

*This opinion is nonprecedential except as provided by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
A20-0724**

Elfonzo Dyrell Shelby, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 25, 2021
Affirmed
Jesson, Judge**

Ramsey County District Court
File No. 62-CR-17-3404

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

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

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Jesson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Elfonzo Dyrell Shelby entered a straight plea to identity theft and theft by swindle. Shelby admitted that he obtained personal information from incarcerated persons and then used that information to apply for welfare benefits. Two years after

sentencing, despite entering a straight plea to both counts, Shelby asserted in a petition for postconviction relief that his guilty pleas were involuntary because the state failed to fulfill a purported plea agreement. The postconviction court denied Shelby's petition, concluding that the record does not support his claim that a plea agreement existed. Because the record supports the postconviction court's decision, we affirm.

FACTS

The state charged Shelby with one count of identity theft and one count of theft by swindle. Shelby pleaded guilty to both counts. He admitted that he had sent surveys to incarcerated persons that asked for identifying information. Unbeknownst to those who completed the surveys, Shelby used the information he gathered to apply for (and receive) thousands of dollars in welfare benefits under fictitious names. At the plea hearing, Shelby's attorney stated that Shelby would enter a "straight plea" and argue for a downward durational departure. Shelby and his attorney discussed on the record the fact that he was entering a straight plea:

Q: And Mr. Shelby, you understand that we don't have a specific agreement in these cases, you understand that?

A: I understand.

Q: So *straight plea*, that's what that means. You understand the meaning of that?

A: Yes.

Q: So what we are going to do is we are going to come to court with *no promises from the state, no promises from the judge, in terms of how you're going to be sentenced?*

A: Yes.

Q: And what we are going to ask the court to do is to sentence you for less time than what's called for by the Minnesota Sentencing Guidelines. Do you understand how that's going to work?

A: Yes.

(Emphasis added.) Shelby also submitted a plea petition indicating that he understood that he would be entering a “straight plea,” and that the “defense will seek [a] downward departure.” The district court accepted Shelby’s guilty pleas.

Before sentencing, a presentence investigation report (PSI) was completed. The PSI recommended that the district court impose the presumptive sentence according to the Minnesota Sentencing Guidelines. The PSI indicated that Shelby told the PSI writer that he had cooperated with the prosecution by providing information about ongoing fraud cases.

At sentencing, Shelby asked for a durational departure from the sentencing guidelines for both counts, arguing primarily that he showed remorse and took responsibility for his actions. Notably, Shelby asserted that he had shown remorse by “meeting with the prosecution along with the police investigators to provide information about other individuals who were involved in this scheme.” The state opposed the motion for a downward durational departure, arguing that there were no substantial and compelling reasons to depart. The state acknowledged that the investigators in this case took information from Shelby about “possible other participants in this scheme or schemes like it,” but noted that the investigators “were unable to find any value in that information.” The district court denied Shelby’s motion for a durational departure and sentenced him to the presumptive sentence under the guidelines for both counts.

Two years after sentencing, Shelby filed a petition for postconviction relief asking to withdraw his guilty plea. Shelby argued that his guilty plea was not voluntary because

he had reached an agreement with the state that the state did not fulfill. Specifically, in his supporting affidavit, Shelby claimed that he reached an agreement with the prosecutor to provide information to law enforcement about the technical aspects of his crimes and other participants who had not yet been charged. In exchange, the prosecutor purportedly agreed that if Shelby pleaded guilty to the offenses, the state would recommend (or not oppose) Shelby's request for a downward durational departure. Shelby claimed that he would not have pleaded guilty without the agreement with the state.

The postconviction court denied the petition, concluding that Shelby's assertion that he had an agreement with the state was "not supported by the transcripts" of the plea and sentencing hearings.

Shelby appeals.

DECISION

Shelby argues that the postconviction court abused its discretion by denying his petition for postconviction relief. We review the denial of a petition for postconviction relief for an abuse of discretion. *Rhodes v. State*, 875 N.W.2d 779, 786 (Minn. 2016).¹

In his postconviction petition, Shelby asked the postconviction court to allow him to withdraw his guilty plea because it was not valid. A postconviction court must allow a

¹ We observe that Shelby did not request that the postconviction court hold an evidentiary hearing on his petition. And although Shelby references the lack of an evidentiary hearing in a heading in his appellate brief, Shelby makes no substantive argument on appeal that the postconviction court abused its discretion by denying the petition without first conducting an evidentiary hearing. Thus, we do not address whether the postconviction court erred by failing to hold an evidentiary hearing on Shelby's petition. See *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (indicating that assertions without "argument or citation to legal authority in support of the allegations" are deemed waived).

defendant to withdraw his guilty plea if “withdrawal is 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.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A valid plea must be accurate, voluntary, and intelligent. *Id.*

Shelby claims that his plea was not voluntary. The purpose of requiring guilty pleas to be voluntary is to ensure that the defendant “is not pleading guilty because of improper pressures.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). The state applies improper pressure if it “induce[s] a guilty plea based on a promise by the prosecutor that goes unfulfilled or was unfulfillable from the start.” *Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017). Shelby maintains that the state applied improper pressure to induce him to plead guilty here by making a promise that went unfulfilled—a promise to support or not oppose Shelby’s downward-departure motion.

The postconviction court concluded that there was “nothing in the record” to support the state’s purported promise. On appeal, Shelby contends that the record *does* contain evidence to support his invalid-plea claim—namely, Shelby’s affidavit and indications in the record consistent with his assertion that he cooperated with law enforcement. Consequently, Shelby argues that the postconviction court abused its discretion by denying his petition for postconviction relief. Because the record belies Shelby’s claim, we are not persuaded.

A postconviction court may deny a petition for postconviction relief when the record “directly refute[s]” the allegations in the petition. *Williams v. State*, 760 N.W.2d 8, 14 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009). Here, Shelby’s testimony at

the plea hearing and his failure to object at the sentencing hearing directly refute the existence of the purported agreement with the state.

A straight plea is a plea with no “agreement regarding sentencing.” *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 327 (Minn. 2016). Shelby explicitly stated at the plea hearing that he understood that he was entering a straight plea. And he acknowledged that he had no “specific agreement,” and “no promises from the state” when he pleaded guilty, demonstrating that he understood the implication of entering a straight plea. To the contrary, Shelby agreed that he intended *to argue* for a downward durational departure at sentencing. An argument is not an agreement. Shelby’s clear and unambiguous statements at the plea hearing undercut his claim that he reached a plea agreement with the state.

Nor did Shelby object at sentencing when the state voiced its opposition to a downward durational departure. The Minnesota Supreme Court has observed that a defendant’s failure to object at sentencing to a purported breach of a plea agreement may support an inference as to the defendant’s understanding of the agreement. *State v. Rhodes*, 675 N.W.2d 323, 327 (Minn. 2004). And Shelby made no attempt to withdraw his guilty plea for two years. Shelby’s failure to object to the state’s sentencing arguments further supports the postconviction court’s conclusion that Shelby knew that he had no agreement with the state as to sentencing.²

² It is clear from the record, and the state has never disputed, that Shelby provided information to law enforcement. But the fact that Shelby provided information to law enforcement is not indicative as to whether Shelby reached a plea agreement with the state. We also observe that the plea hearing occurred *after* Shelby’s meeting with law

Ultimately, we discern no abuse of discretion in the postconviction court's decision to deny Shelby's petition for relief. The court acted well within its discretion in concluding that Shelby's plea was voluntary, and therefore valid, and in denying the petition.³

Affirmed.

enforcement. As discussed above, Shelby agreed at the plea hearing that he pleaded guilty with "no promises from the state." Shelby's plea-hearing testimony demonstrates that, even after he provided information to law enforcement, he understood that he had not reached a plea agreement with the state.

³ Shelby also submitted a supplemental pro se brief in this appeal. His arguments in the supplemental brief are consistent with those made in his primary brief, and we have addressed those arguments above.