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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0081**

State of Minnesota,
Respondent,

vs.

Bradley Patrick Barnett,
Appellant.

**Filed April 27, 2020
Affirmed
Kirk, Judge***

Ramsey County District Court
File No. 62-CR-18-3848

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

John Choi, Ramsey County Attorney, St. Paul, Minnesota; and

Adam E. Petras, Special Assistant County Attorney, Minneapolis, Minnesota (for
respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Kirk,
Judge.

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

UNPUBLISHED OPINION

KIRK, Judge

Bradley Patrick Barnett entered into a plea agreement whereby he agreed to plead guilty in exchange for a stay of imposition provided that he did not have any prior felonies. Upon being informed that Barnett had been previously convicted of felony theft, the district court, pursuant to the terms of the plea agreement, sentenced Barnett to one year and one day in prison and stayed execution of the sentence. On appeal, Barnett argues that he is entitled to withdraw his plea on the ground that it was involuntary. We conclude that Barnett's sentence was in accordance with the terms of his plea agreement and therefore voluntary. Accordingly, we affirm.

FACTS

Barnett was charged with domestic assault by strangulation, in violation of Minn. Stat. § 609.2247, subd. 2 (2016). Barnett was released under a number of conditions in lieu of posting bail. One of the conditions was that he have no contact with the victim. Barnett subsequently contacted the victim and his pre-trial release was revoked.

Shortly thereafter, the parties entered into a plea agreement whereby Barnett pleaded guilty to the domestic assault charge. The terms of the plea agreement anticipated that Barnett would receive a stay of imposition if he did not have any prior felonies and that there would be a 30-day cap on the time that he would serve in jail. Additionally, the plea agreement provided that, if Barnett was committed to prison, his sentence would be the low end of the presumptive range.

The district court accepted Barnett's plea and adjudicated him guilty. Barnett asked to be conditionally released pending sentencing, and the state did not object. However, the district court stated that Barnett was required to verify his address before he would be released. By the time Barnett was released, he had spent a total of 33 days in jail.

At the sentencing hearing, Barnett moved to withdraw his guilty plea on the ground that he did not understand the ramifications that would accompany violating the conditions of his plea agreement or comprehend the effect that his plea would have on his ability to find housing and employment. The state opposed Barnett's motion to withdraw his plea, and the district court denied the request. The state informed the district court that Barnett had a prior felony for which he received a stay of imposition. The state requested a sentence of one year and one day which would be stayed for three years. It noted that the sentence would be in line with the plea agreement. Barnett's attorney did not object to the state's recommendation. The district court sentenced Barnett to one year and one day, stayed execution of the sentence, and placed Barnett on probation for three years. The district court also sentenced Barnett to 33 days in the Ramsey County Correctional Facility with credit for 33 days served.

Barnett filed a notice of appeal but later moved this court to stay the appeal and remand the case to the district court for postconviction proceedings. We granted the motion. Following the remand, Barnett petitioned for postconviction relief, arguing that he was entitled to either a plea withdrawal or an amended sentence because the promises which induced him to plead guilty went unfulfilled. Specifically, Barnett alleged that, in contravention of his plea agreement, he received a stay of execution rather than a stay of

imposition, and served 33 days in jail instead of 30. As a result, Barnett argued, his plea was involuntary and therefore invalid. Specifically, Barnett contended that he was entitled to receive a stay of imposition because he did not have any prior felonies. He acknowledged that he had a prior felony theft conviction, but argued that, because he had received a stay of imposition for that conviction and had successfully completed probation, the conviction is deemed a misdemeanor pursuant to Minn. Stat. § 609.13, subd. 1(2) (2016).

The district court denied Barnett's petition. It concluded that Barnett's 1998 theft conviction constituted a prior felony for the purpose of his plea agreement, and that he was not entitled to withdraw his plea based on the 33 days that he served in custody because his extended incarceration was due to his own conduct.

Following the district court's order, this court dissolved the stay and reinstated Barnett's appeal.

D E C I S I O N

Barnett argues that he is entitled to withdraw his plea or receive an amended sentence because his guilty plea was not voluntary as the promises contained in the plea agreement—*i.e.*, that he would receive a stay of imposition if he did not have a prior felony and that he would not serve more than 30 days in jail—were not fulfilled.

As a threshold matter, the state argues that Barnett forfeited the arguments he raises on appeal by having failed to raise them at his sentencing. A defendant's failure to raise an argument challenging the validity of a guilty plea in district court does not preclude the defendant from raising it on direct appeal or in a postconviction proceeding. *See Brown v.*

State, 449 N.W.2d 180, 182-83 (Minn. 1989); *State v. Johnson*, 867 N.W.2d 210, 214 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015). Therefore, Barnett did not forfeit any of the arguments he raises here.

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 allow a defendant to withdraw his 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). If a guilty plea fails to meet any of these three requirements, it is invalid, and may be withdrawn. See *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). “A defendant bears the burden of showing that his guilty plea was invalid.” *Raleigh*, 778 N.W.2d at 94. We assess the validity of a guilty plea de novo. *Id.*

With respect to the voluntariness requirement, the supreme court has stated:

To determine whether a plea is voluntary, the court examines what the parties reasonably understood to be the terms of the plea agreement. The voluntariness requirement ensures a defendant is not pleading guilty due to improper pressure or coercion. Whether a plea is voluntary is determined by considering all relevant circumstances.

Id. at 96 (citations omitted). “[W]hen a plea rests in any significant degree 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. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (quoting *Santobello v. New York*, 404 U.S. 257, 262, 92 S. Ct. 495, 499

(1971)). Failure to fulfill such a promise or agreement constitutes a due-process violation. *State v. Wukawitz*, 662 N.W.2d 517, 522 (Minn. 2003). “On demonstration that a plea agreement has been breached, the court may allow withdrawal of the plea, order specific performance, or alter the sentence if appropriate.” *Brown*, 606 N.W.2d at 674. “[T]he interpretation and enforcement of plea agreements present legal issues that we review de novo.” *James v. State*, 699 N.W.2d 723, 728 (Minn. 2005).

Barnett’s argument that he did not have a prior felony because it had been statutorily converted to a misdemeanor is unavailing. Although Minn. Stat. § 609.13, subd. 1(2) provides that a felony conviction “is deemed to be for a misdemeanor if the imposition of the prison sentence is stayed, the defendant is placed on probation, and the defendant is thereafter discharged without a prison sentence,” caselaw has “established that section 609.13 does not require that a felony conviction with a stayed sentence be treated as a misdemeanor for all purposes.” *In re Disciplinary Hearing of Woollett*, 540 N.W.2d 829, 832 (Minn. 1995); *see also State v. Coleman*, 808 N.W.2d 32, 34-35 (Minn. App. 2012), *review denied* (Minn. Mar. 28, 2012). As the district court noted, Barnett’s previous conviction would have been assigned a felony point under the sentencing guidelines notwithstanding section 609.13.¹ *See* Minn. Sent. Guidelines 1.B.19.a, 2.B.1 (Supp. 2017); *State v. Campbell*, 814 N.W.2d 1, 7 (Minn. 2012). Furthermore, the record indicates that Barnett himself believed that he had a prior felony when he declined to raise an objection

¹ The parties do not dispute that Barnett’s felony conviction had decayed. However, the state argues, and the district court noted, that nothing in the plea agreement excluded decayed felony convictions from being considered as prior felony convictions.

at his sentencing hearing. Therefore, because Barnett had been convicted of a felony previously, and understood that conviction to be a prior felony under the plea agreement, his sentence was in accordance with the terms of the plea agreement.

Barnett also argues that his plea agreement was breached when he received a jail term of 33 days instead of the 30 days agreed upon. The parties disagree about the reasons for Barnett's extended detention; however, neither party cites any authority for whether it constituted a violation of his plea agreement. Similarly, the district court did not explain why Barnett's 33 days in jail did not violate his plea agreement other than to note that it was the result of Barnett's own conduct.

A defendant's pretrial detention is distinct from a jail term that is ordered as part of a sentence. See Minn. Stat. § 609.135, subd. 1(a), (b) (2016) (incarceration in local jail following a stay of imposition is an "intermediate sanction"); Minn. R. Crim. P. 6.02-.03. Therefore, any jail term that Barnett negotiated as part of his plea agreement would not limit the length of his pre-trial detention. Nonetheless, the district court ordered that Barnett serve 33 days in jail so that the jail term would be commensurate with the 33 days that Barnett had credit for. See Minn. R. Crim. P. 27.03, subd. 4(B); *State v. Clarkin*, 817 N.W.2d 678, 689 (Minn. 2012). As such, the district court ordered a jail term that was in excess of that negotiated by the parties. Although it is unclear whether such a modification constitutes a violation of the plea agreement, see, e.g., *Wukawitz*, 662 N.W.2d at 526 (holding that the modified sentence cannot exceed the term set forth in the plea agreement), it was impossible for this modification to have affected the consideration behind Barnett's plea, given that the modification was de minimis and that Barnett's extended jail term

merely reflected the time that he had already spent in pretrial detention. Therefore, Barnett's argument that the district court breached the plea agreement by sentencing him to three additional days of jail time is meritless.²

As the district court sentenced Barnett in accordance with the terms of the plea agreement, Barnett is unable to maintain that his plea was involuntary, and that he is entitled to withdraw it.

Affirmed.

² Embedded within Barnett's argument that the district court violated the plea agreement by ordering an additional three days of jail time is the argument that, under the terms of the plea agreement, he had an absolute right to withdraw his plea in the event that the district court rejected it. However, because we conclude that the district court accepted the plea agreement and sentenced Barnett in accordance with it, this argument is moot.