*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A18-1599**

State of Minnesota,
Respondent,

vs.

Rufo Hamid Mumed,
Appellant.

**Filed June 15, 2020**
**Affirmed**
**Jesson, Judge**

Hennepin County District Court
File No. 27-CR-17-17652

Keith Ellison, Attorney General, Krista Barrie, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Beau D. McGraw, McGraw Law Firm, P.A., Lake Elmo, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Jesson, Judge; and Klaphake, Judge.[*]

---

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

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

**JESSON**, Judge

After pleading guilty to identity theft and theft by false representation for receiving more than $35,000 through a medical-assistance-billing scheme, appellant Rufo Hamid Mumed seeks to withdraw her guilty plea. The postconviction court denied her request. Mumed argues that she should be permitted to withdraw her plea because it was inaccurate and involuntary. We affirm.

## FACTS

This case is about a fraudulent medical-assistance-billing scheme conducted by appellant Rufo Hamid Mumed.[2] The Minnesota Attorney General's Office investigated allegations of medical-assistance-billing fraud related to Mumed and a personal care attendant company, Limay Home Care, Inc. (Limay). The investigation revealed that, beginning in 2014, Mumed managed and controlled Limay. But while Mumed ran the business, Limay was registered under her former husband's name. This was intentional. In 2012, the government investigated Mumed for fraudulent billing practices with her previous personal care attendant company, AAA Plus Home Health Care, LLC (AAA). In that investigation, authorities learned that AAA overbilled for services. Because of this

---

[2] The parties refer to Minnesota's medical-assistance program as Medicaid. Medicaid is a federal program in which Minnesota cooperates with the federal government to provide health care and services to qualifying Minnesotans. *See Young v. Jesson*, 796 N.W.2d 158, 164 (Minn. App. 2011), *review denied* (Minn. June 28, 2011); *see also* Minn. Stat. §§ 256B.01, .02, subd. 8 (2018). Medical assistance is Minnesota's version of Medicaid. *In re Carlisle Tr.*, 498 N.W.2d 260, 263 n.1 (Minn. App. 1993). We use medical assistance throughout this opinion.

fraud, AAA was terminated from participating with medical assistance, and Mumed pleaded guilty to fraud-related felonies in 2015. Before AAA was barred from medical assistance participation, Mumed attempted to open a second personal care attendant company. But Mumed was not eligible, and her request was denied. After that denial, Mumed opened Limay under her former husband's name, with the knowledge that having the company under her name would make it ineligible to enroll as a medical-assistance provider.

Through Limay, Mumed coordinated billing and reimbursement through medical assistance for personal care attendant hours that were fabricated. For example, Mumed submitted claims for more hours than staff had worked. And she billed medical assistance using the names of people who were not Limay staff. Mumed did not pay the staff for these hours, but instead kept the money. In total, the investigation revealed that Mumed fraudulently obtained over $130,000 in medical-assistance funds.

Based on her conduct, the state charged Mumed with four felony counts: theft by false representation of over $35,000 (counts one and two), identity theft of over $35,000 (count three), and identity theft of over $2,500 (count four). Mumed pleaded guilty to counts one and three, in exchange for counts two and four being dismissed. In support of her plea, Mumed submitted a plea petition and provided testimony on the factual basis of her plea. The district court found that her plea was sufficient.

There was no agreement on sentencing, but the presumptive sentence for count three was 48 months in prison. Defense counsel expressed Mumed's intent to seek a departure at sentencing. At the sentencing hearing, while Mumed moved for a downward dispositional departure with no incarceration, the state presented additional evidence from a fraud investigator in support of its request that Mumed serve time in prison.[3] The district court denied Mumed's departure request and sentenced her to 42 months in prison on count three. For count one, the court ordered a concurrent 33-month sentence stayed for one day.

About four months after her sentencing, Mumed moved to withdraw her guilty plea. The district court construed this request as a petition for postconviction relief and set the matter for a hearing. At the hearing, the parties did not present testimony or evidence, but rested on their respective filings. In a written order, the postconviction court denied Mumed's request, finding that her plea was valid and that she was not entitled to withdraw it. This appeal follows.[4]

## D E C I S I O N

Mumed challenges the postconviction court's denial of her request to withdraw her guilty plea. The court found that her plea was accurate, intelligent, and voluntary and that she was not entitled to withdraw it. In situations where our review comes after a defendant filed a direct appeal that was stayed to permit her to pursue postconviction relief, as is the case here, "we review the postconviction court's decisions using the same standard that we apply on direct appeal." *State v. Beecroft*, 813 N.W.2d 814, 836 (Minn. 2012). Applying

---

[3] In an apparent effort to demonstrate her remorse, Mumed told the court at this hearing that she was "so guilty," that she knew she "did wrong," that she made "this mistake," and that she "did bad." And her attorney stated, "[t]here's no question as to my client's guilt. Absolutely no question to that."

[4] Mumed originally filed this appeal after her sentencing. But the appeal was stayed, at her request, pending the district court's consideration of her request to withdraw her guilty plea. After the court denied her relief, the stay was dissolved and this appeal proceeded.

that standard, we review legal questions de novo and findings of fact for clear error. *Sanchez v. State*, 890 N.W.2d 716, 720 (Minn. 2017). And we review the validity of a plea de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

Criminal defendants do not have an absolute right to withdraw a guilty plea. *Id.* at 93. But the court must permit withdrawal if it "is necessary to correct a 'manifest injustice.'" *Id.* (quoting Minn. R. Crim. P. 15.05, subd. 1). If a plea is not accurate, voluntary, and intelligent, it is constitutionally invalid, and a manifest injustice exists. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004); *see Raleigh*, 778 N.W.2d at 94. And a defendant—like Mumed—bears the burden of showing that her guilty plea was invalid. *See Raleigh*, 778 N.W.2d at 94. In this appeal, Mumed argues that her plea was neither accurate nor voluntary. We address each argument in turn.

*Accuracy*

First, Mumed challenges the accuracy of her plea because "she did not commit the crimes alleged." To support this assertion, Mumed submitted an affidavit with her motion to withdraw her guilty plea, stating that she "disagree[s] with some of the allegations against" her.[5] In order to be accurate, a plea must be established with a proper factual basis. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012). Said another way, the record must contain facts sufficient to support a conclusion that the defendant's conduct meets the elements of the offenses to which she pleaded guilty. *See Kelsey v. State*, 214 N.W.2d 236, 237 (Minn. 1974). This requirement is intended to prevent "a defendant from pleading

[5] We note that Mumed did not indicate *which* allegations she disagrees with, and she did not plead guilty to the whole complaint, only two of the four counts.

guilty to a more serious offense than [she] could be convicted of were [she] to insist on [her] right to trial." *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983).

To determine whether the factual basis is sufficient, we consider what is required for each offense. Here, to support a conviction for theft by false representation, the state had to prove that Mumed obtained the property of a third person—valued at over $35,000—by intentionally deceiving that person with a false representation. *See* Minn. Stat. § 609.52, subds. 2(a)(3), 3(1) (2014). It must also prove that Mumed knew the representation was false, that she made it with the intent to defraud, and which did defraud, a third person. *Id.*, subd. 2(a)(3). False representation includes filing a claim for reimbursement for medical care provided to a recipient of medical assistance, "which intentionally and falsely states the costs of or actual services provided by a vendor of medical care." *Id.*, subd. 2(a)(3)(iii).

Turning to the facts underlying her plea to theft by false representation, Mumed acknowledged that she owned Limay, which provided personal care attendant services to clients on medical assistance. She agreed that she billed the state for hours that did not exist, that this was a false representation, and the fraud amounted to more than $35,000. And Mumed registered Limay under someone else's name because she knew she was ineligible to enroll it in medical assistance, based on her past involvement with AAA. Mumed's testimony established a sufficient factual basis for her plea to theft by false representation.

Second, to support her conviction for identity theft, the state had to prove that Mumed used another's identity with the intent to commit, aid, or abet unlawful activity and that the loss was over $35,000. *See* Minn. Stat. § 609.527, subds. 2, 3(5) (2014). Here, Mumed agreed that she used a personal care attendant's personal identity and information to bill medical assistance for "theft purposes," which amounted to more than $35,000. These admissions establish a sufficient factual basis for her plea to identity theft.

Still, Mumed argues that she did not commit the crimes because one of Limay's alleged employees "did in fact meet with her in the [s]pring of 2013." But even if Mumed's assertion was true, a single meeting does not prove that she is not guilty. The existence of this meeting would not establish that the alleged employee ever worked at Limay or that the employee worked the specific hours that Mumed submitted to medical assistance. And if, by making this assertion, Mumed was trying to suggest that the employee worked at Limay, she could have supported this assertion with other evidence, including tax documentation, time cards, affidavits from patients served, staff schedules, or communications about shifts. She did not. Mumed failed to meet her burden to show that her plea is invalid.

Moreover, the core of this fraud was that Mumed was running Limay under someone else's name so that it could be eligible for payments from medical assistance. If the government had been aware that Mumed was the owner and operator of Limay, it would not have paid any Limay claims through medical assistance. Therefore, while the minutiae of each fraudulent claim is relevant, the crux here is that all of Limay's claims—even if made for the correct staff and the correct hours—were fraudulent. Consequently, even if Mumed was right about the alleged employee meeting with her, that assertion does not cast doubt on the overarching criminal conduct here. This argument does not render Mumed's plea inaccurate.

*Voluntariness*

Mumed also argues that her plea was not voluntary because she "only" pleaded guilty after her attorney "promise[d]" her "that he would get her a sentence that did not include a term in prison." The requirement that guilty pleas be given voluntarily ensures that a defendant does not plead guilty because of improper pressures. *Trott*, 338 N.W.2d at 251. If a plea rests "on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *State v. Wukawitz*, 662 N.W.2d 517, 522 (Minn. 2003) (quotations omitted). But a court should not set aside a guilty plea "merely because the accused has not achieved an unwarranted hope." *Schwerm v. State*, 181 N.W.2d 867, 868 (Minn. 1970).

According to Mumed, her attorney promised her that she would not be sentenced to any prison time if she pleaded guilty. But this assertion is contrary to a wealth of evidence in the record. First, in her preplea interview, Mumed stated that she "just can't go to jail" and that she knew she "did something bad" but that she "shouldn't have to go to jail for it." These statements demonstrate that Mumed knew that she was facing incarceration for her offenses.

And in her signed plea petition, Mumed acknowledged that there was no agreement with the state as to sentencing, but that the maximum penalty was 20 years in prison for one of the four counts. The petition also noted that defense counsel would move for a durational and dispositional departure at sentencing. And Mumed acknowledged that no one, including her attorney, had made any promises to her to induce her plea.

At the plea hearing, Mumed agreed that there was no agreement as to her sentence and that the state would request that she serve a 48-month prison sentence. At the end of the hearing, the district court told Mumed, "you need to be prepared to go into custody [at sentencing]; not saying that's what's going to happen, but you need to be prepared that you could be starting—serving a sentence that day." And her attorney responded, "[a]nd I've explained that, and I'll explain that to her too, [y]our [h]onor." All of these acknowledgements that Mumed was facing, and likely to serve, prison time belie her argument that her attorney promised her otherwise.

In addition, to support the state's response to Mumed's motion to withdraw her guilty plea, Mumed's trial attorney submitted an affidavit describing their communications and his advice. He stated that he discussed with Mumed the possible sentences she faced if she pleaded guilty and that he did not ever promise her that she would not receive a prison sentence. He also explained to her that the state was requesting that she serve prison time and that he would file a motion for a sentencing departure. The attorney's statements, which are consistent with the rest of the record, explicitly refute Mumed's argument here. Overall, Mumed's assertion that she should serve probation instead of prison time revealed itself to be more of an unwarranted hope than an unfulfilled promise.

One Minnesota Supreme Court case, in particular, provides additional support for our conclusion here. In *Trott*, the appellant asserted that defense counsel promised him probation if he pleaded guilty. 338 N.W.2d at 252. The court noted that if counsel had indeed made an unqualified promise of probation that was not fulfilled, then the appellant should be entitled to withdraw his plea. *Id.* But because the *Trott* appellant's assertion of a promise was contrary to the record, including his plea petition, his testimony, and his counsel's testimony, the district court's finding that there was no promise was justified. *Id.*

Here, Mumed made a similar assertion. And like in *Trott*, the record here—including Mumed's plea petition, her testimony, her preplea interview, and her attorney's affidavit—indicates that defense counsel *did not* make an unequivocal promise of no prison time to her. Accordingly, the postconviction court's findings are consistent with the relevant caselaw and are supported by the record. The court did not, therefore, err by denying Mumed relief on this basis.

In sum, despite her arguments otherwise, Mumed's guilty plea was both accurate and voluntary. And because she failed to show a manifest injustice, the postconviction court did not err by concluding that she is not entitled to withdraw her plea.

**Affirmed.**