

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1500**

State of Minnesota,
Respondent,

vs.

Justin Lee Armstrong,
Appellant.

**Filed July 30, 2018
Affirmed
Smith, Tracy M., Judge**

Wilkin County District Court
File No. 84-CR-13-362

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

Carl Thunem, Wilkin County Attorney, Breckenridge, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Cleary, Chief Judge;
and Connolly, Judge.

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

SMITH, TRACY M., Judge

Appellant challenges his conviction of third-degree possession of a controlled
substance, arguing that his conviction is invalid because the district court (1) failed to
execute this court's mandate for withdrawal of his guilty plea and (2) did not enter a new

conviction after remand. Appellant also contends that, if we conclude that his conviction is invalid, then the underlying charges against him have remained untried for more than 180 days after his request for final disposition and are subject to dismissal under the Interstate Agreement on Detainers. Because we conclude that appellant's conviction is valid, we affirm.

FACTS

In 2013, respondent State of Minnesota charged appellant Justin Lee Armstrong with second-degree possession of a controlled substance in violation of Minn. Stat. § 152.022, subd. 1(1) (2012), and obstruction of legal process in violation of Minn. Stat. § 609.50, subd. 1(2) (2012). Armstrong and the state reached a plea agreement in which Armstrong pleaded guilty to an amended charge of third-degree possession and agreed to a 58-month sentence, and the state agreed to delay sentencing until separate charges against Armstrong in North Dakota were resolved. The agreement would allow Armstrong to serve his 58-month sentence concurrently with an anticipated prison sentence in North Dakota. Months later, but prior to resolution of the North Dakota charges, the state returned Armstrong to custody, and, over his objection, the district court sentenced him to 58 months in prison under his previously entered guilty plea.

On appeal, we concluded that the state violated the plea agreement to delay sentencing until Armstrong's North Dakota charges were resolved, which rendered Armstrong's guilty plea involuntary. *State v. Armstrong*, No. A15-0912, 2016 WL 764405, at *3-4 (Minn. App. Feb. 29, 2016). Accordingly, we “reverse[d] the conviction and remand[ed] for withdrawal of the guilty plea.” *Id.* at *4.

On March 8, 2016, Armstrong appeared in district court for a remand hearing. Rather than withdraw his guilty plea, Armstrong asked the district court to honor the original plea agreement with the additional terms that sentencing be delayed for nine months for resolution of the North Dakota charges and that he waive his right to appear for sentencing if he were in custody in North Dakota at the time. Armstrong affirmed that he understood that he could withdraw his guilty plea but that he was electing to maintain his plea under a modified plea agreement with the state. The district court then vacated Armstrong's sentence and granted him a conditional release from custody.

In January 2017, Armstrong began serving a 34-month sentence in North Dakota. The state subsequently filed an interstate detainer seeking temporary custody of Armstrong for a plea hearing. In response, on April 7, 2017, Armstrong requested final disposition of any untried indictments or complaints against him under the Interstate Agreement on Detainers (IAD), Minn. Stat. § 629.294 (2016). The district court set a plea hearing for June 27, 2017, but, prior to the hearing, Armstrong's attorney notified the court that Armstrong need not appear because he had not withdrawn his guilty plea and had agreed to be sentenced in absentia after nine months. The attorney stated, "I believe that the conviction can be entered and that the sentence as agreed to by the parties, can simply be pronounced and entered." The district court then quashed the detainer and converted the hearing to a sentencing hearing.

On June 28, 2017, the district court sentenced Armstrong to 58 months in prison and ordered that the sentence run concurrently with Armstrong's North Dakota sentence and that Armstrong receive credit for time served in North Dakota and in Minnesota from

the date of his arrest. The sentencing order and warrant of commitment recorded the conviction of third-degree possession of a controlled substance. The district court subsequently amended the sentencing order to clarify Armstrong's credit for time served.

This appeal follows.

D E C I S I O N

I. The district court did not violate this court's mandate by allowing Armstrong to maintain his guilty plea after remand.

Armstrong claims that his conviction is invalid because, on remand, the district court violated this court's order to withdraw Armstrong's guilty plea by allowing him to maintain his plea. We disagree.

"It is well settled that an unqualified promise which is part of a plea arrangement must be honored or else the guilty plea may be withdrawn." *Kochevar v. State*, 281 N.W.2d 680, 687 (Minn. 1979). "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." *James v. State*, 699 N.W.2d 723, 728-29 (Minn. 2005). Under Minn. R. Crim. P. 15.05, subd. 1, "the [district] court must allow a defendant to withdraw a guilty plea . . . [when] withdrawal is necessary to correct a manifest injustice." A manifest injustice exists when the defendant establishes that his plea was "inaccurate, involuntary, or unintelligent." *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010).

When an appellate court has concluded that a plea agreement was breached, a defendant is allowed to withdraw a guilty plea. In *State v. Garcia*, the Minnesota Supreme Court concluded that an unqualified promise induced the defendant's plea and remanded

to the district court to allow the defendant to withdraw his guilty plea “if he so chooses.” 582 N.W.2d 879, 881-82 (Minn. 1998). Similarly, in *James*, the defendant was “entitled to withdraw his [guilty] plea, or if withdrawal would be unduly prejudicial to the state, have the agreement modified in a way that does not violate the agreement” because his plea “was induced by an unfillable promise.” 699 N.W.2d at 730. In *Uselman v. State*, this court concluded that the defendant “entered his plea involuntarily on an erroneous understanding” and remanded to “the district court to allow [the defendant] to withdraw his guilty plea.” 831 N.W.2d 690, 694-95 (Minn. App. 2013). Armstrong cites no case in which an appellate court mandated withdrawal of a defendant’s guilty plea against the defendant’s own wishes.

“On remand, it is the duty of the district court to execute the mandate of this court strictly according to its terms. The trial court has no power to alter, amend, or modify [this court’s] mandate.” *State v. Roman Nose*, 667 N.W.2d 386, 394 (Minn. 2003) (citation and quotation omitted). In our previous decision in this case, we were reviewing whether the district court’s decision to sentence Armstrong before resolution of a pending criminal case in North Dakota invalidated his plea. We “remand[ed] for withdrawal of [Armstrong’s] guilty plea” because we concluded that the state broke its promise to delay sentencing and that “withdrawal of the guilty plea is necessary to correct a manifest injustice.” *Armstrong*, 2016 WL 764405, at *4.

Here, the record is clear that the district court allowed Armstrong the choice of withdrawing his guilty plea after remand. Armstrong, on his own and with advice of counsel, chose not to withdraw his plea, and stated that he wanted the parties to honor the

original plea agreement as modified by the additional terms to which he agreed at the remand hearing. Armstrong now seeks reversal of his conviction and remand “to allow him to withdraw his plea.” But Armstrong already received this requested relief following remand of his previous appeal. The district court was mandated only to allow Armstrong to withdraw his guilty plea, which it clearly allowed him the opportunity to do. We conclude that the district court did not violate a mandate of this court by allowing Armstrong to maintain his guilty plea.

II. The district court entered a valid conviction after remand.

Armstrong next claims that his conviction is invalid because the district court did not enter a new conviction after remand. We are not persuaded.

A conviction is defined as “(1) a plea of guilty; or (2) a verdict of guilty by a jury or a finding of guilty by the court” that is “accepted and recorded by the court.” Minn. Stat. § 609.02, subd. 5 (2016). Therefore, when a defendant enters a guilty plea, “a conviction requires that a district court both accept and record the guilty plea.” *State v. Thompson*, 754 N.W.2d 352, 355 (Minn. 2008) (citing Minn. Stat. § 609.02, subd. 5) (quotation marks omitted).

A district court records a guilty plea either by “accepting the guilty plea and adjudicating the defendant guilty on the record,” *State v. Martinez-Mendoza*, 804 N.W.2d 1, 6 (Minn. 2011), or by entry of formal judgment of conviction, *State v. Jeffries*, 806 N.W.2d 56, 63 (Minn. 2011). “A conviction appearing in the official judgment of conviction or in a conviction order entered by the court has been formally adjudicated.” *State v. Hoelzel*, 639 N.W.2d 605, 609 (Minn. 2002) (quotation omitted). A district court

accepts a guilty plea when it uses “clear and unambiguous language of acceptance of the plea,” but there are not “magic words” such as “convicted” or “I accept your plea” that “always result in a conviction.” *Jeffries*, 806 N.W.2d at 63. “[T]he trial court judge must reject or accept the plea of guilty on the terms of the plea agreement.” Minn. R. Crim. P. 15.04, subd. 3(1).

With regard to the recording of Armstrong’s guilty plea, the parties agree that, following remand, the district court allowed Armstrong to maintain his previous guilty plea. The district court did not expressly state that it had “adjudicated Armstrong guilty of the offense” before sentencing him. However, the district court issued a sentencing order and warrant of commitment that entered the conviction of third-degree possession of a controlled substance and sentenced Armstrong to 58 months’ imprisonment. Because the district court entered a formal judgment of conviction against Armstrong after remand, the district court properly recorded the conviction. *See Jeffries*, 806 N.W.2d at 63 (noting that a district court records a guilty plea by entry of formal judgment of conviction).

The state concedes that the district court did not explicitly reaccept Armstrong’s guilty plea after remand. But the state contends that the district court implicitly accepted Armstrong’s plea. Although no published case in Minnesota addresses implicit acceptance of a guilty plea, we note that this court in *State ex rel. Peltier v. Hvass* held that the district court “implicitly accepted” the defendant’s guilty plea when it adjudicated him guilty by imposing a criminal sentence and that it did not need to expressly state that it had done so. No. A03-0008, 2003 WL 22534260, at *3 (Minn. App. Nov. 10, 2003). “Unpublished

opinions are not precedential, but they may have persuasive value.” *State v. Ellis-Strong*, 899 N.W.2d 531, 537 (Minn. App. 2017) (citing Minn. Stat. § 480A.08, subd. 3 (2016)).

In addition, federal circuit courts have held that a district court may implicitly accept a plea under the analogous Federal Rules of Criminal Procedure, which we find instructive. *See Wheeler v. State*, 909 N.W.2d 558, 563-64, 568 n.7 (Minn. 2018) (recognizing that Fed. R. Crim. P. 11(c)(3), addressing judicial consideration of plea agreements, is “comparable” with Minn. R. Crim. P. 15.04, addressing district court’s role to reject or accept plea agreements); *Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 867 n.4 (Minn. 2000) (quotation omitted) (“Where our rules of procedure parallel the federal rules, federal cases interpreting the federal rule are helpful and instructive but not necessarily controlling on our interpretation of the state counterpart.”). In *United States v. Arafat*, the Eighth Circuit held that “[a] guilty plea may be explicitly or implicitly accepted by a district court.” 789 F.3d 839, 844 (8th Cir. 2015). The Eighth Circuit concluded that, even though the district court had not explicitly accepted the defendant’s plea, “[t]aken as a whole and considered in context, the district court’s statements reflect that it intended to accept, and that it did implicitly accept [the defendant’s] guilty plea.” *Id.* In *United States v. Sanford*, the Fifth Circuit concluded that the district court implicitly accepted the defendant’s guilty plea by entering judgment of guilt and sentencing the defendant. 429 F.3d 104, 107 n.2 (5th Cir. 2005).

Here, the record shows that the district court implicitly accepted Armstrong’s guilty plea even though it did not use explicit words of acceptance. At the remand hearing, Armstrong’s attorney asked the district court to reaccept his guilty plea under the original

plea agreement and to delay sentencing by nine months. The district court clarified whether Armstrong was requesting to maintain his previous guilty plea, rather than withdraw it, with the modified terms that he be released and resentenced in nine months and that his sentence be vacated. Armstrong told the district court that that made “perfect sense” to him. The district court then asked Armstrong several questions to confirm that he understood the plea agreement, his right to withdraw his guilty plea, and his agreement to be resentenced in nine months. Armstrong answered all of the district court’s questions in the affirmative. At the conclusion of the hearing, the district court vacated Armstrong’s sentence and released him, consistent with the parties’ modified plea agreement. On this record, we conclude that the district court accepted Armstrong’s guilty plea under the terms of the modified plea agreement.

Because we conclude that the district court accepted Armstrong’s guilty plea and recorded it by entry of formal judgment of conviction, Armstrong’s conviction of third-degree possession of a controlled substance is valid.

III. Armstrong is not entitled to relief under the Interstate Agreement on Detainers (IAD).

Armstrong claims that, if his conviction is invalid, then the state’s charges have remained “untried” for more than 180 days after his request for final disposition under the IAD, Minn. Stat. § 629.294, which requires dismissal of the charges.¹ Because

¹ The IAD is a compact among 48 states, the federal government, and the District of Columbia to establish procedures for resolving one jurisdiction’s outstanding criminal charges against a prisoner who is incarcerated in another state. *State v. Wells*, 638 N.W.2d 456, 459 (Minn. App. 2002), *review denied* (Minn. Mar. 19, 2002). The agreement’s purpose is to require prompt disposition of outstanding charges so that persons incarcerated

Armstrong’s argument is predicated on his claim that his conviction is invalid, and because we conclude that his conviction is valid, Armstrong is not entitled to his requested relief under the IAD. Moreover, we note that the district court issued its sentencing order and warrant of commitment entering conviction against Armstrong on June 28, 2017, 82 days after he requested final disposition of the charges, and well within the 180-day deadline under the IAD.

Affirmed.

in other jurisdictions receive a speedy trial on those charges. *State v. Burks*, 631 N.W.2d 411, 412 (Minn. App. 2001). Minnesota and North Dakota are parties to the agreement and have codified it in their respective statutes. Minn. Stat. § 629.294, subd. 1; N.D. Cent. Code § 29-34-01 (2016); *Wells*, 638 N.W.2d at 459. Under the IAD, a prisoner of a party state who has “pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner . . . shall be brought to trial within 180 days” of delivering a proper request for “final disposition . . . of the indictment” against him, or the charges will be dismissed with prejudice. Minn. Stat. § 629.294, subd. 1, arts. III(a), V(c); see *State v. Kurz*, 685 N.W.2d 447, 450 (Minn. App. 2004) (describing the IAD), *review denied* (Minn. Oct. 27, 2004).