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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0013**

State of Minnesota,
Respondent,

vs.

Kara-Ann Marie Collins,
Appellant.

**Filed April 3, 2017
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-15-1450

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant argues that the postconviction court abused its discretion in (1) denying her petition to withdraw her guilty plea because she was under the influence of drugs and

alcohol, making her plea invalid because it was unintelligent and (2) not holding an evidentiary hearing before denying her request to withdraw her guilty plea. We affirm.

FACTS

Appellant Kara-Ann Collins was charged with second-degree possession of a controlled substance in violation of Minn. Stat. § 152.022, subd. 2(a)(1) (2014), and fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(b)(1) (2014). Pursuant to a written plea agreement, appellant agreed to plead guilty to second-degree possession of a controlled substance and to be sentenced to 36 months in prison if she received a favorable presentence-investigation report (PSI) and complied with any recommendation of a chemical-dependency assessment. The state also agreed to dismiss the fifth-degree possession of a controlled-substance charge at the time of sentencing.

During the plea hearing, appellant stated that she was currently taking Prozac and Topamax for her bipolar condition, anxiety, and depression. Appellant acknowledged that the medications did not cloud her thinking and that she understood the nature of the proceedings. In discussing the plea and the basis for it, appellant answered a series of questions posed by the district court, her attorney, and the state. Appellant explained in detail to the district court that she went to the light-rail station to meet a friend, how she travelled there, and that, at the time of her arrest, she was in possession of methamphetamine and two digital scales. Appellant also stated that she understood that her guilty plea was for possession and not for sale of a controlled substance. The district

court determined that appellant provided a sufficient factual basis and accepted her guilty plea.

A few months later, but before sentencing on the instant matter, appellant was again arrested and charged for possession of a controlled substance. Because appellant's PSI was not favorable, the district court found that the state was no longer bound to the 36-month prison-sentence recommendation under the plea agreement. The state offered appellant a low end-of-the box 75 months guidelines sentence and dismissal of appellant's new case. Minn. Sent. Guidelines 4.C (2014). Appellant requested an adjournment to hire a new attorney, which the district court granted.

A few days afterward, appellant sent a letter to the district court stating that she did not agree with a 75-month prison sentence because her original plea agreement was for a 36-month sentence. Appellant also claimed that she did not remember signing the plea agreement because she "was totally under the influence of drugs and alcohol."

At the sentencing hearing in the instant matter, the district court noted that it reviewed appellant's letter and gave appellant time to speak with her attorneys about whether to request withdrawal of her guilty plea. Appellant indicated that she no longer wished to withdraw her guilty plea, had no questions for the court, and felt comfortable going forward with sentencing. Appellant stated that she was taking Prozac and Topamax, the same two medications she was taking when she initially pleaded guilty. Appellant's attorney expressed no concerns about appellant's ability to proceed with sentencing. The district court sentenced appellant to 75 months, with credit for 118 days,

and, pursuant to the new agreement, dismissed the controlled-substances charges in the new case.

Appellant filed a direct appeal, which was stayed to allow her to file a petition for postconviction relief. In her petition, appellant asserted that her plea was unintelligent, and therefore invalid, because she was intoxicated at the time of the plea hearing. Appellant asserted that, although she told the district court that her ability to understand the process was not impaired by her Prozac and Topamax medications, she was also under the influence of alcohol and did not understand what she was doing. Appellant also alleged that she did not remember signing the plea agreement.

The postconviction court, which was the same presiding judge who accepted appellant's plea and sentenced her, summarily denied appellant's petition, finding that, "[while appellant] asserts she has no memory of signing a plea petition or what she was agreeing to at the [plea] hearing, she does not provide any additional evidence to support this assertion." The postconviction court concluded that appellant's claims that "she was under the influence of drugs or alcohol and does not remember the plea proceedings appear self-serving and not credible." The postconviction court ruled that appellant's plea was intelligent and valid and, thus, no manifest injustice existed to allow appellant to withdraw her plea. The stay of appeal was then dissolved and this appeal follows.

D E C I S I O N

Appellant challenges the postconviction court's denial of her guilty plea withdrawal petition on the grounds that her plea was unintelligently made and that she

was, at the very least, entitled to an evidentiary hearing before the denial. Her arguments are without merit for the following reasons.

I. The postconviction court did not abuse its discretion when it denied appellant's plea-withdrawal petition.

Appellant argues that the postconviction court abused its discretion by denying appellant's petition to withdraw her guilty plea because it was unintelligently made. We disagree.

"When a defendant initially files a direct appeal and then moves for a stay to pursue postconviction relief, we review the postconviction court's decisions using the same standard that we apply on direct appeal." *State v. Beecroft*, 813 N.W.2d 814, 836 (Minn. 2012). Appellate courts "review a denial of a petition for postconviction relief, including denial of relief without an evidentiary hearing, for an abuse of discretion." *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). "A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quotation omitted); *see also Colbert v. State*, 870 N.W.2d 616, 621 (Minn. 2015). "[Appellate courts] review the postconviction court's underlying factual findings for clear error and its legal conclusions de novo." *Williams v. State*, 869 N.W.2d 316, 318 (Minn. 2015).

A defendant does not have an "absolute right to withdraw a guilty plea after entering it." *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). After sentencing, a defendant may withdraw a guilty plea "to correct a 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. “To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Nelson v. State*, 880 N.W.2d 852, 858 (Minn. 2016) (quotation omitted). A petitioner “bears the burden of showing [the] plea was invalid.” *Raleigh*, 778 N.W.2d at 94. “[A]ssessing the validity of a plea presents a question of law that [this court] review[s] de novo.” *Nelson*, 880 N.W.2d at 858 (quotation omitted).

“A plea is intelligent when the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty.” *Oldenburg v. State*, 763 N.W.2d 655, 658 (Minn. App. 2009) (quotation omitted). In her postconviction petition, appellant argued that “[a]t the time she signed the plea petition and had her plea hearing, [she] was under the influence of drugs and alcohol . . . , and she did not understand what she was doing.” Based on the record and the postconviction court’s interactions with appellant at the plea and sentencing hearings, the postconviction court found that appellant’s assertions were not credible and concluded that her plea was made intelligently.

The record supports the conclusion that appellant’s plea was intelligently made. Throughout the plea hearing, after being questioned extensively about her psychological health, appellant informed the district court that her judgment was not clouded by the medications that she was taking, that she was not confused by what she was doing at the plea hearing, and that she understood what was happening. While appellant informed the district court at the time of her plea that she was taking medications, she said nothing about consuming alcohol. Appellant engaged in a conversation with the district court about the kind of treatment she desired as part of the plea agreement and expressed an

understanding of what was required under the plea agreement. Appellant also articulated the factual basis for her plea.

Appellant relies on one response from the plea hearing in support of her argument that she did not understand the proceedings at the time of her plea. When the district court asked appellant to describe in her own words what they were doing there, she responded, “I can’t explain it like -- hurt more, more hurt than -- I know I made my -- I did my own -- I did this so now I have to own up to it but it’s -- Who wants go to prison, you know?” However, this is not the unintelligible rambling of someone too intoxicated to speak or understand the proceedings at the time. Following appellant’s response, the district court offered her tissues and stated, “it seems clear . . . that [appellant] understand[s] what we’re doing here and everything. . . . [she’s] not able to articulate it just because of emotions involved but I understand.” Therefore, appellant’s argument that this is proof of her intoxication is not persuasive. Furthermore, prior to accepting her sentence, appellant had plenty of opportunity at subsequent appearances with her attorney to request withdrawal of her guilty plea based on her alleged intoxication, which she did not do.

The postconviction court, which was the same court that observed appellant during her plea and sentencing, was well within its discretion in denying appellant’s postconviction petition to withdraw her guilty plea.

II The postconviction court did not abuse its discretion in denying appellant's petition without an evidentiary hearing.

Appellant argues that the postconviction court abused its discretion by rejecting her postconviction petition without an evidentiary hearing. We disagree.

“A postconviction court may deny a petition for postconviction relief without holding an evidentiary hearing if the petition, files, and records in the proceeding conclusively establish that the petitioner is not entitled to relief.” *Davis v. State*, 880 N.W.2d 373, 376 (Minn. 2016) (citing Minn. Stat. § 590.04, subd. 1, (2014)). When a petition sets forth any facts which, if proved, would entitle the petitioner to relief, an evidentiary hearing is warranted unless, the district court, in earlier proceedings, has fully resolved and reliably found the relevant facts underlying the petitioner's claims not to be in dispute. *See Riley*, 819 N.W.2d at 167-68. Furthermore, “allegations in a postconviction petition must be more than argumentative assertions without factual support.” *Ferguson v. State*, 645 N.W.2d 437, 446 (Minn. 2002) (quotation omitted).

Appellant argues that the postconviction court's credibility determination was inappropriate because determining credibility is best done at an evidentiary hearing. While our supreme court has held that “a postconviction court should not make witness-credibility determinations without first holding an evidentiary hearing,” *Bobo v. State*, 820 N.W.2d 511, 517 n.4 (Minn. 2012) (citing *Wilson v. State*, 726 N.W.2d 103, 107 (Minn. 2007)), this court has repeatedly affirmed denials of postconviction relief by relying on the record, including the plea-hearing transcript, in cases where an appellant asserts that his or her plea was unintelligent due to being under the influence of drugs or

alcohol. *See e.g., Erickson v. State*, 702 N.W.2d 892, 894-95 (Minn. App. 2005); *Williams v. State*, 760 N.W.2d 8, 14-15 (Minn. App. 2009) *review denied* (Minn. Apr. 21, 2009). More importantly, the postconviction court was the same court that accepted appellant's guilty plea and sentenced her months later. Therefore, the postconviction court had sufficient opportunity to observe appellant and her behavior prior to the filing of her postconviction petition and could consider her allegations in light of these prior observations.

We find no error in the postconviction court's determination that appellant provided no evidence to support her assertions and that the claims in her affidavit were couched in a self-serving manner written in support of her petition. Accordingly, the postconviction court did not abuse its discretion when it summarily denied appellant's petition for plea withdrawal without an evidentiary hearing.

Affirmed.