

*This opinion is nonprecedential except as provided by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
A20-1531**

State of Minnesota,
Respondent,

vs.

Gavin Patrick Meany,
Appellant.

**Filed February 28, 2022
Reversed and remanded
Jesson, Judge**

Dakota County District Court
File No. 19HA-CR-19-2414

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

Kathryn M. Keena, Dakota County Attorney, Jessica Bierwerth, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Gavin Meany, a psychiatrist, pleaded guilty to and was convicted of four counts of third-degree criminal sexual conduct by a therapist. The district court imposed a sentence of 90 months' imprisonment to be followed by a lifetime conditional-release

period. Meany appealed from the final judgment, and we stayed the appeal to permit him to pursue postconviction proceedings. After the district court denied postconviction relief, we reinstated this appeal. Meany now argues that his guilty plea was invalid because he entered it on the understanding that his sentence would include only a ten-year conditional-release term. Because the record shows that Meany's plea was based on the understanding that his conditional-release term would be for a ten-year period—not for his lifetime—his plea was unintelligent. Accordingly, we reverse and remand to permit Meany to withdraw his plea.

FACTS

Meany was a board-certified psychiatrist. The following factual allegations are based upon the amended criminal complaint in this matter.

According to the complaint, L.K. sought psychiatric treatment from Meany for mental-health issues in August 2015. L.K. had an eating disorder, had previously been the victim of sexual assault by a physician, and had suffered domestic violence from a former partner. L.K.'s sessions with Meany started off “normally,” but after many sessions, he began to ask her sexual questions. Then he began touching her, including rubbing her over her underwear. By 2018, Meany's alleged sexual acts became even more intense, including digital penetration and touching her under her clothing on the couch in his office during sessions. L.K. came to believe she was in love with Meany. They would meet outside of her appointments. At one coffee shop meeting, they discussed whether they should have sex, but Meany explained it was illegal. Regardless, according to the complaint, he took

her to his home in Apple Valley where they had sex. By the summer of 2019, Meany allegedly would digitally penetrate L.K. at each of her psychiatric appointments.

Eventually L.K. confided in a new therapist about Meany, resulting in a report to law enforcement. Respondent State of Minnesota charged Meany with six counts of third-degree criminal sexual conduct by a therapist during a session, and one count of third-degree criminal sexual conduct by a therapist outside a session.¹ Meany and his counsel prepared a plea petition, which they reviewed together before a scheduled guilty plea hearing.

On January 23, 2020, Meany appeared for a guilty-plea hearing. Meany pleaded guilty to four counts of third-degree criminal sexual conduct by a therapist during a session in exchange for dismissal of the remaining three counts. During the hearing, Meany and his counsel reviewed the rights he was giving up by pleading guilty to four counts. Prior to offering the court the plea petition, Meany and his counsel discussed conditional release:

COUNSEL: Mr. Meany, you understand that a criminal sexual conduct conviction in the third degree carries with it a conditional release period; correct?

MEANY: Correct.

COUNSEL: And you know that means if you are sent to prison, *there is a ten-year conditional release period . . . after the expiration of parole*; correct?

MEANY: Yes.

COUNSEL: And you would be under the supervision of the Department of Corrections *during that ten-year conditional release period*; correct?

MEANY: Yes.

COUNSEL: And if you violated their terms and conditions, you could be returned to prison *for a portion or*

¹ Minn. Stat. § 609.344, subd. 1(h)(i)-(ii) (2018).

the remainder of that ten-year conditional release period; correct?

MEANY: Correct.

(Emphasis added.) Meany's plea petition similarly stated that there would be a ten-year conditional release period.

Meany confirmed that he understood there was no agreement on the sentence, and that the state would be pursuing the maximum possible penalty. Meany entered guilty pleas to four counts. The district court deferred the acceptance of the plea until a later sentencing hearing.

Before sentencing, a presentence investigation (PSI) and psychosexual evaluation were conducted. The PSI included information about the Minnesota Sentencing Guidelines and noted that both ten-year and lifetime conditional-release terms applied. The PSI recommended executed sentences of 48, 76, 117, and 180 months, with a ten-year conditional-release term for the first 48-month sentence, and lifetime conditional-release terms for the 76-, 117-, and 180- month sentences. The sentencing worksheets showed the same sentences and applicable conditional-release periods.

The state sought a statutory maximum sentence of 180 months. Meany opposed the sentence and sought a dispositional departure. At sentencing, the district court discussed the facts of the record and the sentence stating:

[H]aving chosen the profession in the healing arts and using that opportunity to cause harm to someone, it's not something that the law has ever allowed and certainly can't allow . . . I mean, violating that level of trust is something that really is quite extraordinary.

The district court added “this is one of the more egregious circumstances of these cases that I have seen.” However, the district court thought the ultimate sentence would be disproportionate to other similar cases, and that a downward mitigated durational departure was warranted.

The district court imposed a separate sentence for each of the four convictions. For the first conviction, the district court sentenced Meany to 48 months in prison and a conditional-release period of ten years. For the second conviction, the court sentenced Meany to a concurrent sentence of 90 months in prison and a lifetime conditional-release period. For the two remaining convictions, the court imposed concurrent sentences of 90 months in prison—which were downward durational departures from the sentencing guidelines—and lifetime conditional-release periods.² After the district court reiterated that Meany would be on conditional release for the rest of his life, neither Meany nor his counsel objected.

Meany filed a direct appeal. He then moved—and we granted—to stay his appeal to litigate issues that were more appropriate to be raised in a petition for postconviction relief. In his postconviction relief memorandum, Meany argued that his plea was not intelligently entered, and that he received ineffective assistance of counsel rendering his plea involuntary. Meany also asked the postconviction court to reconsider his sentences.

² Meany was also ordered to register as a predatory offender for life.

The postconviction court denied Meany's petition without holding an evidentiary hearing.³ The court reasoned that Meany's guilty plea was intelligent because he was aware that lifetime conditional release was a possibility and never objected when it was imposed at sentencing. And the postconviction court found that the "misadvice" that Meany alleges he received from counsel was not on the record and noted that relief is not warranted if the allegations are without factual support. As for resentencing, the postconviction court explained that the sentences were appropriate and not exaggerated, citing L.K.'s vulnerability and Meany's conduct.

Meany appeals.

DECISION

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 after sentencing, a defendant must be allowed 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 occurs if a plea is not valid; a plea is invalid if it is not accurate, intelligent, or voluntary. *Raleigh*, 778 N.W.2d at 94.

Meany argues that his plea was not intelligent because he was not informed of the lifetime conditional-release term at the time he pleaded guilty. In reviewing the denial of a petition for postconviction relief, we review legal issues de novo and findings of fact for clear error. *Caldwell v. State*, 886 N.W.2d 491, 499 (Minn. 2016).

³ Meany did not expressly request an evidentiary hearing on his petition for postconviction relief.

A guilty plea is intelligent if a defendant “understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Uselman v. State*, 831 N.W.2d 690, 693 (Minn. App. 2013) (quotation omitted). In *Uselman*, we concluded that the defendant’s plea was not intelligent because he reasonably believed that his sentence would not include a term of conditional release. *Id.* at 694. Uselman’s plea petition “expressly declared that conditional release was not applicable ‘[i]n this case.’” *Id.* at 694. Although Uselman (after the plea and before sentencing) reviewed and agreed to a sentencing worksheet which included a conditional-release period, we concluded that the postconviction court erred when it inferred from this that Uselman knew of the conditional-release period at the time of the plea. *Id.* at 694. Nor did Uselman’s failure to object when the conditional-release period was imposed at sentencing alter our conclusion that Uselman’s plea was unintelligent. *Id.*

Uselman drives the outcome of this appeal. Here, as in *Uselman*, Meany pleaded guilty with an incorrect understanding of the conditional-release period that ultimately would be imposed: lifetime conditional release. And not only the plea petition but the plea colloquy itself referred to only a ten-year conditional-release period. While the state reiterated that it would seek the “statutory max,” at no point during the plea hearing did anyone mention lifetime conditional release. Accordingly, the record established here reflects that Meany was misinformed of the length of his term of conditional release before he entered a guilty plea, making his plea unintelligent.

The state relies on *State v. Rhodes*, 675 N.W.2d 323 (Minn. 2004), to argue otherwise. In that case, Rhodes pleaded guilty with an agreed-upon maximum sentence of

105 months, with no mention of a conditional-release term. *Rhodes*, 675 N.W.2d at 325. Rhodes did not object to the PSI and sentencing sheet that included a five-year conditional release. Nor did he object at sentencing after being informed of the conditional-release period. Based upon the earlier silence as to conditional release, the supreme court held that it was fair for the postconviction court to infer that Rhodes understood all along that conditional release was part of his plea agreement.⁴

Here, unlike *Rhodes*, we do not have silence as to conditional release at the time of the guilty plea. We have express discussion of a ten-year conditional-release term. Twice. As we explained when distinguishing *Rhodes* in *Uselman*, it is one thing to use circumstantial evidence to fill in gaps created by silence—it is another to use circumstantial evidence to contradict a defendant’s express understanding of the direct consequences of his plea. *Uselman*, 831 N.W.2d at 694.

In sum, Meany’s guilty plea is unintelligent because it arises from a plea petition and plea hearing that erroneously indicated that a ten-year—not a lifetime—

⁴ The supreme court concluded that Rhodes’s guilty plea was intelligent because (1) he was generally on notice that a mandatory, nonwaivable conditional-release term was part of his sentence, (2) recent supreme court decisions had recognized the mandatory nature of these conditional-release terms, and (3) the record at the plea hearing (including the plea petition) was *silent* as to a conditional-release term. *Id.* at 327.

conditional-release period would follow Meany's imprisonment.⁵ We reverse and remand for the district court to allow Meany to withdraw his guilty plea.⁶

Reversed and remanded.

⁵ Meany supplied a pro se supplemental brief that does not deny the charges, but instead asks us to consider his character when determining this appeal. But he fails to cite to any legal authority or articulate any legal argument. Therefore, the argument is forfeited. *State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008).

⁶ Because we reverse and remand so that Meany may withdraw his guilty plea on this basis, we do not address his additional arguments involving his sentencing or the involuntariness of his plea, including the alleged error that Meany's counsel informed him he would only have to register as a predatory offender for ten years.