argument that he was “not of sound mind” when he entered his plea, the court noted that appellant never raised the issue with the judge presiding over the plea hearing. Observing that the plea transcript was not in evidence and that testimony at the evidentiary hearing conflicted as to whether appellant informed his attorney that he did not understand the plea agreement or that it confused him, the court emphasized that appellant signed the plea petition, the plea was accepted by the district court, and that appellant “raised no objection to the terms of the plea agreement.”

Appellant argues on appeal that the postconviction court erred in denying his petition to withdraw his plea.

D E C I S I O N

In reviewing a postconviction order, an appellate court determines whether there is sufficient evidence to support the postconviction court’s factual findings, and will not disturb the postconviction court’s decision absent an abuse of discretion. *Walen v. State*, 777 N.W.2d 213, 215 (Minn. 2010). But the validity of a guilty plea is a question of law which is reviewed de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

A defendant does not have an absolute right to withdraw a guilty plea. *Id.* at 93. A guilty plea may be withdrawn at any time in order to correct a “manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid.” *Raleigh*, 778 N.W.2d at 94. A valid guilty plea is one that is accurate, voluntary,

and intelligent. *Id.* The defendant has the burden of establishing that his guilty plea is invalid. *Id.* Appellant does not allege that his plea was not accurate, only that it was not voluntary or intelligent.

The voluntariness requirement ensures that a guilty plea is not in response to improper pressures or coercion. *Id.* at 96. “To determine whether a plea is voluntary, the court examines what the parties reasonably understood to be the terms of the plea agreement” and, in doing so, employs a totality-of-the-circumstances approach. *Id.* “An unqualified promise which is part of a plea arrangement must be honored or else the guilty plea may be withdrawn.” *Kochevar v. State*, 281 N.W.2d 680, 687 (Minn. 1979).

Appellant argues that his plea was not voluntary because it was improperly induced by “false information” provided by his attorney. Appellant alleges that his trial attorney promised him that the sentence would include a stay of imposition. The postconviction court found that no such promises were made to appellant. The record supports the court’s finding.

Although appellant testified that his trial attorney had promised him the plea agreement called for a stay of imposition and argued that this promise induced him to plead guilty, the plea petition itself disclaims any such promises. Appellant’s trial attorney testified that, while he did discuss with appellant that he intended to argue for a stay at sentencing, he never promised that appellant would receive a stay of imposition. The postconviction court concluded that the attorney’s testimony on this issue was credible and that appellant’s was not. “When evidence relevant to a factual issue consists of conflicting testimony, the district court’s decision is necessarily based on a

determination of witness credibility, which we accord great deference on appeal.” *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

Where, as here, a defendant was aware that sentencing was left to the discretion of the judge, a guilty plea “should not be set aside merely because the accused has not achieved an unwarranted hope.” *Schwerm v. State*, 288 Minn. 488, 491, 181 N.W.2d 867, 868 (1970). The plea petition here referenced “all terms including probationary jail to the court.” Appellant’s belief that imposition of sentence might be stayed is not a sufficient reason to find the plea was involuntary. *See State v. Ferraro*, 403 N.W.2d 845, 847 (Minn. App. 1987) (holding that where a probationary sentence and a right to withdraw the plea were not promised to appellant and were not a part of the plea agreement, appellant’s belief to the contrary did not require vacation of his conviction or reversal of the trial court’s refusal to grant appellant’s request to withdraw plea).

Appellant also argues that his plea was not voluntary because he felt rushed the day of the plea hearing and he had a strong desire to be released from jail so that he could deal with stressful personal matters. In finding that these factors did not render the plea involuntary, the postconviction court emphasized that the signed plea petition stated that appellant was not making “the claim that the fact that I have been held in jail since my arrest . . . caused me to decide to plead guilty in order to get the thing over with rather than waiting for my turn at trial.” Stress and a desire to be released from jail have been held to be insufficient reasons to permit withdrawal of a guilty plea. *See Williams v. State*, 760 N.W.2d 8, 14 (Minn. App. 2009) (rejecting appellant’s argument that her plea

was involuntary due to depression, stress, and being rushed), *review denied* (Minn. Apr. 21, 2009).

“The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Raleigh*, 778 N.W.2d at 96. “To be intelligently made, a guilty plea must be entered after a defendant has been informed of and understands the charges and direct consequences of a plea.” *State v. Byron*, 683 N.W.2d 317, 322 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

Appellant asserts that his plea was not entered knowingly or intelligently because he was “not in his right mind” due to stressors in his personal life including that he was detoxifying from recent drug abuse. Moreover, appellant claims that he “did not completely fully 100 percent understand” his plea agreement and that he had informed his attorney of this.

Beyond his own assertions, appellant offered no testimony or other factual support at the evidentiary hearing supporting his claim that he was not of sound mind when he entered his plea. Generally, emotional and mental stresses at the time of entering the plea are not sufficient reasons to permit plea withdrawal. *See Butala v. State*, 664 N.W.2d 333, 340–41 (Minn. 2003) (finding defendant’s assertions of emotional and mental stress were inadequate reasons to permit withdrawal of guilty plea); *Williams*, 760 N.W.2d at 15 (finding plea was entered intelligently despite defendant’s unsupported assertions that her thinking and mental focus were clogged and distorted due to medication she was taking at the time of the plea).

Appellant's attorney testified that appellant did not communicate to him that he was feeling overwhelmed or confused by the plea process on the day of the plea hearing. Moreover, appellant's attorney, who was experienced in working with defendants who showed signs of not understanding their plea, answered in the negative when asked whether, in his experience, he thought appellant failed to "understand any of the components of the plea agreement at the time it was entered."

The postconviction court concluded that appellant's plea was intelligent despite his assertions. The record provides ample support for the postconviction court's conclusion.

Appellant also claims he thought he was pleading guilty to only two counts. The plea petition clearly lists three counts. Appellant's attorney visited him in jail before the plea hearing to review the plea agreement, and it was after they had reviewed the petition that appellant signed it. Appellant testified that the court reviewed the plea petition with him and that he acknowledged in making his plea that he had sufficient time to review his plea petition with his attorney and that he was satisfied that his attorney had fully advised him. *See Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) (holding that defendant's opportunities to consult with his attorney supported the voluntariness and intelligence requirements).

The record supports the district court's conclusion that appellant did not carry his burden of showing his plea not to have been accurate, voluntary, and intelligent. The postconviction court did not err.

In his pro se supplemental brief, appellant alleges, for the first time, facts tending to imply a claim that his plea was invalid due to ineffective assistance of counsel. “It is well settled that a party may not raise issues for the first time on appeal from denial of postconviction relief.” *Schleicher v. State*, 718 N.W.2d 440, 445 (Minn. 2006) (quotation omitted). There is an exception to this rule which provides that a claim is not forfeited on appeal from denial of postconviction relief if the appellant “could not have asserted [the] claim in his first [postconviction] petition.” *Id.* This exception does not apply here. The attorney representing appellant at the plea hearing was no longer representing appellant when the postconviction petition was filed; appellant was represented by a different public defender at the postconviction hearing. Appellant could have raised any ineffective-assistance-of-counsel claim against his attorney in his postconviction petition and failed to do so. Appellant’s claim is thereby forfeited on appeal.²

Affirmed.

² Moreover, appellant’s pro se supplemental brief cites to no authority with respect to the late-claimed ineffective assistance of counsel. If a brief does not contain an argument or citation to legal authority in support of the allegations raised, the argument is deemed waived. *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002).