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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-1638**

Ulysses Michael Johnson, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed June 18, 2018  
Affirmed  
Hooten, Judge**

Hennepin County District Court  
File No. 62-CR-16-6014

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

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

Lyndsey M. Olson, St. Paul City Attorney, Steven E. Heng, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Hooten, Judge.

**UNPUBLISHED OPINION**

**HOOTEN**, Judge

Appellant challenges the denial of his postconviction petition requesting to withdraw his guilty plea, arguing that his plea was unintelligent because he was not taking

the correct dosage of his prescription medication at the time of the plea hearing. We affirm.

## **FACTS**

On August 16, 2016, appellant Ulysses Johnson was driving a motor vehicle in Saint Paul. Prior to driving the vehicle, Johnson consumed a controlled substance<sup>1</sup> which negatively affected his ability to control the motor vehicle.

Johnson pleaded guilty in January 2017 to operating a motor vehicle under the influence of a controlled substance in violation of Minn. Stat. § 169A.20, subd. 1(2) (2016). The district court sentenced Johnson to 30 days in jail with 25 days stayed and probation for one year. He was given custody credit for 5 days.

Johnson filed a petition for postconviction relief, and testified at the postconviction hearing that he suffers from paranoia, schizophrenia, and depression, and takes Risperdal and Depakote for those conditions. Currently, Johnson takes one milligram of each drug twice a day. But at the time of the plea hearing, he was only taking one milligram of each drug in the evening. Johnson, in describing his mental status on the lower dosage, stated: “I tend to stare off into space, and I don’t too much, like, listen to everything. I take it as, like, listen, but I tend to, like, think about other things besides what I’m doing at the time.” As to the effect on his decision-making, Johnson testified that he “can respond slower,” and that he “appear[s], like, a little distraught, a little bit confused.” Johnson also testified that the prescribed amount of his medication was increased from one milligram to two

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<sup>1</sup> The citation states that Johnson admitted to taking two to three Percocet pills from his father’s prescription, but at the plea hearing Johnson agreed that he consumed marijuana. Johnson’s plea agreement states that he “operated a motor vehicle under the influence of a controlled substance” and does not specify the controlled substance.

milligrams in the fall of 2016, but his doctor told him to finish what he had left and then start the two milligram dosage. When asked.

whether the difference in medication dosage had any effect on his decision or how he was thinking at the plea hearing, Johnson stated that it did, and that if he had a later hearing, he would have understood his counsel better, they “would have had a better understanding of each other and what [he] wanted to do, and the outcome would have been better.”

The social services director at a local church also testified on Johnson’s behalf and confirmed that Johnson has mental health issues. The director had spoken with Johnson and Johnson’s counsel on the day of the plea hearing and testified that Johnson seemed highly upset and agitated, and did not appear as oriented as he usually does.

The postconviction court denied Johnson’s request to withdraw his plea, holding that his plea was accurate, intelligent, and voluntary. Johnson appeals, limiting his argument to whether his plea was intelligent.

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

“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. There is manifest injustice if a plea is not valid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). To be valid, a guilty plea must be accurate, voluntary, and intelligent. *Id.* “The intelligence requirement

ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Id.* at 96.

The denial of a postconviction motion is reviewed for an abuse of discretion, but legal issues are reviewed de novo. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). Whether a plea is valid is a legal question. *Raleigh*, 778 N.W.2d at 94.

Johnson’s plea was intelligent. He went through the plea petition line-by-line with his attorney on the day of the plea hearing. The petition states the charge against him, lists each of the rights he is giving up by pleading guilty, and that he would not serve any additional time in jail and would be subject to DWI conditions. At the plea hearing, Johnson’s counsel informed the court that Johnson wanted to plead guilty and stated those same terms. The prosecutor explained that the standard DWI conditions were completion of a chemical dependency evaluation, follow the recommendations of the evaluation, and not have the same or similar charges while on probation. After the discussion, Johnson agreed that he wanted to plead guilty. Johnson stated that he understood that he was pleading guilty to an enhanceable offense, which meant that if he engaged in similar conduct three more times in ten years, he would be charged with a felony and could go to prison. And, Johnson stated that he understood that he was giving up his rights, including his right to a trial, the right to confront and cross-examine witnesses, the right to remain silent or to testify, and the right to present witnesses in his defense. Johnson agreed he was clear-headed. Finally, when Johnson was asked if he had anything he wanted to tell the court before sentencing, he asked the district court if he could have his probation

transferred to Minneapolis—showing that he understood that as a consequence of his guilty plea he would be placed on probation.

Johnson's arguments to the contrary are unpersuasive. First, Johnson argues that the district court never inquired whether he was currently taking medication, or how any medication he might have been taking affected him. But the district court was not required to ask those questions for a misdemeanor plea. *Compare* Minn. R. Crim. P. 15.01, subd. 1, *with* Minn. R. Crim. P. 15.02, subd. 1. And Johnson's testimony at the postconviction hearing did not establish that the lower dose of medication caused his plea to be unintelligent. Johnson testified that the lower dose causes him to stare off into space and think about other things besides what he was doing. But when asked how the lower dose affected him at the postconviction hearing, Johnson only stated that he would have understood his counsel better and they would have understood each other better. He did not say that he was not paying attention at the hearing or that he was thinking about other things. Moreover, the testimony by the church social services director that Johnson was upset and agitated before the plea hearing does not describe an individual who is staring off into space and not paying attention. And, the fact that Johnson's doctor told him to finish out his current dosage before switching to the higher dosage shows that his doctor did not believe that the lower dosage would affect Johnson's daily life.

Second, Johnson argues that the factual basis for his guilty plea demonstrates that he did not fully understand the proceeding. Johnson told the officer who issued the citation that he had taken Percocet, but at the plea hearing, the prosecutor stated, and Johnson agreed, that he had consumed marijuana. Johnson argues that because he did not correct

the prosecutor, it shows that he did not understand the proceeding. But in his plea petition, Johnson admitted that he was driving under the influence of a controlled substance and did not state what the controlled substance was. And, Johnson agreed under oath that he consumed marijuana and never contradicted that statement in his plea petition, at the plea hearing, or at the postconviction hearing. Given that Johnson testified at the plea hearing that he understood the charges, the rights he was giving up, and the consequences of his plea, the possible discrepancy in what controlled substance Johnson consumed is not enough to make his plea unintelligent.

**Affirmed.**