**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A13-1194**

State of Minnesota,
Respondent,

vs.

Reginald Bruce Long,
Appellant.

**Filed June 2, 2014**
**Affirmed**
**Stauber, Judge**

Ramsey County District Court
File No. 62CR127602

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Peterson, Judge; and Hudson, Judge.

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

**STAUBER**, Judge

Appellant argues that he is entitled to plea withdrawal or specific performance because his plea was induced by and conditioned upon a specific sentence and the district court imposed a greater sentence. We affirm.

## FACTS

On September 18, 2012, appellant Reginald Bruce Long was charged with one count of felony domestic assault arising from an incident the previous evening when he physically assaulted his girlfriend. On December 3, 2012, appellant agreed to plead guilty to the charge in exchange for three months off the bottom-of-the-box guideline sentence, which was 23 months. Appellant signed a written plea agreement, which stated that the agreement was predicated on appellant's compliance with certain conditions, including that he appear for sentencing. Appellant was also warned by his attorney and the court that the court was not bound by the plea agreement if he failed to abide by these conditions.

Sentencing was scheduled for January 7, 2013. On December 29, 2012, appellant was hospitalized for a heart condition, and was not released until January 10, 2013. Appellant sought a continuance in advance, and the sentencing hearing was rescheduled for February 14, 2013. But on February 14, appellant failed to appear. According to appellant's attorney, he arrived at the courthouse, but left after he could not find his attorney. The sentencing hearing was rescheduled for February 21, and appellant again

failed to appear, this time because he was "feeling pains." A bench warrant was issued, and appellant was arrested on March 26.

Appellant appeared for sentencing on April 4, 2013, four months after he pleaded guilty. In light of appellant's repeated failure to appear in court, the state requested a top-of-the-box sentence of 36 months. Appellant's attorney argued for the court to impose the agreed-to sentence of 23 months because appellant made a "good faith effort" to appear. Appellant personally argued for the lesser sentence, stating that he had remained law-abiding, and that his ill health and the ill health of his mother affected his ability to appear. The district court sentenced appellant to 36 months, remarking that appellant was "trying to con [the court]" with his excuses. This appeal followed.

**D E C I S I O N**

Appellant argues that he is entitled to withdraw his plea, or, in the alternative, to specific performance of his plea bargain because the district court did not impose the agreed-upon sentence. "On demonstration that a plea agreement has been breached, the court may allow withdrawal of the plea, order specific performance, or alter the sentence if appropriate." *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). "In determining whether a plea agreement was violated, courts look to what the parties to [the] plea bargain reasonably understood to be the terms of the agreement." *Id.* (quotation omitted). What the parties agreed to is an issue of fact for the district court, but the interpretation and enforcement of the agreement is a question of law that is reviewed de novo. *Id.*

"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 a plea may be withdrawn at any

time to correct "a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists where a guilty plea is invalid. *Theis*, 742 N.W.2d at 646. To be valid, a guilty plea must be accurate, voluntary, and intelligent. *Brown*, 606 N.W.2d at 674. A plea induced by a false promise of a lesser sentence is not voluntary. *See id.* The validity of a guilty plea is a question of law that we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

Appellant argues that the district court erred by not imposing the agreed-upon sentence because appellant was given an "unqualified guarantee that he would be sentenced to three months off the low end of the sentencing guidelines box," and that the court "did not warn appellant his plea agreement would be dissolved [if] he failed to appear for sentencing." The record does not support appellant's argument.

At the plea hearing, appellant admitted that he read, signed, and understood the written plea agreement. That agreement states:

> That if the court does not approve this agreement . . . I have an absolute right to then withdraw my plea of guilty and have a trial, **except** if I fail to comply with any of the following:
> . . . .
> I fail to reappear for sentencing as ordered on 1/17/13—PM
> . . . .
> The court will **not** accept the plea agreement and the court will likely sentence me to a more severe sentence than outlined in the plea agreement.

The box next to the appearance-at-sentencing requirement was marked with a slash, clearly indicating that this was a condition that applied to appellant.

Furthermore, at the plea hearing, appellant's attorney asked him whether he "underst[ood] that, in order for the court to be bound by [the plea agreement], you're going to have to do a few things between now and sentencing[?]" Appellant replied, "[y]es, I'm clear." His attorney also said, "[a]nd you understand that you have to return for sentencing?" Appellant responded, "[n]umber one." His attorney next said that if appellant failed to follow through on the conditions of the agreement, "then the judge can sentence you as he sees fit," and that "[i]n fact, he could even go to [the] high end of the box." Appellant responded, "[y]es, I'm very aware." The district court also asked appellant whether he understood that he must follow certain conditions in order for the court to be bound by the plea deal and told appellant the he must return for sentencing.

Appellant contends that, despite receiving repeated warnings from his attorney and the district court that he was required to return for sentencing as a condition of his plea bargain, he is nevertheless entitled to specific performance of the agreement, or to withdraw his guilty plea after he repeatedly violated this condition. Appellant cites no caselaw to support this argument. Appellant's plea agreement is clearly distinguishable from cases imposing the bargained-for sentence where a defendant was given an unqualified promise that he would receive that sentence. *See State v. Kortkamp*, 560 N.W.2d 93, 95 (Minn. App. 1997) (concluding that the state made an unqualified promise, which it breached when it later decided to seek a career-offender sentence); *State v. Kunshier*, 410 N.W.2d 377, 379-80 (Minn. App. 1987) (reversing the imposed sentence because the plea agreement was an unqualified promise of a lesser sentence requiring the district court to give the defendant an opportunity to withdraw his plea

when it did not accept the agreement), *review denied* (Minn. Oct. 21, 1987). The written plea agreement plainly states that the plea was conditioned upon appellant abiding by several conditions, including that he appear at sentencing. Appellant was repeatedly warned at his plea hearing that he needed to return for sentencing, or the deal was off. Therefore, the plea agreement was not breached, and appellant's guilty plea is valid.

**Affirmed.**