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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1262**

Herbert Eugene Pitts, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 11, 2019
Affirmed
Bjorkman, Judge**

Ramsey County District Court
File No. 62-CR-15-5664

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

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and Florey, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the denial of his petition for postconviction relief following an evidentiary hearing, arguing that he is entitled to withdraw his guilty plea because it was not intelligent. We affirm.

FACTS

On July 24, 2015, appellant Herbert Eugene Pitts was charged with violating a domestic-abuse no-contact order (DANCO), under Minn. Stat. § 629.75, subd. 2(d)(1) (2014). On September 9, Pitts agreed to plead guilty in exchange for dismissal of similar charges in another case and imposition of an executed 18-month sentence.

In his signed plea petition, Pitts disclosed that he was hospitalized due to mental-health issues in 2009, and had been treated for schizophrenia and bipolar disorder. But he indicated he had “not been ill recently,” and was taking two types of medication for his mental-health conditions. At the plea hearing, Pitts was questioned by his attorney, the district court judge, and the prosecutor. When asked, Pitts provided his address and phone number. He agreed that he had enough time to speak with his attorney, had gone through the plea petition line by line with his attorney, and understood the trial rights he was giving up by pleading guilty. His attorney verified Pitts’s mental-health history, and asked Pitts whether his mental health affected his “ability to understand and comprehend” the proceeding. Pitts responded, “No.” The district court judge confirmed that, by signing the plea petition, Pitts was “telling [her] [he was] satisfied that [he] understood it,” and that he was “satisfied with [his] representation.”

In verifying the factual basis for the plea, Pitts admitted that, despite the existence and his knowledge of the DANCO, he attempted to enter the victim's hospital room on July 23. He also admitted that he had been told by nurses in the preceding days that he could not have contact with the victim but "did so anyway." The district court accepted Pitts's plea, adjudicated him guilty, and sentenced him in accordance with the plea agreement.

Nearly two years later, Pitts filed a postconviction petition seeking to withdraw his guilty plea and supplement the record as to his "mental health and traumatic brain injury conditions that rendered his plea involuntary and unintelligent."¹ The same district court judge presided over the plea hearing and the postconviction evidentiary hearing.

Pitts testified that at the time of the charged offense he was actually suffering from a brain injury caused by blunt head trauma, attention-deficit hyperactivity disorder, posttraumatic stress disorder, and bipolar disorder. At the time of the plea hearing, he was overmedicated, causing him to be "not of this world." Pitts stated that he was unable to communicate, and did not know who he was, but he did remember that he did not receive his medications on the day of the hearing. He does not recall the district court judge, his plea, or his sentencing hearing. And he testified that he wanted to withdraw his plea because he "never committed that crime."

¹ Although Pitts sought plea withdrawal "on the grounds that his plea was not voluntary and intelligent," his argument at the postconviction evidentiary hearing was limited to whether his plea was intelligently made, and the postconviction court order addressed only that issue. We therefore decline to consider whether Pitts's plea was involuntary. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court will not consider an issue that was not raised or ruled upon by the district court).

The postconviction court denied Pitts’s petition, concluding that “the record clearly reflects that Mr. Pitts comprehended what he was doing on September 9, 2015 when he entered his plea.” Citing examples of Pitts’s plea-hearing testimony and noting that the transcript indicates that Pitts was not “too ill at the time of his plea to understand what he was doing,” the postconviction court rejected Pitts’s argument as “not convincing.” Pitts appeals.

D E C I S I O N

A defendant must be permitted to withdraw his guilty plea at any time if “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice occurs when a plea is not valid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A plea is valid if it is accurate, voluntary, and intelligently made. *Id.* A plea is intelligently made if a defendant “understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Uelman v. State*, 831 N.W.2d 690, 693 (Minn. App. 2013) (quotation omitted).

We review the decision of a postconviction court for abuse of discretion, upholding the court’s findings if they are supported by sufficient evidence and reviewing legal issues de novo. *Bobo v. State*, 860 N.W.2d 681, 684 (Minn. 2015). The supreme court has affirmed the denial of a postconviction petition premised on the assertion that “mental stress at the time of the plea[]” affected the plea’s validity when the assertion contradicted the district court’s recollection of the plea hearing. *Butala v. State*, 664 N.W.2d 333, 340 (Minn. 2003). And this court affirmed the summary denial of a postconviction claim that the “medication [petitioner] was taking at the time of the plea hearing ‘distorted’ her mental

focus” where the allegations were directly contradicted by the plea petition and refuted by the petitioner’s plea-hearing testimony. *Williams v. State*, 760 N.W.2d 8, 15 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009). Such is the case here.

The record supports the postconviction court’s finding that Pitts’s plea was intelligent and demonstrates the court appropriately considered his mental status before accepting the guilty plea. Minn. R. Crim. P. 15.01, subd. 1.5.a-c (requiring district court to determine whether a defendant is under the influence of drugs or alcohol, is mentally disabled, or is receiving mental-health treatment). First, although Pitts disclosed his past diagnosis of and treatment for schizophrenia and bipolar disorder, he testified that he had not been ill recently and his mental-health issues did not affect his understanding of the plea proceedings. A reasonable inference from this testimony is that Pitts’s mental-health conditions were regulated by his medications. Second, Pitts’s responses to questions posed during the plea hearing were appropriate and demonstrated comprehension. Third, Pitts agreed that he had gone through the plea petition line by line and had sufficient time to talk with his attorney.

Finally, the postconviction court expressly found that Pitts’s postconviction testimony was not credible. It is not our role to second guess such credibility determinations. *See Bobo*, 860 N.W.2d at 684 (stating that the “postconviction court is in the best position to evaluate witness credibility”). Moreover, the record supports the postconviction court’s assessment of his credibility. Pitts offered no medical records or other evidence to support his new allegations that he was suffering from a traumatic brain injury and other mental-health conditions that rendered his plea unintelligent. And his

testimony about the precise medications he was taking that caused him to be overmedicated at the time of his plea hearing—while he simultaneously claimed to have no recollection of even being at the hearing—is suspect. Likewise, his assertion that he was “not of this world” at the time of the plea hearing, is defeated by the record, which shows he had no difficulty providing relevant answers to questions that ranged from the offense, to his understanding of court procedures, to his current address and phone number.

In sum, the record amply supports the postconviction court’s determination that “Mr. Pitts comprehended what he was doing on September 9, 2015 when he entered his plea.” We discern no abuse of discretion by the postconviction court in denying Pitts’s request to withdraw his guilty plea.

Affirmed.