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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0516**

State of Minnesota,
Respondent,

vs.

Adolfo Gutierrez Avila,
Appellant.

**Filed May 22, 2017
Reversed and remanded
Toussaint, Judge***

Lyon County District Court
File No. 42-CR-14-600

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

Rick Maes, Lyon County Attorney, Abby Wikelius, Assistant County Attorney, Marshall,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and
Toussaint, Judge.

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

UNPUBLISHED OPINION

TOUSSAINT, Judge

On appeal from his conviction of first-degree criminal sexual conduct, and from the order denying his postconviction petition following a stay and remand, appellant Adolfo Gutierrez Avila argues that (1) his guilty plea was unintelligent because he did not understand that it would waive his right to appeal the statute-of-limitations defense and (2) his trial counsel was ineffective because he failed to advise appellant that his plea would waive all non-jurisdictional issues, including the statute-of-limitations defense. Appellant also filed a pro se supplemental brief in which he made several arguments pertaining to the statute-of-limitations issue. Because appellant's guilty plea was unintelligent, we reverse and remand to allow appellant to withdraw his plea.

DECISION

This court reviews a summary denial of postconviction relief for an abuse of discretion. *State v. Hokanson*, 821 N.W.2d 340, 357 (Minn. 2012). In doing so, we review the postconviction court's legal determinations de novo and its factual findings for clear error. *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011).

Under the rules of criminal procedure, there are two standards for judging a motion to withdraw a guilty plea; one applies only to a motion brought before sentencing, and the other applies to a motion brought at any time. The district court, in its discretion, "may allow the defendant to withdraw a plea *at any time before sentence* if it is fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2 (emphasis added). "*At any time* the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the

satisfaction of the court that withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1 (emphasis added). The fair-and-just standard is discretionary and less demanding than the manifest-injustice standard. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010); *State v. Lopez*, 794 N.W.2d 379, 382 (Minn. App. 2011).

In denying appellant’s motion to withdraw his guilty plea, the district court properly applied the fair-and-just standard under rule 15.05, subdivision 2, and then proceeded to sentencing. Appellant does not challenge the district court’s reasoning in denying his motion under Minn. R. Crim. P. 15.05, subd. 2. Instead, he argues that the district court was compelled to grant his motion to withdraw his guilty plea in order to correct a manifest injustice under rule 15.05, subdivision 1.

“[A] defendant who can show manifest injustice is entitled as a matter of right to withdraw his plea of guilty.” *Hirt v. State*, 298 Minn. 553, 557, 214 N.W.2d 778, 782 (1974). “A manifest injustice exists if a guilty plea is not valid.” *Raleigh*, 778 N.W.2d at 94. A guilty plea is valid if it is accurate, voluntary, and intelligent. *Id.* The validity of a guilty plea is a question of law that is reviewed de novo. *Nelson v. State*, 880 N.W.2d 852, 858 (Minn. 2016).

The purpose of the requirement that a guilty plea be intelligent “is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.” *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016) (quotation omitted). If the defendant is represented, his attorney plays an important role in ensuring that any plea is intelligent by explaining the charges, the rights to be waived, and the consequences of the plea. *Id.* One of the consequences of pleading

guilty is the waiver of all non-jurisdictional defects. See *State v. Ford*, 397 N.W.2d 875, 878 (Minn. 1986) (“A guilty plea by a counseled defendant has traditionally operated . . . as a waiver of all non-jurisdictional defects arising prior to the entry of the plea.”). A statute-of-limitations defense is a non-jurisdictional issue that is waived by a guilty plea. *State v. Johnson*, 422 N.W.2d 14, 18 (Minn. App. 1988), *review denied* (Minn. May 16, 1988).

Appellant argues that his guilty plea was unintelligent because he did not understand that his plea would waive his right to appeal his statute-of-limitations defense. We agree. In *State v. Tupa*, the defendant was charged with being an accessory after the fact to a felony. 194 Minn. 488, 488, 260 N.W. 875, 876 (1935). The defendant demurred on the ground that the statute of limitations barred prosecution of the offense. *Id.* at 489, 260 N.W. at 876. After the district court overruled the demurrer, the defendant pleaded guilty to the charged offense. *Id.* On appeal from the denial of the defendant’s motion to set aside the judgment, our supreme court held that the defendant, by his guilty plea, did not waive “any defects in the information and the defense of the statute of limitations” because there was no indication that he “intended to waive or relinquish a ‘known right.’” *Id.* at 495-97, 260 N.W. at 878-79 (noting that waiver “is a voluntary relinquishment of a known right,” that is “largely a matter of intention,” and “must be based on a full knowledge of the facts” (quotation omitted)).

We acknowledge that the supreme court in *Tupa* did not hold that the statute-of-limitations defense may never be waived, and that our supreme court has since concluded that a “statute-of-limitations defense is a claim-processing rule, which is subject to waiver.”

Reed v. State, 793 N.W.2d 725, 732 (Minn. 2010) (holding that a statute-of-limitations defense is not a jurisdictional rule that deprives a district court of its power to adjudicate a case). And as stated above, a valid guilty plea generally waives all non-jurisdictional defects. See *Ford*, 397 N.W.2d at 878. But as in *Tupa*, there is no indication that appellant intended to relinquish his right to argue his statute-of-limitations defense on appeal. The record reflects that after appellant was charged with first-degree criminal sexual conduct, he moved to dismiss the charges, asserting a statute-of-limitations defense. Although the district court denied the motion, appellant continued to litigate the issue, requesting reconsideration of the district court’s decision, and later moving to compel discovery in order to obtain documents pertaining to the statute-of-limitations issue. In fact, at the sentencing hearing, when the prosecutor argued that the district court should deny appellant’s request to withdraw his guilty plea, the prosecutor acknowledged that appellant was “hung up” on the statute-of-limitations issue. Yet despite appellant’s continued intention of pursuing the statute-of-limitations issue, it is undisputed that appellant was not “informed about the fact that he would be waiving his statute-of-limitations defense on appeal” by pleading guilty.¹

Because appellant did not understand that by pleading guilty he was waiving his right to appeal his statute-of-limitations defense, a right he clearly had no intention of relinquishing, we cannot conclude that appellant’s guilty plea was intelligent. See *Taylor*,

¹ To the contrary, we note that in opposing appellant’s request to withdraw his guilty plea, the prosecutor argued that because the statute-of-limitations issue was “already” decided by the district court, appellant’s “proper course of action is either upon appeal . . . or in some form of a postconviction proceeding.”

887 N.W.2d at 823. Accordingly, appellant's guilty plea was invalid, and the district court erred by denying appellant's request to withdraw his guilty plea. And because appellant must be entitled to withdraw his guilty plea, we need not address appellant's alternative ineffective-assistance-of-counsel argument, or the claims raised in appellant's pro se supplemental brief.

Reversed and remanded.