

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0017**

Spencer Louis Perkins, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 20, 2012
Affirmed
Stauber, Judge**

Hennepin County District Court
File No. 27CR0860460

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, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Chutich, Judge; and Collins, Judge.*

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

UNPUBLISHED OPINION

STAUBER, Judge

In this postconviction appeal, appellant argues that the district court abused its discretion by denying his pro se motion to withdraw his guilty plea. We affirm.

FACTS

In December 2008, appellant Spencer Louis Perkins was charged with first-degree aggravated robbery and third-degree assault. Appellant subsequently pleaded guilty to third-degree assault. Under the terms of the plea agreement, appellant would receive a sentence of 72 months in prison. After the plea hearing, the state requested that appellant be committed to the commissioner of corrections pending appellant's sentencing. An e-mail from the district court's law clerk was then sent to appellant's counsel on the same day appellant entered his plea, stating: "The Court is inclined to grant the . . . request for an interim commit pending sentencing . . . if [appellant] objects to this, the Court will give him the opportunity to withdraw his plea and go to trial."

At a hearing on the request for the interim commitment, appellant expressed his wish to withdraw his guilty plea and also to release his attorney. A formal motion was filed a few days later in which appellant argued, among other things, that his plea was not intelligently made because he was subject to an interim commitment to the commissioner of corrections. Appellant claimed that when he entered his plea, he relied on being able to remain at the county jail until his sentencing date before being committed to the custody of the commissioner. The district court found that "[a] review of the State's specific offer in this case does not include the location of where [appellant] would be

housed as a condition of his plea. In addition . . . [appellant] acknowledged that he did not rely on any promises not contained in the plea agreement at the time it was made.” Thus, the district court denied appellant’s motion and appellant received an executed sentence of 72 months pursuant to the plea agreement.

Appellant filed a pro se petition for postconviction relief requesting that his conviction be vacated based upon: (a) ineffective assistance of counsel; (b) the district court’s abuse of discretion when it denied appellant’s request to withdraw his plea prior to sentencing; (c) prosecutorial misconduct; (d) coercion; and (e) misrepresentation. The district court summarily denied the motion. This appeal followed.

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 finding, 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 that is reviewed de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

The basis for withdrawal of a guilty plea after sentencing is 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.*

An intelligent plea is required to ensure that the defendant understands the rights he is waiving, the charges, and the consequences of pleading guilty. *Williams v. State*,

760 N.W.2d 8, 15 (Minn. 2009). “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). If a guilty plea is not “accurate, voluntary, and intelligent (i.e., knowingly and understandingly made),” manifest injustice occurs and the plea may be withdrawn. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997).

Appellant argues that his guilty plea was not intelligently made because he understood his plea agreement to include his right to remain at the county jail until his sentencing. To support his claim, appellant points to the e-mail indicating that appellant would be given an opportunity to withdraw his guilty plea in the event of an interim commitment. Thus, appellant argues that the district court abused its discretion by denying his petition for postconviction relief.

Generally, an appellate court will not consider matters not argued to and considered by the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Here, the record reflects that although the issue was initially raised by appellant’s attorney immediately following his guilty plea, once the district court issued an order on the issue, appellant did not appeal the conviction, and he did not raise the argument in his postconviction petition. Accordingly, appellant has waived the argument.

We also conclude that appellant’s claim fails on the merits. A review of the plea hearing reflects that the location where appellant would be confined was not included in the plea agreement. The record also reflects that appellant acknowledged that he did not rely on any promises not contained in the plea agreement at the time it was made and that

appellant understood the rights he was waiving by pleading guilty, and the consequences of the plea. Although the e-mail indicates that the district court contemplated allowing appellant to withdraw his plea in the event of the interim commitment, the e-mail was sent by the district court's law clerk, who may or may not have accurately conveyed the district court's position. More importantly, appellant pleaded guilty before the e-mail was sent to his counsel, demonstrating that appellant did not rely on the e-mail when he entered his plea. *See Perkins*, 559 N.W.2d at 689 (stating that "[a]lthough a plea of guilty may be set aside where an unqualified promise is made as a part of a plea bargain, thereafter dishonored, a solemn plea of guilty should not be set aside merely because the accused has not achieved an unwarranted hope"). Therefore, the district court did not err by concluding that appellant's plea was intelligently made.

Affirmed.