

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0073**

State of Minnesota,
Respondent,

vs.

Gabriel Edward Towne,
Appellant.

**Filed February 8, 2021
Reversed and remanded
Segal, Chief Judge**

Hennepin County District Court
File No. 27-CR-18-10933

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Brennan Lee (certified student attorney), Minneapolis, Minnesota (for respondent)

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

Considered and decided by Florey, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant brings this appeal claiming a breach of his plea agreement and challenging his sentence. Specifically, appellant claims that (1) the state failed to prove

that he violated a condition of the plea agreement; (2) the state breached the agreement by requesting a sentence in excess of the agreed-upon range; and (3) the district court erred by imposing a sentence in excess of the agreed-upon range without allowing him to withdraw his plea. Because the plea agreement is ambiguous, we conclude that Towne’s plea was “unintelligent.” We therefore reverse and remand.

FACTS

In April 2018, appellant Gabriel Edward Towne was charged with one count of first-degree aggravated robbery. Towne allegedly committed the crime with a codefendant whom he had known for ten years. The codefendant was also charged, but was prosecuted separately.

Prior to the trial of the codefendant, Towne entered into a plea agreement that was accepted by the district court. The terms, as stated on the plea-agreement form, provide in relevant part: “plead to Agg[ravated] Rob[bery] 1[st degree]; departure (either durational or dispositional); other terms as set by court; defendant to provide truthful testimony re: co-defendant[.]”

At the hearing on the plea agreement, the state described the agreement as follows:

PROSECUTOR: Mr. Towne will plead guilty to the sole count in the complaint. The [inaudible] of this agreement would be that in exchange for truthful testimony against co-defendant . . . , the State would give Mr. Towne consideration at sentencing from a bottom range of a dispositional departure to 365 days in local jail to a durational departure. It is a sentence—it is a range right now, and that is based on the truthful testimony in the case against [codefendant]. . . . [S]entencing would be held after resolution of [codefendant’s] case.

THE COURT: Okay. So hold on, the agreement is that the county attorney will give a sentencing in the range of what?

PROSECUTOR: A dispositional departure, 365 days in jail, to a durational departure.

THE COURT: Okay. To a durational departure unknown at this time?

PROSECUTOR: Correct.

THE COURT: Okay. Let me just look at something here. Presumptive is a 58-month commitment.

PROSECUTOR: So the—I mean, yes.

THE COURT: And the box being 50 to 69.

While questioning Towne about his understanding of the plea agreement, Towne's counsel asked, "[T]his offer is a little complicated because the State is agreeing to a departure, but we don't know what kind of departure you're going to get yet, do we?" To which Towne replied, "No." Towne's counsel further asked, "And you are going to cooperate with the presentence investigation. And you're also going to—you've been served with a subpoena, and you're going to provide truthful testimony [at the trial of the codefendant] pursuant to that subpoena; is that right?" To which Towne responded, "Yes."

Additional discussion related to the plea agreement occurred at a later hearing in the case. The hearing concerned whether Towne had violated the terms of his conditional release because he had been charged with another crime. At that hearing, the state expressed concern that Towne might "pick[] up more offenses that are impeachable" before codefendant's trial and described the plea agreement as requiring "truthful" and "credible testimony." The state went on to describe the agreement as "an open sentence" that can be "up to a dispositional departure." Immediately after noting the range of the open sentence and Towne's potential additional charge that prompted the violation hearing, the court said to Towne, "[Y]ou're risking going to prison for a really long time."

Towne testified at the codefendant's trial, but the state claimed at the sentencing hearing that Towne did not testify truthfully and thereby breached the terms of the plea agreement. Specifically, the state pointed to Towne's failure to identify the codefendant at the trial. The state asserted that the plea agreement was "off" and asked the court to impose a guidelines sentence. Towne's counsel countered that Towne had not seen the codefendant in over a year and that the codefendant had grown a beard and his hair was longer such that Towne did not recognize the codefendant at the trial. Towne's counsel further argued that the state failed to properly prepare Towne for the trial and that the prosecutor "pulled the plug pretty early" in ending Towne's testimony.

The district court judge at sentencing was the same judge who presided over the codefendant's trial. After hearing arguments on the matter, the judge stated:

Well, Mr. Towne, I was here for the trial [of the codefendant], and I think you knew you were subpoenaed to testify in the trial And I witnessed your performance on the witness stand. And quite honestly, Mr. Towne, . . . I'm not buying it. Okay. The deal you made with the State is no longer in effect. You entered a guilty plea; I accepted it. And today, Mr. Towne, you're going to go to prison on this one.

The district court sentenced Towne to the presumptive guidelines sentence of 58 months. The sentence was immediately executed and Towne was taken into custody. Towne now appeals.

DECISION

Towne claims that sentencing him in excess of the range set out in the plea agreement violated his rights. He asserts that the state failed to prove that he testified untruthfully at the codefendant's trial and that it is the state, not Towne, that is in breach

of the agreement because the state sought a sentence in excess of the range established by its terms. Towne asserts that, at a minimum, he should have been offered the opportunity to withdraw his plea.

We review questions of fact related to a plea agreement for clear error. *State v. Robledo-Kinney*, 615 N.W.2d 25, 32 (Minn. 2000). The validity of a plea agreement involves a question of law that we review de novo. *Nelson v. State*, 880 N.W.2d 852, 858 (Minn. 2016).

The Minnesota Rules of Criminal Procedure allow a defendant to withdraw a guilty plea if “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists when a guilty plea is invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A plea is invalid if it is not accurate, voluntary, and intelligent. *State v. Byron*, 683 N.W.2d 317, 322 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). A plea is intelligent if it is made “knowingly and understandingly,” *Uelman v. State*, 831 N.W.2d 690, 693 (Minn. App. 2013) (quotation omitted), “with sufficient awareness of the relevant circumstances and likely consequences,” *Brady v. United States*, 397 U.S. 742, 748, 90 S. Ct. 1463, 1469 (1970). “The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Nelson*, 880 N.W.2d at 858 (quotation omitted).

The conditions of the plea agreement required Towne to testify truthfully at the codefendant’s trial and, in exchange, Towne would receive a dispositional or durational departure in his sentence. The state claimed that Towne breached his end of the agreement

when he failed to identify the codefendant (whom Towne had known for ten years) at the codefendant's trial. Towne's counsel argued at the sentencing hearing that Towne cooperated and testified truthfully and, because Towne did not actually recognize the codefendant, he would have committed perjury if he had identified him. The district court judge, who had presided over the codefendant's trial, agreed with the state that Towne's testimony had not been truthful and sentenced him to the presumptive guidelines sentence of 58 months.

Under the particular circumstances of the plea agreement in this case, we conclude that the district court erred. Those circumstances include the fact that neither the written plea agreement nor any statement on the record made clear that a consequence of failing to testify truthfully, as determined by the court, would be the imposition of a sentence in excess of the range set out in the agreement with no opportunity to withdraw his plea. When this lack of clarity is paired with a subjective plea condition—whether testimony is truthful—it risks rendering the guilty plea unintelligent.

The state argues that Towne was put on notice of the consequences because the district court referred to the presumptive sentence at the plea hearing during the following exchange:

THE COURT: Okay. To a durational departure unknown at this time?

PROSECUTOR: Correct.

THE COURT: Okay. Let me just look at something here. Presumptive is a 58-month commitment.

PROSECUTOR: So the—I mean, yes.

THE COURT: And the box being 50 to 69.

This reference, however, appears to be an effort by the district court to understand the scope of the proposed reduction in sentence and falls short of a clear warning to Towne of the consequences of failing to testify truthfully. The state also argues that the court made the consequences clear at a subsequent hearing on whether Towne had violated the conditions of release, warning Towne, “[Y]ou’re risking going to prison for a really long time.” Even if we were to accept this as providing clear notice of the consequences, this statement by the district court was made after Towne’s guilty plea had been submitted and accepted by the court.

We acknowledge, as the state points out, that there is no explicit requirement for the district court to recite such a warning. While that may be so, the caselaw is clear that a defendant must be apprised of the full consequences of pleading guilty, regardless of whether that is in a written plea agreement or by a statement made on the record by the defense, the state, or the district court. *State v. Montez*, 899 N.W.2d 200, 204 (Minn. App. 2017); *State v. Batchelor*, 786 N.W.2d 319, 324 (Minn. App. 2010). Here, we have the subjective condition of “truthful” testimony, combined with the absence of a clear warning that, if Towne failed to testify “truthfully,” he would be sentenced as if he had entered a straight guilty plea with no downward departure or opportunity to withdraw his plea. Under these circumstances, we cannot conclude that the plea was made “knowingly and understandingly.” *Uselman*, 831 N.W.2d at 693 (quotation omitted).

The cases relied on by the state, such as *Batchelor* and *Montez*, are distinguishable. In those cases, the defendant was provided a clear warning of the consequences for failing to abide by the conditions of the plea agreement. For example, in *Batchelor*, the terms of

the written plea agreement stated that if the defendant did not appear for sentencing, he would receive the guidelines sentence. The district court reinforced in a hearing the consequences of failing to appear for the sentencing: “If you show up you get the 60 months concurrent. If you don’t show up, then when we catch you, you get the 160 months, which is the presumptive sentence” *Batchelor*, 786 N.W.2d at 321. This court determined that the plea agreement was intelligent because the consequences for failing to comply with a conditional term were “expressly contemplated” by the plea. *Id.* at 324.

Likewise, we emphasized in *Montez* that it was “clear from the record that appellant understood the direct consequences of his plea.” 899 N.W.2d at 204 (quoting *Batchelor*, 786 N.W.2d at 324). In *Montez*, the defendant agreed to cooperate with the presentence investigation, return for sentencing, and remain law-abiding. *Id.* at 202. The plea agreement stated that if the defendant failed to meet the conditions “then the above plea agreement is in jeopardy and the court may sentence me without regard to that agreement.” *Id.* The defendant further confirmed his understanding of the conditions and the consequences for failing to meet the conditions at the plea hearing in response to questioning by his attorney.

The other cases cited by the state similarly contain a clear record that, either in the written plea agreement or at the plea hearing, the defendant received an explicit warning of the consequences of failing to abide by the conditions of the agreement. *See, e.g., State v. Brown*, 606 N.W.2d 670, 675 (Minn. 2000) (holding the plea clearly set conditions and consequences of defendant failing to be accepted into treatment or failing to complete

treatment: “[Appellant] understood both when he entered his plea of guilty and at sentencing that he risked an executed double durational departure sentence . . .”).

We thus reverse and remand this case to the district court. In reaching this conclusion, we do not question the district court’s determination that Towne failed to testify truthfully at the codefendant’s trial. We are also mindful of the possibility that Towne may, subjectively, have been fully aware of the consequences of this failure. Nevertheless, because of the magnitude of the rights being waived when a defendant enters a guilty plea, a clear statement of the consequences of failing to satisfy a plea condition is necessary to ensure that the plea, in a conditional plea agreement, is intelligent.

We note that Towne has requested, as his preferred remedy, that the court sentence him in accordance with the plea agreement. On remand, the district court may, at its discretion, choose to either sentence Towne within the range set out in the plea agreement or allow Towne to withdraw his guilty plea and have the case proceed to trial.

Reversed and remanded.