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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1250**

James Edgar Austin, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed August 5, 2008  
Affirmed  
Halbrooks, Judge**

Carver County District Court  
File No. 10-K1-02-771

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Considered and decided by Halbrooks, Presiding Judge; Willis, Judge; and  
Johnson, Judge.

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

In this postconviction proceeding, appellant challenges the district court's refusal to allow him to withdraw his guilty plea to two counts of criminal sexual conduct. He contends that the failure to inform him of the statutorily mandated five-year conditional-release period that accompanies conviction of such a crime rendered his decision to plead guilty invalid. We affirm.

### FACTS

Persons convicted of criminal sexual conduct prior to 2006 in Minnesota and sentenced to prison are subject to the mandatory conditional-release requirements of Minn. Stat. § 609.109 (2000).<sup>1</sup> Following a conviction of second-degree criminal sexual conduct under Minn. Stat. § 609.343 (2000), generally a five-year conditional-release period is required upon the offender's release from custody. Minn. Stat. § 609.109, subd. 7(a). If an offender placed on conditional release violates the terms of this release, he or she may be reincarcerated and required to serve the remaining period of the conditional-release period in prison. Minn. Stat. § 609.109, subd. 7(b).

In April 2002, appellant was charged with six counts of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343. On October 2, 2002, he entered into a plea agreement, providing that he would plead guilty to two of the six counts in return for dismissal of the remaining four counts. The plea agreement also stated that no further

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<sup>1</sup> Minn. Stat. § 609.109 was repealed in 2006. 2006 Minn. Laws ch. 260, art. 1, § 48, at 732. Minn. Stat. § 609.3455 (2006) replaced this section in large part.

prison time would be imposed based on appellant's plea (as he had been in custody since his arrest), but that appellant would be subject to probation. The agreement did not include any term concerning the maximum sentence to which appellant could be subjected. During the plea hearing, the district court informed appellant that the maximum sentence for the charges to which he was pleading guilty was 25 years. At no time during the plea hearing was appellant informed that he would be subject to the mandatory conditional-release period if he violated his probation and was sentenced to prison. Nor did his written plea petition include any notice of the mandatory conditional-release term.

A presentence investigation (PSI) was subsequently performed, and the PSI worksheet was provided to appellant. The PSI indicated that appellant would be subject to the statutorily mandated five-year conditional-release period if his prison sentence was executed.

At the sentencing hearing, the district court sentenced appellant under the terms of the plea agreement. The district court stayed imposition of any further prison time and placed appellant on probation for up to 25 years. There was no discussion of conditional release at appellant's sentencing hearing.

Appellant had a probation-violation hearing on January 6, 2004. At this hearing, the district court found that appellant violated his probation by committing the new offense of receiving stolen property and, as a consequence, executed a 27-month prison sentence. The court stated that, upon appellant's release from prison, he would be placed "on probation under Minnesota Statute 609.109."

Appellant was released from prison in December 2004, but violated the terms of his conditional release and was reincarcerated. He subsequently brought a petition for postconviction relief on March 16, 2007, attempting to withdraw his plea of guilty to both criminal-sexual-conduct charges based on the failure to inform him of the mandatory conditional-release period. The district court denied appellant's petition. This appeal follows.

### DECISION

Appellant argues that the failure to inform him of the five-year conditional-release period mandated by Minn. Stat. § 609.109, subd. 7 (2000), rendered his decision to plead guilty constitutionally deficient. In a postconviction appeal, we will reverse a district court's decision granting or denying a postconviction petition only if the court abused its discretion. *Russell v. State*, 562 N.W.2d 670, 672 (Minn. 1997). Issues of law relevant to such matters, however, are reviewed de novo. *Schleicher v. State*, 718 N.W.2d 440, 445 (Minn. 2006). Because the enforcement and interpretation of plea agreements present legal issues, our review of the district court's denial of appellant's petition is de novo. *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000).

A defendant may withdraw a guilty plea if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. For a guilty plea to satisfy constitutional requirements it "must be accurate, voluntary, and intelligent (i.e., knowingly and understandingly made)." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). The absence of any of these three requisites, if shown by the defendant, results in

a “manifest injustice” and allows the defendant to withdraw the plea. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

In negotiating a plea agreement, the state is bound by any promises it makes as a part of the agreement. *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). “Allowing the government to breach a promise that induced a guilty plea violates due process.” *James v. State*, 699 N.W.2d 723, 728 (Minn. 2005) (quotation omitted). Furthermore, a guilty plea cannot be induced by the promise of an illegal or unauthorized sentence because such a promise is not capable of being fulfilled. *Id.* at 729.

Cases dealing with undiscussed, yet statutorily mandated, conditional-release periods have received considerable attention by the supreme court. As a result, the supreme court has established the general rule that if a maximum sentence is negotiated as part of a plea agreement and the defendant is not made aware of a mandatory conditional-release period before pleading guilty, the conditional-release period cannot later be imposed if it would violate the negotiated sentence without giving the defendant an opportunity to withdraw his or her plea. *James*, 699 N.W.2d at 730; *Jumping Eagle*, 620 N.W.2d at 44; *State v. Garcia*, 582 N.W.2d 879, 882 (Minn. 1998).<sup>2</sup> Appellant

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<sup>2</sup> There are at least two exceptions to this general rule that will preclude a defendant from withdrawing a guilty plea based on an undiscussed conditional-release term. *See State v. Rhodes*, 675 N.W.2d 323, 327 (Minn. 2004) (finding that providing a defendant with a sentencing worksheet noticing the conditional-release period *and* discussion of the conditional-release period at the sentencing hearing prevents an offender from later withdrawing the plea); *Brown*, 606 N.W.2d at 674 (if the conditional release can be imposed without violating the duration of the sentence contemplated as part of the plea agreement an offender is not allowed to withdraw a plea). The *Brown* case is inapposite because there was no cap as to sentence here, and *Rhodes* is distinguishable because there was no discussion of the conditional-release period during appellant’s sentencing hearing.

argues that this general rule applies here and mandates that he be allowed to withdraw his guilty plea. We disagree.

A consistent component of the *James/Jumping Eagle/Garcia* line of cases is that they involved a maximum negotiated sentence as part of the plea agreement. No such fact exists here. Appellant's plea agreement stated that he would be subject to no further executed prison time based solely on his guilty plea but that he would be subject to probation for up to 25 years. There was no cap on the duration of the sentence that the district court could impose.

When a specified sentence is not negotiated as part of a plea agreement, this court held in *State v. Christopherson* that the failure to warn a defendant of a conditional-release period mandated by section 609.109 does not, by itself, render a guilty plea invalid. 644 N.W.2d 507, 509-11 (Minn. App. 2002), *review denied* (Minn. July 16, 2002). The material facts in *Christopherson* are identical with appellant's case. Christopherson pleaded guilty to second-degree criminal sexual conduct, imposition of his sentence was stayed, and he was placed on probation. *Id.* at 508. The record reflected no evidence that a maximum sentence was agreed to as part of Christopherson's plea. *Id.* at 509. Christopherson subsequently violated his probation, and the district court executed his stayed prison sentence, which included the mandatory five-year conditional-release period. *Id.* After Christopherson's release from custody, he violated the terms of his conditional release and was returned to prison. *Id.* He challenged imposition of the conditional-release period, claiming that the failure to inform him of the

conditional-release requirement at the time of his plea meant that it was not accurate, voluntary, and intelligent. *Id.*

We rejected this argument, stating:

Because the conditional-release term was not mandated at the time Christopherson entered his plea, to adopt his position would be to adopt a rule that requires any court taking a plea to state on the record all possible consequences of any future violation of terms of probation. If the court fails to do so, upon a later finding of a violation, the court could not impose any sanction that was not mentioned at the time of the earlier plea without giving the defendant the opportunity to withdraw his plea, perhaps years after he entered it. Such a rule would conflict with [other related statutory provisions].

....

. . . Consequently, the fact that the conditional release was not mentioned to Christopherson at the time the original plea was entered is not, in itself, enough to demonstrate that his plea was not accurate, voluntary, and intelligent.

*Id.* at 510-11. The *Christopherson* court distinguished the *Jumping Eagle/Garcia* line of cases because “at the time of [Christopherson’s] plea there was no limitation on the amount of prison time.” *Id.* at 511-12.

We conclude that *Christopherson* controls here because appellant’s plea agreement did not contain a term of a maximum sentence. The essence of what appellant bargained for in his plea agreement was to avoid further prison time, not a particular sentence. *See id.* at 511 (stating “the only thing . . . bargained for was a disposition that would not include prison time”). The state made no promise that was violated by later imposition of the undiscussed yet mandatory conditional-release period. Thus, the state

did not improperly induce appellant to plead guilty by making an unfulfillable promise in regard to his sentence. As in *Christopherson*, the *James/Garcia/Jumping Eagle* precedent is distinguishable for this reason. Therefore, we conclude that the district court correctly determined that no manifest injustice is present to allow appellant to withdraw his guilty plea.

## **II.**

Appellant also argued to the district court that his plea was not accurate, voluntary, and intelligent because he was unaware that he would have to register as a sex offender. While addressed in the state's brief, appellant does not brief this issue on appeal. Therefore, the issue is waived. *State v. Grecinger*, 569 N.W.2d 189, 193 n.8 (Minn. 1997). Regardless, the substance of this argument warrants appellant no relief because the supreme court has held that registration as a sex offender is a collateral consequence of a guilty plea; failure to inform a defendant about this requirement does not justify withdrawal of the defendant's plea. *Kaiser v. State*, 641 N.W.2d 900, 907 (Minn. 2002).

**Affirmed.**