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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-701**

Fatima S Mukhtar, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed April 6, 2010  
Affirmed  
Connolly, Judge**

Anoka County District Court  
File No. 02-K4-06-005411

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

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

Robert M. A. Johnson, Anoka County Attorney, Kathryn M. Timm, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Hudson, Judge; and Johnson, Judge.

**UNPUBLISHED OPINION**

**CONNOLLY**, Judge

Appellant challenges the postconviction court's denial of her motion to withdraw her guilty plea. She alleges that her plea was invalid because her limited English-

speaking abilities did not allow her to intelligently plead guilty without the assistance of an interpreter. Because there is sufficient evidence in the record to support the postconviction court's findings that appellant was able to effectively communicate in English and that appellant's guilty plea was intelligently and voluntarily made, we affirm.

### **FACTS**

Appellant Fatima Mukhtar was charged with one count of felony theft by wrongfully obtaining public assistance in excess of \$35,000 in violation of Minn. Stat. §§ 256.98, subd. 1; 609.05, subd. 1; 609.101, subd. 4; and 609.52, subd. 3(1) (2004). Appellant's husband was charged as her codefendant and separately pleaded guilty for the same acts. Appellant and her husband opened a public-assistance case with Anoka County in February 2003. The financial assistance forms they filed were inconsistent with their demonstrated ability to pay bills, their automobile ownership, and the existence of multiple bank accounts. Appellant's husband owned a gas station that had two employees and annual sales of \$1.5 million. None of the assets were reported to the Anoka County Department of Human Services.

The state alleged that from January 2003 to November 2005, appellant and her husband, acting together, obtained public-assistance benefits from Anoka County to which they were not entitled in the amount of \$68,711.52 by intentionally concealing material facts and willfully making false representations. The maximum sentence for this offense was 20 years imprisonment and a \$100,000 fine. *See* Minn. Stat. § 609.52, subd. 3(1).

Appellant petitioned to enter a guilty plea. At the plea hearing, appellant was represented by the same attorney as her codefendant husband. The district court accepted appellant's guilty plea at the sentencing hearing in February 2007. It entered a stay of imposition and placed appellant on probation on the conditions that she remain law abiding and on good behavior, maintain employment, comply with the rules and requirements of the department of corrections, and (jointly and severally with her husband) pay restitution. The district court imposed no jail time. Appellant was later fired from her job because of her criminal conviction.

In March 2008, appellant filed a motion to withdraw her guilty plea pursuant to Minn. R. Crim. P. 15.05, subd. 1. She based her request on claims that she received ineffective assistance of counsel, that she was not informed of and did not waive her right to separate counsel, and that her guilty plea was not knowing, intelligent, and voluntary. She subsequently dropped the claim that she did not waive her right to separate counsel, and she does not maintain her ineffective-assistance-of-counsel argument on appeal.

The postconviction court issued an order denying appellant's motion to withdraw her guilty plea. Relevant to this appeal, the postconviction court found that appellant's guilty plea was knowing and intelligent despite the lack of an interpreter because, despite her postconviction claims to the contrary, she was capable of communicating in English during the proceedings. She now appeals, arguing that the postconviction court abused its discretion in denying her relief because her guilty plea was invalid.

## DECISION

We review a postconviction court's decision whether to permit withdrawal of a guilty plea for an abuse of discretion. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). Review of a postconviction court's findings is limited to determining whether there is sufficient evidence in the record to support those findings. *Id.* Questions of law are reviewed de novo. *Cuypers v. State*, 711 N.W.2d 100, 103 (Minn. 2006).

After conviction and sentencing, a court "shall allow" a defendant to withdraw a guilty plea to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists where a guilty plea is invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A plea is valid only if it is accurate, voluntary, and intelligent. *State v. Byron*, 683 N.W.2d 317, 322 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

Appellant argues that her plea was invalid because it was not intelligently made. "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." *Id.* The intelligence requirement is meant to ensure that the defendant understands the charges, the rights she is waiving by pleading guilty, and the consequences of the guilty plea. *Hernandez v. State*, 408 N.W.2d 623, 625 (Minn. App. 1987).

Appellant's invalid-plea argument is based on her alleged difficulties with the English language, as a result of which, she claims, she did not understand her rights or the proceedings. "We presume that, prior to entry of a guilty plea, defense counsel reviews the plea petition with the defendant and the defendant understands its terms." *Byron*, 683 N.W.2d at 323. "The person petitioning for postconviction relief bears the

burden of establishing the facts alleged in the petition by a fair preponderance of the evidence.” *Perkins*, 559 N.W.2d at 685.

The postconviction court specifically found that appellant’s testimony at the postconviction evidentiary hearing was not credible. Because it is in a “unique position to assess witness credibility,” we defer to a postconviction court’s credibility determinations. *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006). This is particularly the case where, as here, the same judge presided over the proceedings in both the trial court and postconviction court. The postconviction court specifically observed that (1) appellant never expressed the need for an interpreter in any of her previous court appearances, and did not appear to have difficulty communicating in English; (2) a form written in Somali and signed by appellant rebutted her testimony that all of the public-assistance forms she received were in English; (3) appellant communicated with her counselor at the job training center, completed her employment plan, and conducted job searches on the computer in English and without the assistance of an interpreter; and (4) appellant passed the exam required to become a nursing assistant, which was written in English. The court also noted that appellant’s husband characterized her English abilities as fair. All of these findings are supported by and consistent with the record.

Appellant contends that the transcript of the plea hearing shows that she lacked an ability to effectively communicate in English. She relies primarily on two exchanges.

The first exchange is as follows:

THE COURT: Do you have any questions about the plea agreement that the attorneys recited?

APPELLANT: (Speaking inaudibly to her attorney.)

DEFENSE COUNSEL: Do you have any questions about the agreement?

APPELLANT: No.

THE COURT: Have you had sufficient time to talk to [defense counsel]?

APPELLANT: (Speaking inaudibly to her attorney.)

THE COURT: Have you had enough time to talk to [defense counsel]?

APPELLANT: Yes.

THE COURT: Are you satisfied that he knows all of the facts relating to your case?

APPELLANT: Yes.

THE COURT: Are you satisfied that he's answered any questions you might have?

APPELLANT: Yes.

THE COURT: As you stand before me today are you under the influence of any intoxicating liquor, drugs, or medications?

APPELLANT: (Speaking inaudibly to her attorney.)

DEFENSE COUNSEL: Are you under the influence of any drugs or alcohol?

APPELLANT: No.

THE COURT: Do you suffer from any mental disability?

APPELLANT: No.

At the postconviction evidentiary hearing, appellant testified that she did not understand the judge when he was asking her questions, and she now contends there is a “suspicious juxtaposition” between how the questioning proceeded when defense counsel asked questions and how the questioning proceeded when the court asked her questions.

The second exchange is as follows:

PROSECUTOR: And you realize that failing to disclose [the gas station owned by appellant's husband] made you receive benefits that you were not entitled to receive?

APPELLANT: Uh-huh. Yes.

PROSECUTOR: Would you agree—and let me ask you this. What was the reason that you did not disclose it?

APPELLANT: What do you mean?

PROSECUTOR: Why didn't you tell social services about the gas station?

APPELLANT: Because, you know, we did the bankruptcy.

Appellant contends that, “despite the relative clarity of the state’s question,” she did not understand the question, which is evidenced by her “non sequitur response involving bankruptcy.” We disagree.

The transcript of the plea hearing indicates that appellant was responsive to questions, and she appropriately answered “yes” or “no”—apparently without prompting from defense counsel—to many questions asked by the prosecutor. Moreover, not all of her answers consisted of a one-word response. For example, when asked a question she did not understand by the prosecutor, appellant responded, “What do you mean?”

Appellant specifically testified at the plea hearing that she had gone through her petition to plead guilty with her attorney line by line, that he answered all of her questions about it, that she had signed it, and that she had been informed she was waiving her trial rights. She testified that she was not coerced to plead guilty, that the only promise she had received was the plea bargain, and that she understood the charge. Appellant testified that she understood that felony wrongfully obtaining public assistance in excess of \$35,000 is punishable by up to 20 years in prison and a fine of up to \$100,000, and that she wished to plead guilty.

At the postconviction evidentiary hearing, appellant testified that she took three months of English classes when she moved to the United States, that she volunteered at Unity Hospital, and that she worked as a nursing assistant in home care. She testified that she eventually passed an English-language test that was required to become a nursing

assistant. She did not have or request an interpreter during her conversations with the Anoka County social-services workers during her visits to the job training center.

Michael Barnard, an employment counselor at the job training center, testified that appellant was taking adult basic education courses, which means that she had to be somewhat proficient in English. A person who had reached that transitional stage normally would not need an interpreter to sign a plan, and Barnard would not offer one unless requested. Appellant did not use an interpreter, and Barnard testified, “She appeared to be able to speak the English language with me.” He described appellant as being at a “high level” and having “advanced English-speaking ability.”

With the aid of the interpreter provided at the evidentiary hearing, appellant did testify that she only spoke “broken English.” She stated that, in her communications with social-services representatives, she did not speak “good English.” She testified that she never spoke to defense counsel without the presence of her codefendant husband, who translated for her and did not involve her in the decision-making process. She also testified, “Even the last day of the court I did not understand what was going on. Only I understood that I was fired from my employment because they told me that I have committed a crime against the government.” She stated that defense counsel “asked [her] everything and said to say yes” at the plea hearing. However, this recollection of the proceedings is not consistent with the record, which reveals that she answered questions from the judge and the prosecutor as well, and that not all of her answers were “yes.” She also testified that she did not completely understand everything that the judge asked her.

Again, we presume that a defendant represented by counsel reviews the content and meaning of a plea petition with her attorney, and she stated that this occurred at the plea hearing. The transcript of the plea hearing does not show that appellant was unable to understand or speak English. The postconviction court found that her testimony at the evidentiary hearing was not credible, and there is sufficient evidence in the record to support this finding. Appellant's testimony was at times inconsistent, and all of the circumstances relating to her behavior before she pleaded guilty suggest that she was able to communicate in English. We defer to a postconviction court's credibility determinations in circumstances such as these. Because the postconviction court's findings that appellant was able to communicate in English and intelligently pleaded guilty find sufficient support in the record, her plea was valid. The district court therefore did not abuse its discretion in denying appellant's motion to withdraw her guilty plea.

For the first time on appeal, appellant also contends that her guilty plea was invalid because it was not accurate. "This court generally will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure." *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). However, the court has discretion to do so "when the interests of justice require consideration of such issues and doing so would not unfairly surprise a party to the appeal." *Id.* The state would be unfairly surprised by consideration of this issue on appeal. Although some testimony at the plea hearing and at the postconviction evidentiary hearing bears on the factual basis underlying appellant's guilty plea, the state would have elicited testimony and presented

evidence at the evidentiary hearing pertaining to the plea's accuracy if this issue had been presented to the postconviction court. We note that appellant's contentions do not undermine our confidence in the accuracy of her guilty plea. But because the interests of justice do not require us to address the accuracy of appellant's guilty plea in this case, we decline to do so.

**Affirmed.**