

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1733**

Michael Sheldon Boswell, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 21, 2014
Affirmed
Harten, Judge***

Anoka County District Court
File No. 02-CR-10-615

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Anthony C. Palumbo, Anoka County Attorney, Donald LeBaron, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Harten, Judge.

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

UNPUBLISHED OPINION

HARTEN, Judge

Appellant challenges the denial of his postconviction petition to withdraw his 2011 guilty plea to fifth-degree controlled substance crime. Because the district court did not abuse its discretion in denying appellant's petition, we affirm.

FACTS

On 23 January 2011, appellant Michael Boswell committed an offense that resulted in a charge of fifth-degree controlled substance crime. Prior to the plea hearing on the morning of 23 May 2011, appellant signed a plea agreement that indicated in relevant part, "No one—including my attorney . . . has made any promises to me . . . in order to obtain a plea of guilty from me," and "No one—including my attorney . . . has threatened me . . . in order to obtain a plea of guilty from me." At the plea hearing, appellant's attorney questioned him about the agreement:

Q. Do you recognize this document?

A. Yes.

Q. And did we go over this today?

A. Yes.

Q. Did I go through and read all of these lines to you?

A. Yes.

....

Q. [D]o you understand that when you enter a plea of guilty that means you will not have a trial?

A. Yes.

....

Q. Okay. Has anyone put pressure on you to plead guilty?

A. No.

Appellant's attorney also questioned him about his use of medication.

- Q. As you stand here right now are you clear headed?
A. Yes.
Q. You do normally take some medications, correct?
A. Yes.
Q. And this is for depression?
A. Yes.
Q. And you also take Seroquel and Depakote, correct?
A. Yes.
Q. And when do you normally take them? What time of the day?
A. I take them at noon and at night.
Q. So you have not taken them today?
A. No.
Q. But do you understand everything we talked about?
A. Yes.

Subsequently, in June 2013, appellant filed a postconviction petition seeking to withdraw his guilty plea. The postconviction court denied the petition. Appellant argues that the denial was an abuse of the court's discretion because appellant was under pressure from his attorney to plead guilty and because appellant had not taken his medications at the time of the plea hearing.

DECISION

Unless a postconviction court exercises its discretion in an arbitrary or capricious manner, its decision will not be reversed. *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010). Similarly, a postconviction court's decision on whether to permit withdrawal of a guilty plea will be reversed only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). Withdrawal of a guilty plea will be allowed "upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Manifest

injustice exists if the plea was not accurate, voluntary, and intelligent. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). “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).

Appellant argues that his guilty plea was involuntary because his attorney pressured him to plead guilty. But appellant’s allegations as to pressure from his attorney lack factual support. *See id.* Appellant signed a petition stating that he had not been pressured by his attorney, and he testified that he had not been pressured by his attorney. He offers no evidence to refute the petition and his own testimony.

Appellant also argues that his guilty plea was not intelligent because “[he] was not on his medications at the time he entered his guilty plea.” But the phrase “not on his medications” implies that appellant was not taking his medications as they were prescribed and as he usually did take them. Appellant testified that he did not usually take his medications until noon, and the hearing occurred in the morning. Therefore, appellant was following his usual regimen by not taking his medication prior to the hearing. Appellant offers no evidence to refute his own testimony that he was clear headed and understood what was going on. Moreover, the rest of the transcript supports that testimony: for example, the transcript reflects that appellant remembered the omnibus hearing and knew that his motion to exclude certain evidence had been denied.

The postconviction court did not abuse its discretion in concluding that appellant's guilty plea was voluntary and intelligent and denying his motion for postconviction relief.

Affirmed.