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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1222**

LeRoy Jeffers, Jr., petitioner,

Appellant,

vs.

State of Minnesota,

Respondent.

Filed April 27, 2010

Affirmed

Wright, Judge

Hennepin County District Court
File No. 27-CR-05-071687

David W. Merchant, Chief Appellate Public Defender, Stephen L. Smith, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Wright, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges the district court's denial of his request to withdraw his 2006 guilty plea to third-degree criminal sexual conduct. He argues that he is entitled to withdraw the guilty plea because he was not notified of the mandatory ten-year conditional-release term and because his attorney "coerced" him into pleading guilty. He also argues that imposition of the ten-year conditional-release term violates the prohibition against double jeopardy. For the reasons set forth below, we affirm.

FACTS

In October 2005, J.J. called 911 to report that her boyfriend, appellant Leroy Jeffers, Jr., had assaulted her. J.J. reported that, during the assault, appellant threw her to the floor, strangled her, and struck her in the forehead with his fist. During the subsequent investigation, police learned that Jeffers had been involved in a sexual relationship with J.J. since April 2003, when J.J. was only 14 years old and Jeffers was 32 years old.

A complaint was filed in November 2005 charging Jeffers with third-degree criminal sexual conduct for engaging in sexual penetration on multiple occasions with J.J. between April 2003 and October 2005. Jeffers also was charged with domestic assault by strangulation for allegedly assaulting J.J. on October 19, 2005.

On February 8, 2006, Jeffers agreed to plead guilty to third-degree criminal sexual conduct. The state agreed to dismiss the domestic-assault charge, and the parties agreed that Jeffers would receive a stay of imposition and be placed on probation. Jeffers also

agreed to “follow any recommendations of probation and comply with any statutory requirements for other sex offender registration or assessment that may be mandatory under the statute for this case.” But Jeffers was not specifically advised of the mandatory conditional-release term, either during the guilty-plea hearing or in the written petition to plead guilty signed by Jeffers.

At his sentencing hearing on April 11, 2006, Jeffers initially expressed dissatisfaction with his court-appointed counsel. After questioning by the district court, Jeffers agreed to continue with his counsel’s representation. His counsel moved to withdraw Jeffers’s guilty plea, claiming that Jeffers had been under the impression that he could remain in his public housing if he pleaded guilty, but that was not the case. The prosecutor responded that Jeffers’s housing was a collateral consequence of his guilty plea; and although his housing was discussed, no promises were made. The district court denied Jeffers’s motion to withdraw his guilty plea.

The district court thereafter stayed the imposition of Jeffers’s sentence and placed him on probation for five years. The district court specifically advised Jeffers that revocation of his probation for any reason would result in the execution of his 28-month prison sentence, and a ten-year conditional-release term would be imposed. Jeffers did not object, and he signed a document entitled “Terms and Conditions of Stayed Felony Sentence,” which also recited this information.

After Jeffers failed to complete sex-offender treatment, his probation was revoked on March 20, 2007. The district court executed the 28-month sentence and imposed a ten-year conditional-release term.

In April 2009, Jeffers filed a pro se petition for postconviction relief, seeking to withdraw his guilty plea. In a May 4, 2009 letter to Jeffers, the district court addressed and rejected Jeffers's challenge to the imposition of his conditional-release term. Absent any objection and in the interest of judicial economy, we construe the district court's letter as an order denying Jeffers's petition for postconviction relief. This appeal followed.

DECISION

I.

Jeffers argues that the district court abused its discretion by denying his petition for postconviction relief because he "misunderstood" conditional release and would not have pleaded guilty had he known he would be subject to it. He thus claims that his guilty plea was not intelligently made and that he should be allowed to withdraw it. We will not disturb the district court's denial of Jeffers's petition to withdraw his guilty plea unless the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

"A defendant does not have an absolute right to withdraw a valid guilty plea." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). But withdrawal of a guilty plea after sentencing must be allowed if it "is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists if a guilty plea is not "accurate, voluntary, and intelligent (i.e., knowingly and understandingly made)." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). "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 [guilty] plea.” *State v. Byron*, 683 N.W.2d 317, 322 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

The district court concluded that Jeffers’s guilty plea was intelligently made because he knew “at the time of the original plea agreement and sentencing” that a ten-year conditional-release term would be imposed. The district court observed that “[t]he original plea agreement also included a ten-year conditional release period if [Jeffers] were ever revoked from probation.” But the record fails to establish that a conditional-release term was addressed either at the guilty-plea hearing or in the guilty-plea petition. The district court and the state in its respondent’s brief also indicate that Jeffers’s presentence investigation (PSI) report informed him of the conditional-release term. But the PSI report is not part of the district court file that was sent to this court, and the record does not indicate whether Jeffers reviewed the PSI report before his sentencing.

The record, nevertheless, establishes that Jeffers’s guilty plea was intelligently made. At the sentencing hearing, the district court specifically advised Jeffers that, should he violate the conditions of his probation, his 28-month sentence would be executed and he would be subject to a ten-year conditional-release term. In addition, Jeffers signed a document at the sentencing hearing entitled “Terms and Conditions of Stayed Felony Sentence,” which states: “10 year CR if revoked.”

In *State v. Rhodes*, 675 N.W.2d 323, 327 (Minn. 2004), the defendant sought to withdraw his guilty plea, claiming that it was not intelligently made “because he was not informed about the mandatory period of conditional release at the time that he entered his guilty plea.” The Minnesota Supreme Court concluded that the guilty plea was

intelligently made because (1) the conditional-release term was mandated by statute for the defendant's offense of conviction, thereby putting the defendant on notice of the consequences of his guilty plea, and (2) the defendant failed to object to the conditional-release term at the sentencing hearing. *Id.*

Here, Jeffers's offense occurred between April 2003 and October 2005. During that period, and at the time of Jeffers's guilty plea in 2006, the imposition of a ten-year conditional-release term was mandatory for an offender with a prior criminal-sexual-conduct conviction.¹ Minn. Stat. § 609.109, subd. 7 (2002). As in *Rhodes*, a conditional-release term was mandatory for Jeffers's offense, and Jeffers was on notice of this fact. 675 N.W.2d at 327. Also, as in *Rhodes*, Jeffers was expressly advised of the ten-year conditional release term at his sentencing hearing and failed to object. *Id.* Thus, Jeffers's guilty plea was intelligently made, and the district court did not abuse its discretion by rejecting Jeffers's request to withdraw his guilty plea.

II.

Jeffers implies that his trial attorney provided ineffective assistance by "coercing" him into signing the "terms and conditions" of the sentencing form. To be valid, a guilty plea must be made voluntarily or without undue pressure or coercion. *State v. Ecker*, 524

¹ While the PSI report is not included in the district court file sent to this court, the file does contain a March 15, 2006 "Repeat Sex Offender Order for Examination," which states that "on September 24, 1992, [Jeffers] was previously convicted of a sex offense Criminal Sexual Conduct in the Third Degree in Hennepin County District Court." Because of this previous offense, Jeffers's conditional-release term is ten years, rather than five years. *See* Minn. Stat. § 609.109, subd. 7 (2002). We observe that, effective for crimes committed on or after August 1, 2005, section 609.109 was repealed and replaced with Minn. Stat. § 609.3455, which specifically applies to sex offenders. *See* 2005 Minn. Laws ch. 136, art. 2, §§ 21, 23.

N.W.2d 712, 718 (Minn. 1994). But a finding of coercion requires “actual or threatened physical harm, or . . . mental coercion overbearing the will of the defendant.” *Id.* at 719 (quotation omitted).

To succeed on a claim of ineffective assistance of counsel, Jeffers “must affirmatively prove that his counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quotations omitted). “Allegations in a postconviction petition must be more than argumentative assertions without factual support” *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007) (quotation omitted).

Jeffers offers no specific factual support for his claim of coercion, and nothing in the record suggests that he was coerced into signing the sentencing form. Because his claim that he was deceived or that his counsel coerced him into signing the sentencing form is made without factual support, the district court did not abuse its discretion by rejecting it as a basis for postconviction relief.

III.

Jeffers also argues that his conditional-release term violates double jeopardy. Jeffers explains that he has completed his 28-month sentence but that the department of corrections has “explained to me that my parole doesn’t expire until April 30, 2018.” He contends that, due to “petty” violations of his conditional release (such as being fifteen minutes late at a halfway house or drinking beer), he has served an additional 13 months

in confinement. Jeffers argues that this additional confinement constitutes two sentences for one crime in violation of constitutional guarantees against double jeopardy.

Jeffers's double-jeopardy argument is without merit. The double-jeopardy clause is not implicated when a mandatory conditional-release term is included in or added to a sentence. *See State v. Calmes*, 632 N.W.2d 641, 649 (Minn. 2001) (double jeopardy is not implicated when sentence is amended to include conditional-release term, which was mandatory at time of sentencing); *State v. Humes*, 581 N.W.2d 317, 320-21 (Minn. 1998) (imposition of conditional-release term does not violate double jeopardy, even when it is imposed after sentencing and increases length of sentence). That is because "a sentence does not have the qualities of constitutional finality that attend an acquittal," *Humes*, 581 N.W.2d at 320 (quotation omitted), and a sentence that is revised to include a mandatory conditional-release term "does not impose multiple punishments, but simply the single punishment that was mandatory at the time of sentencing," *Calmes*, 632 N.W.2d at 649.

For the foregoing reasons, the district court did not abuse its discretion by denying Jeffers's petition for postconviction relief.

Affirmed.