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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A17-0434

A17-0435

State of Minnesota,
Respondent,

vs.

Cody Robert Schrock,
Appellant.

Filed January 16, 2018
Affirmed in part, reversed in part, and remanded
Schellhas, Judge

Dakota County District Court
File Nos. 19HA-CR-16-1257, 19HA-CR-16-3205

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

James C. Backstrom, Dakota County Attorney, Chip Granger, Assistant County Attorney,
Hastings, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Schellhas, Judge; and
Stauber, Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant seeks withdrawal of his guilty plea to second-degree controlled-substance possession and challenges his sentence for fifth-degree controlled-substance possession. We affirm appellant's convictions but reverse and remand to the district court for issuance of a corrected warrant of commitment for the fifth-degree controlled-substance-possession conviction.

FACTS

In July 2013, appellant Cody Schrock was convicted of fifth-degree controlled-substance possession. In April 2016, police found Schrock incapacitated in a running motor vehicle, along with a pipe, a baggie of methamphetamine, and a baggie of heroin on or near Schrock's person. In August 2016, police found a baggie of methamphetamine in Schrock's pocket after arresting him for shoplifting. In connection with the April and August incidents, relevant to this appeal, respondent State of Minnesota charged Schrock with second-degree controlled-substance possession and fifth-degree controlled-substance possession.

Schrock pleaded guilty to both controlled-substance offenses, and the district court adjudicated his guilt on both offenses. At that time, the court informed Schrock that he could argue for a downward dispositional sentencing departure but cautioned him that the court might sentence him to prison. Neither the district court, the prosecutor, nor Schrock's attorney mentioned on the record the 36-month mandatory minimum sentence applicable to Schrock's second-degree controlled-substance-possession offense under Minn. Stat.

§ 152.022, subd. 3(b) (2014), as a result of his July 2013 controlled-substance-possession conviction.¹

At sentencing, the prosecutor noted the applicability of a mandatory minimum 36-month sentence to the second-degree controlled-substance-possession offense due to Schrock's July 2013 fifth-degree controlled-substance-possession conviction, and sought a guidelines sentence of 68 months' imprisonment. Schrock argued for a downward dispositional departure. The district court sentenced Schrock on the record to 68 months executed for his second-degree controlled-substance-possession offense and 15 months executed concurrently for his fifth-degree controlled-substance-possession offense.

¹ “Notwithstanding section 152.18, subdivision 1, a ‘subsequent controlled substance conviction’ means that before commission of the offense for which the person is convicted under this chapter, the person received a disposition for a felony-level offense under section 152.18, subdivision 1, [or] was convicted in Minnesota of a felony violation of this chapter . . .” Minn. Stat. § 152.01, subd. 16a (2014). Under the Drug Sentencing Reform Act (DSRA), a “‘subsequent controlled substance conviction’ means that before commission of the offense for which the person is convicted under this chapter, the person was convicted of a violation of section 152.021 or 152.022 . . . provided that ten years have not elapsed since discharge from sentence.” 2016 Minn. Laws ch. 160, § 1, at 576 (codified at Minn. Stat. § 152.01, subd. 16a (2016)). This amendment in the DSRA became “effective August 1, 2016, and applies only to crimes committed on or after that date.” *Id.* at 576–77. The amendment does not apply to Schrock's conviction of second-degree controlled-substance possession because he committed the offense in April 2016. *See State v. Otto*, 899 N.W.2d 501, 503 (Minn. 2017) (“[T]he plain language of DSRA §§ 3-4 forbids application of the increased weight threshold to offenses committed prior to August 1, 2016.”). Schrock's conviction of second-degree controlled-substance possession constitutes a “subsequent controlled substance conviction,” Minn. Stat. § 152.01, subd. 16a (2014), even though his July 2013 conviction of fifth-degree controlled-substance possession is neither a conviction under section 152.021 nor section 152.022, Minn. Stat. § 152.01, subd. 16a (2016). The mandatory minimum 36-month sentence therefore applies under Minn. Stat. § 152.022, subd. 3(b).

This appeal follows.²

DECISION

Validity of plea to second-degree controlled-substance possession

Schrock argues that his guilty plea to second-degree controlled-substance possession is invalid and that he should be allowed to withdraw it. He did not challenge the validity of his guilty plea in district court, but he may do so in this direct appeal. See *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) (“A defendant is free to simply appeal directly from a judgment of conviction and contend that the record made at the time the plea was entered is inadequate” to establish the requirements of a valid guilty plea.).

Appellate courts apply a de novo standard of review to determine the validity of a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A defendant does not have an absolute right to withdraw a valid guilty plea after sentencing, unless the plea is manifestly unjust. *Id.* at 93. “The intelligence requirement [of a valid guilty plea] ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Id.* at 96. But a defendant need not know every consequence of his or her plea for the plea to be intelligent. *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). The intelligence requirement refers to direct consequences of a plea, those consequences that are “definite, immediate, and automatic and are punitive and a part of a

² At oral argument, in consideration of *Otto*, Schrock withdrew his challenge to his second-degree controlled-substance-possession conviction in which he sought a reduced offense level under the DSRA.

defendant's sentence.” *State v. Brown*, 896 N.W.2d 557, 561 (Minn. App. 2017) (quotation omitted), *review denied* (Minn. July 18, 2017).

Schrock argues that his guilty plea to second-degree controlled-substance possession was not intelligent because, at the plea hearing: (1) although Schrock's attorney acknowledged that the district court had made “no promises” regarding Schrock's sentence, his attorney told the district court that Schrock would be arguing at sentencing for a dispositional departure; (2) the district court told Schrock that he could seek a downward dispositional departure; (3) Schrock's plea petition did not include a minimum sentence; and (4) contrary to Minn. R. Crim. P. 15.01, subd. 1(6)(j),³ no one informed Schrock, and he did not know, of the applicable mandatory minimum 36-month sentence.

The state argues that Schrock's plea was intelligent because he was informed of the maximum applicable sentence. We agree. Schrock's plea petition included the maximum penalties for the offense of second-degree controlled-substance possession. And before Schrock entered his guilty plea, the district court informed him that the maximum penalties for the offense were “25 years in prison” and a “maximum fine of one[-]half million dollars.” Later in the hearing, the court repeated the maximum-penalty information, asked Schrock whether he understood, and Schrock stated that he understood.

In *State v. Trott*, under circumstances similar to those in the case before us, the defendant argued that his plea was not intelligent because, at the time of his plea, neither

³ Minn. R. Crim. P. 15.01, subd. 1(6)(j) governs guilty-plea procedures and requires that the “judge . . . ensure defense counsel has told the defendant and the defendant understands [that] [i]f a minimum sentence is required by statute, the judge may impose a sentence of imprisonment of not less than [the minimum number of] months for the crime charged.”

defense counsel nor the state was aware that a mandatory minimum sentence applied, no mention of the mandatory minimum was placed on the record, and Trott's plea petition contained no information about the mandatory minimum. 338 N.W.2d 248, 250–52 (Minn. 1983). And as in Schrock's case, Trott's plea petition contained maximum-penalty information, the district court informed Trott about the maximum penalties on the record, and the court made no promises to Trott about his sentence. *Id.* at 250.

Before the sentencing hearing, the prosecutor urged the court by memorandum to sentence Trott to a downward dispositional departure. *Id.* But at the sentencing hearing, the prosecutor explained that he had been mistaken both that the guidelines called for a stayed sentence of 21 months and about the fact that Trott's offense required imposition of a mandatory minimum one-year and one-day sentence. *Id.* Trott nevertheless asked for a stayed sentence and treatment, i.e., a downward dispositional departure, and the prosecutor then argued that if the court granted any departure, it should be an upward departure. *Id.* The court imposed an executed 21-month sentence. *Id.* at 251.

Within two weeks of his sentencing, Trott moved to withdraw his plea, and the district court conducted an evidentiary hearing at which Trott and his defense counsel testified. *Id.* Trott claimed that his counsel had promised him that he would receive a probationary sentence. *Id.* His counsel admitted that he told Trott that probation was likely but denied giving Trott any promises. *Id.* The supreme court rejected Trott's argument that his guilty plea was unintelligent, noting that Trott was aware of the mandatory minimum sentence at his sentencing hearing and neither moved to continue the sentencing hearing or to withdraw his plea for a mistake. *Id.* at 252.

Here, as in *Trott*, Schrock learned of the mandatory minimum 36-month sentence at his sentencing hearing and neither moved to continue his sentencing hearing nor to withdraw his plea. Instead, he argued for a downward dispositional departure based on various facts. The district court considered Schrock's arguments but noted that it did not find identifiable substantial and compelling reasons to support a downward dispositional departure and therefore sentenced Schrock to an executed sentence of 68 months' imprisonment. Schrock does not argue that his defense counsel promised him a probationary sentence, and the record clearly reflects that the district court made no such promises to him.

Because Schrock was aware at his plea hearing of the applicable maximum penalties, we conclude that he was aware of the consequences of his plea and that his plea therefore was intelligent and is valid. Nothing in the record persuades us that we must allow Schrock to withdraw his plea in order to "correct a manifest injustice" under Minn. R. Crim. P. 15.05, subd. 1. *See Spann v. State*, 368 N.W.2d 377, 379 (Minn. App. 1985) ("Where a defendant is not promised a probationary sentence, he will not later be allowed to withdraw a plea because he was sentenced according to the guidelines."); *see also* Minn. R. Crim. P. 15.01 cmt. ("[A] failure to include all of the interrogation set forth in Rule 15.01 will not in and of itself invalidate a plea of guilty."). We affirm Schrock's conviction of second-degree controlled-substance-possession conviction.

Warrant of commitment for fifth-degree controlled-substance possession

Schrock argues that the warrant of commitment for his fifth-degree controlled-substance-possession conviction is erroneous because it states that his commitment is for

68 months, instead of the 15-month sentence imposed by the district court at the sentencing hearing. The state agrees, and the record of the sentencing hearing supports Schrock's argument. Schrock is entitled to a corrected warrant of commitment that accurately reflects the district court's orally pronounced sentence of 15 months' concurrent imprisonment for his fifth-degree controlled-substance-possession conviction. *See State v. Staloch*, 643 N.W.2d 329, 329 (Minn. App. 2002) ("When an orally pronounced sentence varies from a written sentencing order, the orally pronounced sentence controls."). We therefore reverse the district court's sentence for Schrock's fifth-degree controlled-substance-possession conviction and remand for correction of the warrant of commitment consistent with the district court's sentence pronounced at the sentencing hearing.

Affirmed in part, reversed in part, and remanded.