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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1835**

Deon Lashawn Mallett, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 29, 2019
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-16-4869

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

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

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

In 2016, Deon Lashawn Mallett pleaded guilty to first-degree criminal sexual conduct and admitted that he sexually assaulted his fiancée. Two years later, he petitioned

for post-conviction relief and requested leave to withdraw his guilty plea on the ground that the plea is invalid because he did not enter it intelligently or voluntarily. The post-conviction court denied the petition. We affirm.

FACTS

On February 17, 2016, Minneapolis police officers were dispatched to the Hennepin County Medical Center in response to a report of a domestic assault. The officers met with Mallett's fiancée, L.H., who told them that Mallett had forced his hand down her pants without her consent, penetrated and scratched her vagina with his fingers, slapped her numerous times, and strangled her until she lost consciousness. Two days later, the state charged Mallett with first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2014); domestic assault by strangulation, in violation of Minn. Stat. § 609.2247, subd. 2 (2014); and felony domestic assault, in violation of Minn. Stat. § 609.2242, subd. 4 (2014). The district court ordered Mallett to undergo a psychological evaluation pursuant to rules 20.01 and 20.02 of the rules of criminal procedure. A psychologist determined that Mallett was competent to stand trial and did not satisfy the criteria for being not criminally responsible because of a mental illness.

In May 2016, the state and Mallett entered into a plea agreement in which Mallett agreed to plead guilty to count 1, the parties agreed to a bottom-of-the-box sentence of 261 months of imprisonment based on a criminal-history score of 5, and the state agreed to dismiss counts 2 and 3. The plea agreement was reflected in a plea petition, which Mallett signed.

Mallett appeared before the district court for a plea hearing two days later. After the terms of the plea agreement were read into the record, the district court asked him, “Is this what you want to do today, sir?” Mallett answered, “I guess, yeah.” The district court clarified by asking, “Do you want to resolve it in this way with a guilty plea or not?” Mallett answered, “Yeah.” Mallett’s attorney then discussed the rights that Mallett would be waiving as the result of pleading guilty. Mallett affirmed to the district court that he had read and understood the plea petition and that he did not have any questions. The district court then had the following colloquy with Mallett:

DISTRICT COURT: Mr. Mallett, you seem kind of tired. Did you get some sleep last night?

MALLETT: Not really.

DISTRICT COURT: Okay. So you didn’t get a lot of sleep. Is your mind clear today?

MALLETT: A little.

DISTRICT COURT: Well, it’s important to me that you understand everything that’s going on in this courtroom, okay? So if you don’t understand anything, you need to tell me, all right? Do you understand what’s happening?

MALLETT: A little bit, yes.

DISTRICT COURT: Well, I need to make sure you understand it a lot, okay? Because I don’t want you to do it – I mean, this is real serious business here, and, I mean, if you want to plead guilty, that’s fine. But I just need to make sure that this is what you want to do and that you understand what you’re doing, okay? So do you understand what’s happening? You said a little bit. So what’s confusing you this morning?

MALLETT: That I’m going to go away for a long time.

DISTRICT COURT: That's confusing to you? Or is that just disturbing to you?

MALLETT: Both.

DISTRICT COURT: Both. Okay. What's the confusing part?

MALLETT: I don't want to talk about it.

DISTRICT COURT: Well, now's the time to talk about it, because I don't want you to plead guilty unless this is what you want to do. So let me ask it this way . . . did anybody make you or pressure you into pleading guilty today?

MALLETT: No.

DISTRICT COURT: The decision to plead guilty, did you make that decision after thinking about it and talking with your lawyer?

MALLETT: Yeah.

DISTRICT COURT: Do you want more time to think about this decision? Or do you think that you've come to your decision, and you're not going to change your mind?

MALLETT: I just – I'm kind of upset because my family ain't here in court. And they thought I was supposed to go to court on Monday, and I ain't going to see none of my family.

Before the conclusion of the plea hearing, Mallett asked the district court whether it was "going to take the warrant off" L.H. The district court responded by stating that a "material witness warrant" had been issued to ensure L.H.'s presence at Mallett's trial but that her testimony would be unnecessary because Mallett was pleading guilty. The district court asked Mallett whether he understood, and Mallett responded, "All right."

The district court once again sought to assess Mallett's mental state in the following exchange:

DISTRICT COURT: Okay. So you told me you didn't get much sleep last night, and I'm sorry about that, because you're yawning. But do you feel like your mind is clear enough that you know what you're doing today?

MALLETT: Yeah.

DISTRICT COURT: And do you understand everything?

MALLETT: Yeah.

DISTRICT COURT: And you're shaking your head no, but you're saying "Yes." So which is it? Do you understand everything?

MALLETT: Yeah.

DISTRICT COURT: All right. So this is something that you want to go forward and do?

MALLETT: Yeah.

The district court next inquired about Mallett's medications. Mallett stated that he takes prescription medication every night to clear his mind but that it is not helpful and that he feels the same whether or not he takes it. When asked if he was thinking clearly, Mallett responded, "Yeah." The district court then expressly found that Mallett had provided a "knowing, intelligent and voluntary waiver" of his rights and proceeded to the factual basis of the guilty plea. Mallett admitted that he digitally penetrated L.H.'s vagina without her consent and scratched her vagina. He also admitted that he was aware of the injuries he

inflicted on L.H. The district court accepted Mallett's guilty plea. At a sentencing hearing in June 2016, the district court imposed a sentence of 261 months of imprisonment.

Exactly two years later, Mallett petitioned for post-conviction relief and requested leave to withdraw his guilty plea. In a memorandum in support of the petition, Mallett argued that his guilty plea is invalid on the grounds that it was not entered intelligently or voluntarily. Mallett did not submit an affidavit in support of the petition and did not request an evidentiary hearing. In September 2018, the post-conviction court filed an order in which it denied the petition. Mallett appeals.

D E C I S I O N

Mallett argues that the post-conviction court erred by denying his post-conviction petition for two reasons. First, he argues that his guilty plea is invalid on the ground that it was not entered intelligently. Second, he argues that his guilty plea is invalid on the ground that it was not entered voluntarily.

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a district court must grant a defendant's motion to withdraw a guilty plea if necessary to "correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. "A manifest injustice exists if a guilty plea is not valid." *Raleigh*, 778 N.W.2d at 94. To be constitutionally valid, "a guilty plea must be accurate, voluntary, and intelligent." *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). The supreme court has explained each of the three requirements as follows:

The main purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to

trial. . . . The purpose of the voluntariness requirement is to insure that the defendant is not pleading guilty because of improper pressures. The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.

State v. Trott, 338 N.W.2d 248, 251 (Minn. 1983). If a guilty plea fails to meet any of these three requirements, it is invalid. See *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). Thus, if a person's guilty plea is not accurate, not voluntary, or not intelligent, a district court must permit the person to withdraw the plea. *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). A defendant bears the burden of showing that his or her guilty plea is invalid. *Raleigh*, 778 N.W.2d at 94. This court applies an abuse-of-discretion standard of review to the denial of a post-conviction petition. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012).

A.

Mallett first argues that he did not intelligently enter his guilty plea “because he did not understand the rights he was waiving or the consequences of pleading guilty” because of his mental-health issues and because he was exhausted and confused on the day of the plea hearing. “The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Raleigh*, 778 N.W.2d at 96. “Consequences” in this context refers to the direct consequences of a guilty plea, such as the maximum sentence, but not any collateral consequences. *Id.*; see also *Taylor*, 887 N.W.2d at 823.

The post-conviction court rejected Mallett's argument for the following reasons:

Here, the record is clear that Petitioner's plea was intelligent. Petitioner was questioned at length about his understanding of the proceedings, the rights he was giving up, and the consequences of his plea. Petitioner affirmatively acknowledged understanding the proceedings, his rights, and the consequences of his plea. Petitioner further told the Court that he made the decision to plead guilty after thinking about it and talking with his attorney. Petitioner now alleges that he was unable to understand his trial rights or the consequences of pleading guilty due to his mental defect leading up to and during his plea hearing. At the time of his plea, the Court had found Petitioner competent to participate in the proceedings at a prior hearing. During the plea hearing, the Court engaged in a lengthy inquiry to determine whether Petitioner's mind was clear enough to understand the rights that he was giving up and the consequences of pleading guilty. Petitioner has not provided any new information which would in any way undermine the record made during the plea hearing. Thus, the Court concludes that Petitioner's plea was intelligent.

Mallett's argument for reversal is based on the record as it existed on the day he entered his guilty plea because he did not introduce any additional evidence in post-conviction proceedings. The district court record supports the post-conviction court's analysis and does not support Mallett's argument. As an initial matter, a psychologist examined Mallett before the plea hearing and concluded that he was competent to stand trial. Mallett does not challenge that assessment in any way. A defendant with a mental-health condition is not incapable of entering a valid guilty plea. *See Perkins v. State*, 559 N.W.2d 678, 690-91 (Minn. 1997). Mallett does not explain with particularity why his mental-health condition prevented him from intelligently entering a guilty plea.

In addition, when Mallett signed his plea petition, he agreed that he had discussed the terms of the plea agreement with his attorney and that he understood the terms. At the

plea hearing, Mallett's attorney described the rights that Mallett would waive by pleading guilty and stated that he would be sentenced to 261 months of imprisonment. Mallett reiterated on the record that he had discussed the terms of the plea agreement with his attorney, that he understood the rights he was waiving, and that he did not have any questions about his rights. The district court followed up with a series of questions to ensure that Mallett understood the rights he was waiving and the consequences of his plea. Mallett told the district court on multiple occasions that he understood and did not have any questions. The district court thoroughly explored Mallett's state of mind during the plea hearing and resolved any lingering doubts about Mallett's understanding of his guilty plea. In short, Mallett's argument is contradicted by his own statements at the plea hearing, and he has not introduced any evidence to support a contrary finding.

Thus, the post-conviction court did not err by concluding that Mallett's guilty plea was entered intelligently.

B.

Mallett also argues that he did not voluntarily enter his guilty plea "because he felt coerced into pleading guilty." Specifically, he argues that he "felt coerced into pleading guilty by the promise of lifting the material witness warrant" on his fiancée, L.H. "The voluntariness requirement ensures a defendant is not pleading guilty due to improper pressure or coercion." *Raleigh*, 778 N.W.2d at 96. In assessing whether a plea is voluntary, "the court examines what the parties reasonably understood to be the terms of the plea agreement." *Id.* We consider all relevant circumstances when determining whether a guilty plea is voluntary. *Id.*

The post-conviction court rejected Mallett's argument for the following reasons:

During his plea hearing, Petitioner told the Court that no one had made or pressured him to plead guilty. Petitioner alleges that his guilty plea was involuntary because he felt coerced into pleading guilty. Specifically, Petitioner alleges that he believed that the only way to lift the material witness warrant on L.H. was to plead guilty. Petitioner's present assertion that he only pled guilty because he wanted the State to lift the material witness warrant does not qualify as coercion under the case law. Petitioner has not provided any facts to support the argument that his plea was influenced by his desire for the State to lift the warrant. Discussion about lifting the witness warrant for L.H. took place as part of a larger discussion regarding when the sentencing would take place, and in the context of addressing Petitioner's concerns that his family members were not present on the plea date. After the Court explained that a PSI would be necessary and therefore sentencing would need to take place at a later date at which time family members who were not present could be present, Petitioner inquired, "Is you all going to take the warrant off her?" The Court explained that since there was not going to be a trial, the witness warrant for the victim L.H. was no longer necessary. This Court concludes that Petitioner's plea was voluntary and without coercion.

Mallett's argument, which is based on a purported "promise," is contradicted by his plea petition, in which he stated that no one made any promises to induce him to plead guilty. Likewise, at the plea hearing, the district court asked him, "[D]id anybody make you or pressure you into pleading guilty today?" Mallett responded, "No." Near the conclusion of the plea hearing, Mallett asked the district court whether it was "going to take the warrant off her." The district court answered the question by explaining that L.H.'s trial testimony no longer would be necessary because he was pleading guilty. The district court asked Mallett whether he understood the explanation, and Mallett responded, "All right," without referring to any connection between that issue and his decision to plead

guilty. Nothing in the transcript of the plea hearing indicates that the material-witness warrant was a motivating factor in Mallett's decision to plead guilty rather than a tangential matter, and Mallett did not introduce any evidence in post-conviction proceedings to establish that the material-witness warrant played any role in his decision.

Thus, the post-conviction court did not err by concluding that Mallett's guilty plea was entered voluntarily.

We note that Mallett filed a *pro se* supplemental brief in which he argues that he received ineffective assistance of counsel from a public defender who represented him before he pleaded guilty. But Mallett did not allege ineffective assistance of counsel in his post-conviction petition and did not mention the issue in the memorandum of law that was presented to the post-conviction court. He is making the argument for the first time on appeal. Because the argument was not presented to the post-conviction court, it has been forfeited and, thus, cannot be considered by this court. See *Powers v. State*, 731 N.W.2d 499, 502 (Minn. 2007); *Schleicher v. State*, 718 N.W.2d 440, 445 (Minn. 2006); *Azure v. State*, 700 N.W.2d 443, 446-47 (Minn. 2005).

In sum, the post-conviction court did not err by denying Mallett's petition for post-conviction relief.

Affirmed.