

*This opinion is nonprecedential except as provided by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
A21-0071**

Roy Lee Smith, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 4, 2021
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-16-18357

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In 2017, Roy Lee Smith pleaded guilty to first-degree criminal sexual conduct pursuant to a plea agreement. The district court imposed a sentence of 156 months of

imprisonment. In 2020, Smith moved to correct his sentence and requested leave to withdraw his guilty plea. The district court denied Smith's requests for relief. We affirm.

FACTS

In July 2016, the state charged Smith with first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(c) (2014). In January 2017, Smith pleaded guilty pursuant to a plea agreement. At the plea hearing, the prosecutor and Smith's attorney stated the terms of the plea agreement on the record. The prosecutor stated that, if Smith pleaded guilty, he could choose between two sentencing options. First, Smith could elect to receive a "firm 156-month prison commit," which was a sentence at the midpoint of the presumptive range prescribed by the sentencing guidelines. Second, Smith could elect to receive a sentence in "a range of 144 to 172." Smith's attorney stated to him: "I think we felt the better choice for you would be to take the firm 156, which is right in the middle guideline case. Do you understand that?" Smith answered in the affirmative. His attorney then asked, "And you still want to proceed with that option, the 156 firm then, correct?" Smith again answered in the affirmative. Smith pleaded guilty. On the same day, he signed a plea petition that referred to a plea agreement specifying a prison term of 156 months.

At sentencing in March 2017, the state requested that the district court sentence Smith "pursuant to the negotiation, which is 156-month prison commit." Smith's attorney requested that the district court "follow the plea agreement: 156 months." The district court imposed a sentence of 156 months of imprisonment, with jail credit for time served. Smith did not pursue a direct appeal.

In April 2020, Smith filed a *pro se* motion to correct his sentence pursuant to rule 27.03, subdivision 9, of the rules of criminal procedure. He argued that he had not received any jail credit, and he requested an award of 259 days of credit. The district court referred Smith's *pro se* motion to the office of the state public defender. *See* Minn. Stat. § 590.02, subd. 1(4) (2018) (requiring district court administrator to transmit post-conviction petition to state public defender if petitioner is without counsel); *Paone v. State*, 658 N.W.2d 896, 899-900 (Minn. App. 2003) (reversing and remanding to allow post-conviction petitioner to present claims to district court with assistance of public defender). In July 2020, Smith wrote a letter to the assigned district court judge in which he requested that he be permitted to withdraw his guilty plea on the grounds that he is innocent and that he had agreed to a 144-month sentence but had received a 156-month sentence. Two weeks later, a state assistant public defender, by letter, entered her appearance on behalf of Smith. The assistant state public defender requested that the district court consider and resolve Smith's motion to correct his sentence and stated that Smith no longer was seeking to withdraw his plea. The state filed a three-page letter brief discussing Smith's prison sentence and his receipt of jail credit. Smith later wrote another letter to the assigned district court judge in which he reiterated his request that he be permitted to withdraw his guilty plea.

In November 2020, the district court denied Smith's motion to correct sentence and his request for plea withdrawal. The district court determined that Smith had received 259 days of jail credit, which is the amount reflected on the warrant of commitment. The district court also determined that Smith's request to withdraw his guilty plea is untimely because it was made more than two years after he was sentenced. The district court further

determined, in the alternative, that Smith's guilty plea is not invalid because Smith voluntarily chose a prison sentence of 156 months. Smith appeals.

DECISION

With the assistance of his assistant state public defender, Smith argues that the district court erred by denying his "postconviction petition asking the court to resentence him in accordance with his reasonable understanding of the plea agreement." He contends that his guilty plea is invalid on the ground that he understood that he would receive a sentence of only 144 months.

We begin our analysis by identifying the issue or issues that are properly before this court. An offender may challenge a sentence either by petitioning for post-conviction relief under chapter 590 of the Minnesota Statutes or by moving to correct the sentence under rule 27.03, subdivision 9, of the rules of criminal procedure. *Washington v. State*, 845 N.W.2d 205, 210 (Minn. App. 2014). A post-conviction petition must be filed no more than two years after a judgment of conviction becomes final, unless certain exceptions apply. Minn. Stat. § 590.01, subd. 4(a) (2020). But a motion to correct sentence pursuant to rule 27.03, subdivision 9, may be filed "at any time." Minn. R. Crim. P. 27.03, subd. 9; *see also Reynolds v. State*, 888 N.W.2d 125, 133 (Minn. 2016). For that reason, an offender seeking relief more than two years after his sentencing may wish to rely on rule 27.03, subdivision 9.

However, an offender may rely on rule 27.03, subdivision 9, only to the extent that the offender's challenge is limited to his sentence. If an offender challenges both his guilty plea and his sentence, rule 27.03, subdivision 9, does not apply, and the offender must seek

relief under the post-conviction statute. *Johnson v. State*, 801 N.W.2d 173, 175-76 (Minn. 2011). Similarly, if an offender challenges a sentence that was imposed pursuant to a negotiated plea agreement, rule 27.03, subdivision 9, does not apply because “a motion to change that sentence impacts more than simply the sentence.” *State v. Coles*, 862 N.W.2d 477, 481 (Minn. 2015). Because Smith’s 156-month prison sentence was a term of his negotiated plea agreement, he may not challenge his sentence under rule 27.03, subdivision 9. The only proper vehicle for his claim or claims is a post-conviction petition.

As stated above, a post-conviction petition must be filed within two years of final judgment, unless certain exceptions apply. Minn. Stat. § 590.01, subd. 4(a); *Hooper v. State*, 838 N.W.2d 775, 780-82 (Minn. 2013). The district court ruled that both Smith’s motion and his informal request were filed more than two years after final judgment, and the district court further noted that Smith had not argued for an exception to the two-year statute of limitations. On appeal, Smith does not challenge that part of the district court’s order. Thus, it is undisputed that Smith’s informal request for post-conviction relief is untimely. That conclusion is a sufficient basis for affirming the district court’s order.

Even if Smith’s post-conviction request were timely, it would not have merit. To prevail on a post-conviction motion to withdraw a guilty plea, a petitioner must establish that 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). To be constitutionally valid, “a guilty plea must be accurate, voluntary, and intelligent.” *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). A guilty plea is intelligent if the defendant, at the time he entered the plea, “understood the charges

against him, the rights he waived, and the consequences of the plea.” *Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017) (quotation omitted). Similarly, a guilty plea is voluntary if it is not “based on any improper pressures or inducements.” *Id.* at 876-77. A defendant bears the burden of proving that his guilty plea is invalid. *Raleigh*, 778 N.W.2d at 94. This court applies a *de novo* standard of review to a district court’s determination of the validity of a guilty plea. *Id.*

As an alternative ground for denying post-conviction relief, the district court determined that Smith’s guilty plea is not invalid because Smith elected a prison sentence of 156 months at the sentencing hearing. Smith contends on appeal that the 156-month sentence is contrary to his understanding of the plea agreement. But the record is clear that Smith had a choice between a “firm 156-month prison commit” and “a range of 144 to 172,” that he chose a 156-month sentence, and that the district court sentenced him accordingly. Smith has not pointed to any facts in the record that would support his contention that he believed that he would receive a sentence of 144 months. *See id.* at 96. Because it is clear from the transcript of Smith’s plea hearing that he agreed to a prison sentence of 156 months, he cannot prove that he reasonably understood that he would receive a prison sentence of only 144 months. Accordingly, the district court did not err by determining, in the alternative, that Smith has not satisfied his burden of establishing that his guilty plea is invalid. *See id.* at 94, 96.

Thus, the district court did not err by denying Smith’s informal request for post-conviction relief.

Affirmed.

A handwritten signature in black ink, appearing to read "Matthew Johnson", is written over the word "Affirmed." and extends to the right.