STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1862

Christopher Robert Politano, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed May 20, 2013
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-09-47894

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant challenges the district court's denial of his petition for postconviction relief, arguing that his ten-year conditional-release term should be modified or he should

be permitted to withdraw his plea because of manifest injustice. Because appellant knowingly, intelligently, and voluntarily pleaded guilty to failing to register as a predatory offender, which requires imposition of a ten-year conditional-release term, we affirm.

FACTS

On May 24, 2011, appellant Christopher Robert Politano pleaded guilty to failing to register as a predatory offender, Minn. Stat. § 243.166, subd. 5(a) (2008). Appellant was sentenced during this same hearing, in accordance with the plea agreement, to 36 months in prison, to be served concurrently with a 57-month sentence that appellant was already serving. After imposing sentence, the district court questioned whether there was a conditional-release term. Because neither the prosecutor nor defense counsel was certain, the prosecutor said that she would research the issue. The district court dismissed two other charges against appellant, and a brief recess ensued. Upon returning to the courtroom, the prosecutor stated that there was a mandatory ten-year conditional-release term, which the district court imposed. Appellant commented, "I don't agree with it because I already signed the deal and you already dismissed the other two and I walked out of the courtroom."

The district court explained that the conditional-release term was mandatory, and both the court and defense counsel asked appellant if he wanted to withdraw his guilty plea. Defense counsel explained that the conditional-release term was not part of the plea agreement, but it was "just something that happens as a matter of law when you are sentenced to – when you are convicted of a charge like this." Defense counsel offered a

second time to go to trial, saying, "I suspect the Judge will allow you to withdraw your plea and we can go and try to defend this case[.]" He further explained that if convicted, appellant would nevertheless be subject to the conditional-release term. Appellant made no reply.

Nearly a year later, on May 8, 2012, appellant filed a postconviction petition, requesting modification of his conditional-release term "so that its duration does not exceed the agreed-upon 36-month sentence." The postconviction court denied the petition, noting that appellant had not asked to withdraw his plea, and concluded that appellant had not demonstrated that his conditional-release term should be modified. Appellant filed a notice of appeal.

D E C I S I O N

We review the postconviction court's decision to deny relief for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). "Determining what the parties agreed to in a plea bargain is a factual inquiry for the postconviction court to resolve[,] [b]ut interpretation and enforcement of plea agreements involve issues of law that we review de novo." *Id.* (citation omitted). We review the postconviction court's findings for clear error. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001).

Appellant argues that his plea agreement did not include a conditional-release term; he states that he was not aware until sentencing that a conditional-release term would be imposed. He argues that because this was manifestly unjust, he should either be permitted to withdraw his guilty plea or this court should direct the district court to

correct the conditional-release term to coincide with the maximum supervised release time he expected under the plea agreement. *See State v. Wukawitz*, 662 N.W.2d 517, 522 (Minn. 2003).

A defendant is not entitled to withdraw a guilty plea, but the district court must allow a defendant to withdraw a plea if it is necessary to correct a manifest injustice. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010); 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 constitutionally valid guilty plea is accurate, voluntary, and intelligent. *Id.* A defendant seeking to withdraw a guilty plea has the burden of showing that his plea was invalid. *Id.* Appellant asserts that his plea was neither voluntary nor intelligent. A guilty plea is not voluntary if, based on all of the circumstances, a defendant does not understand the terms of a plea agreement; a guilty plea is not intelligent if a defendant does not understand the charges, the rights he is waiving, or the direct consequences of his plea. *Id.* at 96.

Based on the record before us, we conclude that appellant was aware of the conditional-release term at the plea hearing. The complaint set forth the maximum sentence and referred to a conditional-release term. The plea petition that appellant signed contained a clause that stated, "I understand that for . . . most sex offenses, a mandatory period of conditional release will be imposed to follow any executed prison sentence." During sentencing, when the question arose about whether a conditional-release term should be imposed, appellant stated, "I had one before." The district court and the attorneys discussed whether a conditional-release term had to be imposed; the prosecutor stated, "I'd have to look that up." Within a very short time, the parties

returned to court with information that the conditional-release term was mandatory. This is not similar to *Wukawitz*, in which the conditional-release term was added in an amended sentencing order more than two years after the sentencing hearing. 662 N.W.2d at 520; *see Rhodes*, 675 N.W.2d at 326-27 (noting that in cases in which imposition of a conditional-release term was found to violate a defendant's rights, the conditional-release term was not mentioned at the sentencing hearing or included in the original sentence).

In *Rhodes*, the supreme court determined that the defendant's plea was intelligent, because the defendant knew at the time of his guilty plea and at sentencing that the conditional-release term was mandatory, the statute requiring imposition of a conditional-release term had been in effect for a number of years, and the defendant did not object at the time of sentencing. *Id.* at 327. Here, although appellant objected at sentencing, the complaint referred to a conditional-release term, the district court and the attorneys discussed it at sentencing, the conditional-release term is mandatory, and it has been mandatory since its enactment in 2005. *See* 2005 Minn. Laws ch. 136, art. 3, § 8 at 947-48 (eff. Aug. 1, 2005).

Finally, although appellant argues that the conditional-release term was imposed after the end of the sentencing hearing, this court previously permitted a correction in a sentence when the correction was made the same day that the sentence was imposed. *Tauer v. State*, 451 N.W.2d 649, 651 (Minn. App. 1990) (permitting district court to impose higher sentence after it misunderstood the presumptive sentence range when correction was made within hours after sentencing), *review denied* (Minn. Mar. 16, 1990). The correction here was made within minutes of sentencing.

Based on the record, the postconviction court did not err by determining that appellant failed to demonstrate a manifest injustice that would permit withdrawal of his plea or modification of his sentence. We therefore conclude that the postconviction court did not abuse its discretion by denying appellant's postconviction petition.

Affirmed.