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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1773**

State of Minnesota,
Respondent,

vs.

Adam John Berge,
Appellant.

**Filed July 15, 2019
Affirmed
Schellhas, Judge**

Meeker County District Court
File No. 47-CR-12-173

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

Brandi Schiefelbein, Meeker County Attorney, Litchfield, Minnesota (for respondent)

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

Considered and decided by Jesson, Presiding Judge; Schellhas, Judge; and Tracy M.
Smith, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the validity of a global plea agreement and subsequent
probation revocation and argues that the district court unlawfully imposed a lifetime
conditional-release term in connection with his conviction of second-degree criminal

sexual conduct because he did not have a previous or prior sex-offense conviction. We affirm.

FACTS

In October 2012, Berge entered an *Alford* plea to two counts of second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(a) (2010). Consistent with the terms of the plea agreement, the district court stayed imposition of sentences, sentenced Berge to serve an interim sentence in a local correctional facility, and placed him on probation for 25 years.

On June 15, 2017, a probation officer filed a probation-violation report, alleging that Berge violated the conditions of his probation by failing to report to his probation agent, as directed, and failing to attend a sex-offender supervision group. Subsequently, a probation officer filed another probation-violation report, alleging that Berge violated the terms of his probation by failing to meet with his probation agent, as directed, and failing to remain law-abiding. The second violation report alleged that Berge faced charges for felony domestic assault and felony terroristic threats, now known as threats of violence (files 47-CR-17-742¹ and 47-CR-17-782).

On August 7, 2018, Berge appeared with counsel before the district court to address the alleged probation violations. At that time, he also faced additional charges for damage to energy transmission equipment and theft of energy (file 47-CR-18-1226). Berge agreed that he would plead guilty to felony damage to energy transmission equipment, and in

¹ The record is unclear about any disposition of file 47-CR-17-742.

exchange for his guilty plea, the state would dismiss theft of energy in file 47-CR-18-1226, along with felony threats of violence in file 47-CR-17-782, and would recommend a 19-month prison sentence. Berge also agreed that he would admit to violating his probation on his conviction of second-degree criminal sexual conduct, and he and the state agreed that they would jointly recommend to the court a presumptive, executed prison sentence of 70 months for a conviction of second-degree criminal sexual conduct and a concurrent, executed prison sentence of 60 months for a separate conviction of second-degree criminal sexual conduct. In accordance with the terms of the plea agreement, Berge then pleaded guilty to felony damage to energy transmission equipment and admitted that he violated the terms of his probation by absconding from supervision when he left the State of Minnesota and went to the State of Washington.

As jointly recommended, the district court imposed concurrent prison sentences of 70 months and 60 months on each of Berge's convictions of second-degree criminal sexual conduct, ten years of conditional release on Berge's first second-degree criminal sexual conduct conviction, and lifetime conditional release on Berge's subsequent second-degree criminal sexual conduct conviction. The court also imposed a 19-month prison sentence on Berge's conviction of damage to energy transmission equipment, to be served concurrently with his sentences for second-degree criminal sexual conduct.

This appeal follows.²

² Because the state did not file a responsive brief, this court ordered that this appeal would proceed under Minn. R. Civ. App. P. 142.03.

DECISION

I.

The state has the burden of proving an alleged probation violation by clear and convincing evidence. *See* Minn. R. Crim. P. 27.04, subd. 2(1)(c)b. When revoking probation, the district court must: “(1) designate the specific condition or conditions that were violated; (2) find that the violation was intentional or inexcusable; and (3) find that need for confinement outweighs the policies favoring probation.” *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). District courts have broad discretion in determining whether sufficient evidence supports revocation of probation, and this court will reverse only if the district court abuses its discretion. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

“In Minnesota plea agreements have been analogized to contracts and principles of contract law are applied to determine their terms.” *In re Ashman*, 608 N.W.2d 853, 858 (Minn. 2000). Plea agreements “represent a bargained-for understanding between the government and criminal defendants in which each side foregoes certain rights and assumes certain risks in exchange for a degree of certainty as to the outcome of criminal matters.” *State v. Meredyk*, 754 N.W.2d 596, 603 (Minn. App. 2008) (quotation omitted). Where, as here, plea agreements involve multiple crimes, this court has recognized that such agreements “are often intricate and require a delicate balancing of competing considerations.” *State v. Montermini*, 819 N.W.2d 447, 455 (Minn. App. 2012) (quotation omitted).

Berge argues that the record of the August 2018 hearing is unclear about whether he and respondent State of Minnesota “had a meeting of the minds and whether [he] fully understood all of the rights that he was waiving or the likely outcome of his probation violation hearing.” Specifically, he contends that the record is unclear about whether he intended to “giv[e] up his right to contest” one or both of his sentences for second-degree criminal sexual conduct, whether he was “aware that conditional release would be included in the executed sentence or sentences,” and whether his awareness “would have changed [his] decision to enter into the agreement.” Berge argues therefore that the probation-revocation order regarding his second-degree criminal-sexual-conduct convictions should be vacated and the matter remanded to the district court “for clarification.” Assuming, without deciding, that Berge can challenge the validity of his August 2018 global plea agreement in an appeal from a probation-revocation order, Berge’s argument on appeal lacks merit.

After sentencing, withdrawal of a guilty plea is permitted if a defendant proves that withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a guilty plea is not valid. *Dikken v. State*, 896 N.W.2d 873, 876 (Minn. 2017). A valid guilty plea must be accurate, voluntary, and intelligent. *Id.* Determining the validity of a guilty plea presents a question of law that is subject to de novo review. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). “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. “Consequences” refers to a plea’s

direct consequences, such as the maximum sentence and fine. *Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998).

Here, the transcript of the August 2018 probation-revocation hearing clearly reflects Berge's understanding that he was giving up his right to challenge imposition of both sentences for second-degree criminal sexual conduct. The prosecutor stated on the record that, as part of the agreement, Berge would agree to "a joint recommendation for a presumptive commitment of seventy months." The following colloquy then occurred:

THE COURT: As well as the . . . there's a second count in that, but that has a sixty month commitment. So, all right. Is that your understanding, [defense counsel]?

DEFENSE COUNSEL: It is, Your Honor.

THE COURT: Mr. Berge, is this what you want to do today?

THE DEFENDANT: Yes, Your honor.

And the district court later asked Berge if he was "on probation for two . . . convictions of criminal sexual conduct," to which Berge answered, "That's correct." The record clearly reflects Berge's understanding of the rights he was waiving under the global plea agreement.

Berge also argues that his plea was unintelligent because "it is not clear whether, at the time that [he] entered into the agreement, he understood that if any of the sentences were imposed or executed that he would be subject to conditional release for his convictions." But a defendant who pleads guilty with assistance of counsel is presumed to have been advised of his rights and the consequences of his plea. *State ex rel. Rankin v. Tahash*, 149 N.W.2d 12, 15 (Minn. 1967).

Here, the record reflects that Berge appeared with counsel at the probation revocation hearing. Moreover, when the district court imposed a ten-year conditional-release period to count one of second-degree criminal sexual conduct and lifetime conditional release to count two of second-degree criminal sexual conduct, neither Berge nor his counsel objected or asked any questions about it. We therefore can presume that Berge was aware of the consequences of his global plea agreement in August 2018. *See Stone v. State*, 675 N.W.2d 631, 634 (Minn. App. 2004) (presuming that defendant “was aware of the consequences of his plea and, therefore, his plea was intelligent” where defendant was represented by counsel, imposed supervised-release period was discussed multiple times at sentencing, defendant did not object when supervised-release period was imposed, and defendant did not question court about it). Berge has not established that his global plea was unintelligent, even if it is appropriately raised in an appeal from a probation revocation. *See State v. Fields*, 416 N.W.2d 734, 736 (Minn. 1987) (concluding that defendant properly raised sentencing issue at probation revocation hearing).

II.

Berge challenges the district court’s imposition of a lifetime conditional-release period under Minn. Stat. § 609.3455 (2010). “Interpreting a sentencing statute is a question of law, which we review de novo.” *State v. Noggle*, 881 N.W.2d 545, 547 (Minn. 2016).

Minnesota law provides that when a district court commits an offender to the custody of the commissioner of corrections for a violation of second-degree criminal sexual conduct, the “court shall provide that, after the offender has completed the sentence imposed, the commissioner shall place the offender on conditional release for ten years,

minus the time the offender served on supervised release.” Minn. Stat. § 609.3455, subd. 6. Conversely, an offender who has a “previous or prior sex offense conviction” is generally subject to a mandatory lifetime conditional-release term. *Id.*, subd. 7(b). An offender has a “prior sex offense conviction” if the “offender was convicted of committing a sex offense before the offender has been convicted of the present offense, regardless of whether the offender was convicted for the first offense before the commission of the present offense, and the convictions involved separate behavioral incidents.” *Id.*, subd. 1(g). “Conviction” is defined as “any of the following accepted and recorded by the court: (1) a plea of guilty; or (2) a verdict of guilty by a jury or a finding of guilty by the court.” Minn. Stat. § 609.02, subd. 5 (2010).

Berge argues that the district court accepted his guilty pleas “simultaneously” rather than “sequentially.” He contends that under these circumstances, he was not convicted of a prior or previous sexual offense, and that he therefore only should be sentenced to the ten-year conditional-release period. We disagree.

The supreme court discussed Minn. Stat. § 609.3455 in *State v. Nodes*, 863 N.W.2d 77 (Minn. 2015). In that case, the offender, who had never been convicted of a sex offense, pleaded guilty to two sex offenses at the same hearing. *Id.* at 78–79. During sentencing, the district court stated:

I will now formally accept the pleas, and on count one adjudicate him guilty of criminal sexual conduct in the first degree, a felony in violation of Minnesota Statute 609.432, subd. 1(a) and subd. 2(a), on or about February 26, 2013, and also on count three, criminal sexual conduct in the second degree, a felony, in violation of Minnesota Statute 609.343, subd. 1(a) and subd. 2(a) on or about March 19, 2013.

Id. at 79. The supreme court concluded that “[a] defendant who, in a single hearing, is convicted of two sex offenses, one immediately after the other, each arising out of separate behavioral incidents, has a ‘prior sex offense conviction’ under Minn. Stat. § 609.3455.” *Id.* at 77. In so concluding, the supreme court emphasized that “[a]s long as one conviction is entered before the second, it is a ‘prior conviction’ under the plain language of [Minn. Stat. § 609.3455].” *Id.* at 82. The court held that at the time the judge accepted the guilty plea on count one, the defendant was “convicted” and thus, even though the passage of time between the conviction of count one and count two was slight, the defendant had a prior conviction under Minn. Stat. § 609.3455 and was subject to lifetime conditional release. *Id.* at 81–82.

Berge argues that *Nodes* does not control here because that case did not address the question of how multiple convictions should be treated when they were entered simultaneously rather than sequentially. But the flaw in Berge’s argument is that his convictions *were entered sequentially*. The record reflects that in accepting Berge’s guilty pleas, the district court stated: “This Court will accept the pleas, adjudicate [Berge] to be guilty of Count One, Second Degree Criminal Sexual Conduct, in violation of Minnesota Statute 609.343, subdivision 1(a) and 2(a), and Count Two, Second Degree Criminal Sexual Conduct, in violation of Minnesota Statute 609.343, subdivision 1(a) and 2(a).” The manner in which the court accepted Berge’s pleas was identical to the manner in which the court accepted the defendant’s pleas in *Nodes*, which the supreme court concluded was

sequential. *See* 863 N.W.2d at 79, 82. The court therefore did not err by imposing a lifetime conditional-release period under Minn. Stat § 609.3455.

Affirmed.