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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1660**

Teresa Michelle Peterson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 27, 2020
Affirmed in part, reversed in part, and remanded
Johnson, Judge**

Crow Wing County District Court
File No. 18-CR-17-1827

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

Donald F. Ryan, Crow Wing County Attorney, Stephanie Shook, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Frisch, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

In 2017, Teresa Michelle Peterson pleaded guilty to third-degree possession of amphetamines in a school zone. In 2019, she petitioned for post-conviction relief, arguing that she should be allowed to withdraw her guilty plea because she had a mistaken

understanding of her criminal-history score. She argued in the alternative that she should be resentenced to a shorter period of imprisonment and that a condition of her probation should be amended. The post-conviction court denied Peterson's motion to withdraw her guilty plea but granted her alternative requests for resentencing and modification of the probation condition. We conclude that the post-conviction court did not err by resentencing Peterson instead of allowing her to withdraw her guilty plea. But we conclude that the post-conviction court erred by filing a warrant of commitment that did not implement the relief that was granted with respect to the probation condition. Therefore, we affirm in part, reverse in part, and remand with instructions to file a second amended warrant of commitment that conforms to the order granting post-conviction relief.

FACTS

In May 2017, a Crosby police officer searched Peterson's purse in a school parking lot and found marijuana, Ativan pills, and drug paraphernalia. The state charged Peterson with (1) third-degree possession of amphetamines in a school zone, in violation of Minn. Stat. § 152.023, subd. 2(a)(6) (2016); (2) fifth-degree possession of a controlled substance, in violation of Minn. Stat. § 152.025, subd. 2(1) (2016); and (3) possession of a hypodermic syringe or needle, in violation of Minn. Stat. § 151.40, subd. 1 (2016).

In June 2017, a pre-sentence investigator assigned Peterson a criminal-history score of 1 based on a prior felony conviction in Wisconsin in 2004. In August 2017, Peterson pleaded guilty to count 1 pursuant to a plea agreement in which the state agreed to dismiss counts 2 and 3 and to recommend a 27-month stayed sentence and 20 years of supervised probation. Peterson waived a pre-sentence investigation report. The district court

sentenced Peterson in accordance with the state's recommendation. The district court filed a warrant of commitment that included 18 conditions of probation.

In January 2019, a probation officer filed a probation-violation report in which she alleged that Peterson had violated eight conditions of her probation. Shortly thereafter, Peterson petitioned for post-conviction relief and asserted three claims for relief. First, she argued that her guilty plea was invalid on the ground that it was involuntary because she had a mistaken belief that her criminal-history score was 1 (instead of 0) and because her mental-health issues caused her to feel pressured to plead guilty. She requested that the post-conviction court allow her to withdraw her guilty plea. Second, she argued in the alternative that, if she were not allowed to withdraw her plea, the post-conviction court should resentence her based on a criminal-history score of 0 and impose a 21-month stayed sentence. Third, she argued, again in the alternative, that two of the probation conditions in the warrant of commitment are unlawful on the ground that they would allow unreasonable searches and seizures. She requested that the post-conviction court vacate one condition and clarify the other.

The post-conviction court conducted a hearing in May 2019 at which the parties presented oral arguments. The post-conviction court filed an order and memorandum in August 2019 in which it granted the petition in part and denied it in part. The post-conviction court agreed with Peterson that her criminal-history score should have been 0, not 1. The post-conviction court determined that the appropriate remedy for that error was not plea withdrawal but, rather, resentencing based on the corrected criminal-history score.

The post-conviction court also granted Peterson’s request for modifications of two probation conditions by clarifying that any searches or seizures must be “lawful.”

Three days later, the district court resentenced Peterson to a 21-month stayed sentence, which is the sentence she had suggested in the memorandum accompanying her post-conviction petition. That same day, the post-conviction court filed two amended warrants of commitment, both of which restate verbatim the conditions of probation that were stated in the original warrant of commitment. Peterson appeals.

D E C I S I O N

I. Remedy for Erroneous Criminal-History Score

Peterson first argues that the post-conviction court erred by denying her request for plea withdrawal.

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). 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). If a defendant’s guilty plea is not accurate, not voluntary, or not intelligent, the plea is invalid, and the district court must permit the defendant 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.

“The voluntariness requirement ensures a defendant is not pleading guilty due to improper pressure or coercion.” *Raleigh*, 778 N.W.2d at 96. In determining whether a guilty plea is voluntary, a court must consider all relevant circumstances and “examine[] what the parties reasonably understood to be the terms of the plea agreement.” *Id.* The supreme court has held that, if a defendant decides to plead guilty pursuant to a plea agreement with a mistaken belief about the resulting sentence, the defendant is entitled to a remedy.

For example, in *State v. Benson*, 330 N.W.2d 879 (Minn. 1983), the supreme court suggested that a defendant who had pleaded guilty pursuant to a mistaken belief concerning his criminal-history score and his presumptive sentence “could withdraw [his] plea” or “could let the [district] court resentence him” to “the shortest sentence within the presumptive sentence range.” *Id.* at 880-81. In *State v. DeZeler*, 427 N.W.2d 231 (Minn. 1988), the supreme court considered the argument of a defendant who had pleaded guilty under similar circumstances. *Id.* at 235. The supreme court reasoned that the defendant could withdraw his guilty plea so long as his guilty plea was based on the mistaken assumption that the presumptive sentence would be a stayed sentence and there were no independent grounds for an upward departure from the presumptive sentence. *Id.* In *State v. Jumping Eagle*, 620 N.W.2d 42 (Minn. 2000), the supreme court again considered similar circumstances and held that, on remand, the state should be allowed to present argument to the district court as to whether plea withdrawal or sentence modification was the most appropriate remedy. *Id.* at 45.

In this case, the post-conviction court considered this line of opinions but reasoned that the cases were “factually distinguishable from the present case.” The post-conviction court reasoned as follows:

The criminal history scores of the defendants in [*Benson*, *DeZeler*, and *Jumping Eagle*] were discovered to be higher, rather than lower. This means the defendants were facing more time than they negotiated for, and even executed time rather than stayed time. This is unlike Petitioner, who discovered she would be facing the same disposition and *less* stayed time if resentenced. The Court also finds it notable that no case law was presented to the Court where, like Petitioner, a criminal history score was found to be lower post-sentencing. The Court has also not found such a case with those facts during its research.

Accordingly, the post-conviction court concluded that plea withdrawal is not appropriate.

Peterson reiterates her argument that her guilty plea was based on mistaken belief about her criminal-history score. But Peterson does not effectively challenge the post-conviction court’s analysis. In effect, she received the same consideration as the defendant in *Jumping Eagle*: consideration by the district court as to whether plea withdrawal or resentencing is most appropriate. See 620 N.W.2d at 45. She cites no caselaw for the proposition that plea withdrawal is required if a guilty plea is based on a mistaken understanding that a *longer* sentence, rather than a *shorter* sentence, would be imposed. We believe that the post-conviction court’s reasoning is logical: if a person is willing to plead guilty and accept a sentence of a given length, the person presumably would have been willing to plead guilty and accept a sentence that is shorter than the one to which she agreed. Peterson contends that she “may have been eligible for diversion and ultimately

dismissal,” but she does not develop the legal basis of the argument, and the factual basis is lacking as well because Peterson said nothing about the issue in her affidavit.

Peterson also reiterates her argument that her mental-health issues caused her to plead guilty. The post-conviction court reasoned that Peterson offered “no supporting documentation, medical records, or third-party affidavits supporting the existence” of her mental-health conditions, and that her self-diagnostic statements, even viewed in the light most favorable to her claim, do not rise to the level of a manifest injustice. The post-conviction court also noted that Peterson made sworn statements in the plea petition that she had not been treated for any mental-health issues and was not taking any medications at the time of her guilty plea. In addition, Peterson denied in her plea petition that any person had made any promises or threats toward her to obtain her guilty plea, and she denied under oath at the plea hearing that she was pressured or coerced in any way. The post-conviction court did not abuse its discretion by rejecting Peterson’s argument for these reasons.

Thus, the post-conviction court did not err by concluding that Peterson’s guilty plea was voluntary and by resentencing her to a shorter stayed sentence instead of allowing her to withdraw her guilty plea.

II. Condition of Probation

Peterson also argues that the post-conviction court erred by not granting her full relief on her challenge to a condition of her probation.

As stated above, the original warrant of commitment stated 18 conditions of probation. The fifteenth condition was, “Random testing at the request of any peace officer

or probations agent or corrections officer.” In its order and memorandum ruling on Peterson’s post-conviction petition, the post-conviction court stated that the fifteenth condition should be modified to provide, “*Lawful* testing by any probation officer, peace officer, or corrections officer.” (Emphasis added.) But the post-conviction court later filed two amended warrants of commitment that did *not* incorporate the revision that had been ordered. Instead, each of the amended warrants of commitment is identical to the warrant that was filed in 2017.

On appeal, Peterson contends that the post-conviction court erred by not properly amending the fifteenth condition, as provided in the post-conviction order, and by not limiting the fifteenth condition to testing ordered by her probation officer. She requests that this court “remand this case . . . with instructions to clarify that Peterson need only submit to random chemical testing as required by probation.” In response, the state concedes that the amended warrant of commitment “is incorrect” because it “still states what was ordered at the original sentencing.” The state requests that “the matter be remanded for correction of the warrant of commitment to be consistent with the district court’s order.”

We agree that the post-conviction court erred by not filing a warrant of commitment that conformed to the terms of its earlier order ruling on Peterson’s post-conviction petition. Therefore, we reverse and remand with instructions to amend the warrant of commitment to incorporate the ordered modification to the fifteenth probation condition.

To the extent that Peterson seeks additional modifications to the fifteenth probation condition based on caselaw arising under the Fourth Amendment, we decline to consider

and resolve that part of her argument. The reasonableness of a search or seizure inevitably depends on its particular facts. It would be difficult, if not impossible, to define the permissible scope of unknown future probationary searches in the manner Peterson requests. And even if it were possible, any such ruling by this court effectively would be an advisory opinion. It is sufficient at this time to conclude that the post-conviction court, when ordering modifications to the original warrant of commitment, did not err by ordering that any such future testing must be “lawful.”

Affirmed in part, reversed in part, and remanded.