

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0283**

State of Minnesota,
Respondent,

vs.

Dequarn Markeyth Bell,
Appellant.

**Filed February 7, 2022
Affirmed in part, reversed in part, and remanded
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-19-22461

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Frisch, Presiding Judge; Segal, Chief Judge; and Reyes, Judge.

SYLLABUS

A parole-eligibility determination by the Minnesota Department of Corrections is a collateral consequence of a guilty plea that does not implicate the intelligence of the plea.

OPINION

FRISCH, Judge

Following the denial of appellant's presentence motion to withdraw his guilty plea and the imposition of sentences for criminal sexual conduct and inducement of another to practice prostitution, appellant argues that (1) because the district court and counsel provided an incomplete description of the manner in which the Minnesota Department of Corrections would determine his parole eligibility, his guilty plea was unintelligent and involuntary, and therefore manifestly unjust; and (2) the district court imposed an incorrect and unlawful sentence. We affirm in part, reverse in part, and remand.

FACTS

In January 2020, a grand jury indicted appellant Dequarn Markeyth Bell on three counts: first-degree criminal sexual conduct, first-degree assault, and inducement of another to practice prostitution, pursuant to Minn. Stat. §§ 609.342, subd. 1(e)(i), .221, subd. 1, and .322, subd. 1a(1) (2018), respectively. Bell was indicted as an egregious first-time offender, which provides for a mandatory life sentence without the possibility of parole if the fact-finder determines the existence of two or more heinous elements, pursuant to Minn. Stat. § 609.3455, subd. 2(a)(1) (2018). The indictment for the criminal-sexual-conduct charge included two heinous elements, great bodily harm and torture, pursuant to Minn. Stat. § 609.3455, subd. 1(d)(1)-(2) (2018).

The following facts were elicited at a hearing prior to sentencing on Bell's motion to withdraw his plea. From the time that respondent State of Minnesota charged Bell to the start of trial, Bell and his counsel devoted "dozens and dozens of hours" to discussing

potential resolutions to the case, including potential plea agreements with the state. Bell was “very involved” in these discussions. Bell understood that the maximum possible consequence if convicted was a life sentence without the possibility of parole. *See* Minn. Stat. § 609.3455, subd. 2(a)(1).

Before trial, the state tendered two offers to Bell. The state offered Bell sentences ranging between 22 1/2 to 30 years in prison in exchange for his plea of guilty to the charges. Bell did not accept either offer, insisted that he did not want to accept a plea agreement, and maintained that he wanted to take his case to trial.

On October 12, 2020, the jury trial began. Victim testified about the physical and sexual assault inflicted by Bell and that Bell forced her to engage in acts of prostitution. Immediately following victim’s testimony, Bell asked counsel to seek another plea offer from the state. The state was hesitant to tender another offer to Bell because the trial had commenced and victim had already testified, but the state ultimately did propose a new plea offer to Bell. The state offered Bell the option to plead guilty to all three counts and admit the great-bodily-harm heinous element in exchange for a life sentence with the possibility of parole, and a minimum term of imprisonment of 30 years.

Bell and his counsel had not previously discussed a sentence involving life with the possibility of parole. Counsel communicated to Bell that, should he accept the agreement, Bell would be incarcerated for 30 years and would then become eligible for parole, subject to the determination of the Minnesota Department of Corrections (the department). Bell stated to counsel that he was “adamant” that he wanted to serve a total of no more than 30 years in prison. Bell requested assurance from counsel that he would be released from

prison after 30 years. Counsel indicated that the department would likely grant him parole after completing the minimum sentence, stating that “parole is granted unless there are reasons not to grant, like somebody is starting a riot or somebody kills somebody in prison.” But counsel also advised Bell that neither counsel nor anyone else could guarantee that the department would ultimately grant Bell parole. Counsel advised Bell that “[p]arole can be denied. Parole can be granted. But it’s up to the Department of Corrections.” Bell advised counsel that he would accept the offer from the state. The next morning, counsel and Bell reviewed the guilty-plea petition together. The district court then suspended the jury trial and held a guilty-plea hearing.

At the guilty-plea hearing, the district court informed Bell that he was pleading guilty under Minn. Stat. § 609.3455, subd. 3(a) (2018) (providing for a life sentence with the possibility of parole based on the existence of one heinous element), which the district court described as “life with a possibility of parole,” with an in-custody “minimum of 30 years.” See Minn. Stat. § 609.3455, subd. 5 (2018) (providing that the district court “shall specify a minimum term of imprisonment, based on the sentencing guidelines”). The district court informed Bell that the department would consider his parole eligibility “just like they would for any other prisoner.” The district court emphasized that after Bell completed the minimum sentence, the department “will assess your conduct in prison” and “make a decision about whether any infractions have occurred that would extend the period of time that you’re in jail.” Neither counsel nor the district court informed Bell that the department’s parole decision would be based on any factor other than his conduct during

his incarceration. Bell then pleaded guilty to the three counts and admitted the one heinous element per the terms offered by the state.

Bell called counsel immediately after entering the guilty plea, informed counsel that he made the “biggest mistake” by pleading guilty, and stated that he wanted to withdraw the plea. Bell then moved the district court to withdraw the guilty plea based, in part, on the theory that he was misinformed of the consequences of the guilty plea.

In December 2020, the district court conducted an evidentiary hearing on Bell’s motion. Bell and counsel each testified to their recollections of Bell’s request to initiate plea negotiations after victim’s testimony, the state’s new offer, their discussions about whether Bell should accept the offer, and what counsel communicated to Bell as to the terms of the sentence. Counsel testified that they thought that the department would likely grant Bell parole, but they could not guarantee that it would. Bell testified that he told counsel that he did not want to accept the agreement without a guarantee that he would be released from prison after serving 30 years total. Bell testified that he would have preferred to finish the trial and let the jury decide his fate without that guarantee.

The district court denied Bell’s motion, finding that counsel’s testimony was “credible and believable” and that Bell’s testimony was “inconsistent . . . and less credible.” The district court concluded that, among other things, Bell was not misinformed about the consequences of his guilty plea.

After denying the motion, the district court held a sentencing hearing. The district court accepted the state’s representation that it should assign three criminal-history points to Bell. The district court proceeded to sentence Bell under the first-degree

criminal-sexual-conduct charge to a life-with-the-possibility-of-parole sentence with a minimum term of 30 years' incarceration. The district court then sentenced Bell for the inducement-of-another-to-practice-prostitution charge to a lesser sentence to be served concurrently.

The district court did not mention on the record that the 30-year in-custody minimum sentence was an upward departure from the recommended duration set forth in the Minnesota Sentencing Guidelines. At the sentencing hearing, the state noted that the lesser count III sentence, which Bell would serve concurrently with the greater count I sentence, was a guidelines sentence. But the state did not indicate that the sentence for count I constituted an upward departure from the guidelines. At no point did the district court comment on whether it was sentencing Bell to an upward departure. And in its sentencing report, the district court expressly set forth that the imposed sentence was not a departure from the sentencing guidelines.

Bell appeals.

ISSUES

- I. Was Bell's plea unintelligent or involuntary, resulting in a manifest injustice?
- II. Is Bell entitled to resentencing?

ANALYSIS

- I. Bell is not entitled to withdraw his guilty plea because no manifest injustice occurred.**

Bell argues that the district court and counsel provided an incomplete description of the department's parole decision-making process and therefore "grossly misinformed" him

of that process. We understand Bell’s argument on appeal to be that the affirmative misadvice of counsel and the district court induced his plea and that this misinformation rendered his plea unintelligent and involuntary, resulting in a manifest injustice. He therefore argues that he must be allowed to withdraw his guilty plea under Minn. R. Crim. P. 15.05, subd. 1 (providing that a defendant must be allowed to withdraw a guilty plea to correct a manifest injustice).¹

A manifest injustice occurs when a guilty plea is not constitutionally 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.” *Id.* The validity of a guilty plea is a question of law that we review de novo. *Id.* “The defendant bears the burden of establishing the facts that support his claim that the guilty plea is invalid.” *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017).

Although neither the district court nor counsel fully set forth all of the factors which would be used by the department in determining Bell’s parole eligibility, we conclude that no manifest injustice occurred because parole-eligibility determinations are collateral consequences that do not affect the intelligence of a guilty plea, and that Bell was not induced to plead guilty based on this incomplete information.

¹ Bell does not waive the manifest-injustice argument by raising it for the first time on appeal. See *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) (explaining that a “defendant is free to simply appeal directly from a judgment of conviction and contend that the record made at the time of the plea was entered is inadequate” to establish that a plea was inaccurate, involuntary, or unintelligent).

A. A parole-eligibility determination is a collateral consequence of a guilty plea.

Bell first argues that the department's parole-eligibility determination is a "direct consequence" of his guilty plea, that his plea was unintelligent because he did not know of all the factors the department would use in its parole decision-making process, and that his plea was therefore constitutionally invalid. We disagree.

"A plea is intelligently made if the defendant understands the charges, understands the rights that are waived by pleading guilty, and understands the consequences of the plea." *Williams v. State*, 760 N.W.2d 8, 15 (Minn. App. 2009) (citing *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007)), *rev. denied* (Minn. Apr. 21, 2009). "Counsel, however, is not required to advise the defendant of *every* consequence for the defendant's plea to be intelligent." *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016).

Only "direct consequences" are relevant in assessing the intelligence of a guilty plea. *Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998). Direct consequences are those "which flow definitely, immediately, and automatically from the guilty plea, namely, the maximum sentence and any fine to be imposed." *Id.* Collateral consequences, by contrast, are those that do not punish, "serve a substantially different purpose" than to punish, and "are imposed in the interest of public safety." *Kaiser v. State*, 641 N.W.2d 900, 905 (Minn. 2002). Collateral consequences include, for example, the requirement to register as a predatory offender. *Id.* at 907. A defendant's lack of knowledge about the collateral consequences of a guilty plea "does not render the guilty plea unintelligent and entitle a defendant to withdraw it." *Taylor*, 887 N.W.2d at 823.

Minnesota courts have not previously determined whether a parole-eligibility decision by the department is a direct or collateral consequence of a guilty plea. We now hold that a parole-eligibility determination by the department is a collateral consequence of a guilty plea.

We first observe that neither the district court nor counsel fully described the department's process for making a parole decision for an inmate in Bell's position. Unlike most felony crimes for which supervised release is automatically granted after completion of two-thirds of the sentence, Minn. Stat. §§ 244.05, subd. 1b, .101, subd. 1 (2018), parole decisions for life sentences with the possibility of parole are discretionary and require the department to consider additional factors beyond the defendant's in-prison conduct. These considerations include:

[T]he risk the inmate poses to the community if released, the inmate's progress in treatment, the inmate's behavior while incarcerated, psychological or other diagnostic evaluations of the inmate, the inmate's criminal history, and any other relevant conduct of the inmate while incarcerated or before incarceration.

Minn. Stat. § 244.05, subd. 5(d) (2018). The department must also assess whether the inmate has, if necessary, completed sex-offender, chemical-dependency, or mental-health treatments, as well as the victim's recommendation regarding whether the inmate should receive parole. Minn. Stat. § 244.05, subd. 5(c), (d)(1)(i)-(iii) (2018). Accordingly, the statements by both counsel and the district court indicating that the department's primary consideration in determining Bell's parole eligibility would be his in-prison conduct did not set forth a complete description of the department's parole decision-making process.

Even so, a parole-eligibility decision is by definition uncertain and not a “definite,” “immediate,” or “automatic” result of a sentence. *Kaiser*, 641 N.W.2d at 904 n.6. The department makes a parole decision only after the inmate has served the minimum term of imprisonment. The department’s parole decision does not turn on the sentence imposed or any of the events giving rise to the conviction and sentence. Instead, the department considers the events and circumstances *following* the imposition of the sentence and incarceration of the inmate, including in-prison behavior and, in this case, psychological evaluations, the completion of certain mental-health treatments, and other statutory factors. See Minn. Stat. § 244.05, subd. 5(d). A parole decision that is based on factors that necessarily occur *after* the imposition of the sentence cannot be a “definite,” “immediate,” or “automatic” result of a sentence and therefore is a collateral consequence of the guilty plea. *Kaiser*, 641 N.W.2d at 904 n.6.

Moreover, the purpose of a parole-eligibility decision is to ensure public safety rather than to punish a defendant. See *id.* at 905 (describing collateral consequences as “serv[ing] a substantially different purpose” than to punish, “and are imposed in the interest of public safety”). In assessing a parole decision for an offender with a life sentence, the department must consider the “inmate’s progress in treatment,” “the risk the inmate poses to the community if released,” “and any other relevant conduct of the inmate.” Minn. Stat. § 244.05, subd. 5(d). These factors reflect public-safety, not punitive, considerations, underscoring that a parole-eligibility decision is a collateral consequence of a guilty plea.

Finally, we observe that federal jurisdictions have also concluded that parole-eligibility decisions are collateral consequences of a guilty plea. See *State v.*

Ellis-Strong, 899 N.W.2d 531, 538 (Minn. App. 2017) (“[F]ederal caselaw regards parole eligibility as collateral.”). In *Hunter v. Fogg*, the Second Circuit noted that Rule 11 of the Federal Rules of Criminal Procedure provided that the defendant “need be informed of only two sentencing consequences: ‘the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law.’”² 616 F.2d 55, 60 (2d Cir. 1980). The Second Circuit concluded that “the constitutional requirements of a state court guilty plea do not include informing a defendant of the minimum portion of a sentence that a court may require him to serve.” *Id.* at 61. The court reasoned that “even if [the defendant] was not aware that the Parole Board would make the decision as to how much of his ten-year sentence he would have to serve in custody before consideration for parole, his plea was not unconstitutionally entered.” *Id.* at 62 (footnote omitted).

Moreover, “the majority of circuits deciding the issue have concluded that parole ineligibility is only a collateral consequence.” *Bustos v. White*, 521 F.3d 321, 325 (4th Cir. 2008); see *Perkis v. Sirmons*, 201 Fed. Appx. 648, 652 (10th Cir. 2006) (“[P]arole eligibility . . . [is a] collateral consequence[] of a plea and therefore a state court’s failure to inform the defendant of th[is] consequence[] does not render a guilty plea unknowing or involuntary.”); *Hill v. Lockhart*, 731 F.2d 568, 570 (8th Cir. 1984) (“The details of parole

² Rule 11 of the Federal Rules of Criminal Procedure was amended in 2002 to expand the list of sentencing consequences that a defendant must be notified of prior to the district court accepting a guilty plea. See Fed. R. Crim. P. 11, advisory comm. notes to 2002 amend. The amended language, which is currently in force, specifies that a defendant must be informed of “any maximum possible penalty, including imprisonment, fine, and term of supervised release” as well as “any mandatory minimum penalty.” Fed. R. Crim. P. 11(b)(1)(H)-(I). This language does not alter the conclusion that parole eligibility is a collateral consequence of a guilty plea.

eligibility are considered collateral rather than direct consequences of a plea, of which a defendant need not be informed before pleading guilty.”), *aff’d*, 474 U.S. 52 (1985); *see also Cepulonis v. Ponte*, 699 F.2d 573, 577 (1st Cir. 1983) (same).

Like the federal rules, the Minnesota Rules of Criminal Procedure provide only that the district court must inform a defendant of “[t]he maximum penalty the judge could impose” and the minimum sentence, if one is required by statute prior to accepting a guilty plea. Minn. R. Crim. P. 15.01, subd. 1(6)(i)-(j). Although not binding, we find the reasoning of these federal decisions persuasive and conclude that the parole-eligibility process is a collateral consequence of the entry of a guilty plea of which a defendant need not be advised in order for the plea to be constitutionally valid.

Because the department’s determination of parole eligibility is a collateral consequence of a guilty plea, any incomplete information that was provided to Bell regarding the factors used by the department to determine such eligibility did not render his guilty plea unintelligent.

B. Bell was not improperly induced to accept the plea agreement.

Bell next argues that his guilty plea was involuntary and therefore constitutionally invalid because the incomplete information regarding the department’s parole decision-making process induced his acceptance of the offer. Specifically, Bell asserts that his plea was involuntary because (1) the district court made him an unfulfillable promise and (2) he received ineffective assistance of counsel. We are not persuaded.

A plea is involuntary if the defendant is improperly pressured or induced to accept the plea agreement. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983); *see Brown*, 449

N.W.2d at 182 (“The voluntariness requirement helps [e]nsure that the defendant does not plead guilty because of any improper pressures or inducements.”). To assess the voluntariness of a guilty plea, we look to the parties’ understanding of the terms of the plea agreement. *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). We determine the voluntariness of a guilty plea by considering all the relevant circumstances. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994). “What the parties agreed to involves an issue of fact to be resolved by the district court.” *Brown*, 606 N.W.2d at 674. We review a district court’s findings of fact for clear error. *State v. Robledo-Kinney*, 615 N.W.2d 25, 32 (Minn. 2000).

1. Bell was not induced by an unfulfillable promise.

Bell first argues that the guilty plea was involuntary because it was based on an unfulfillable promise by the district court. We disagree.

“A guilty plea cannot be induced by unfulfilled or unfulfillable promises, including a promise of a sentence unauthorized by law.” *James v. State*, 699 N.W.2d 723, 729 (Minn. 2005). “When a plea rests in any significant degree on a promise or agreement . . . , so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Id.* at 728 (quotation omitted). “Allowing the government to breach a promise that induced a guilty plea violates due process.” *Id.* (quotation omitted). A guilty plea induced by an unfulfillable promise draws the voluntariness of the plea into question. *Brown*, 606 N.W.2d at 674. “While the government must be held to the promises it made, it will not be bound to those it did not make.” *Id.* (quotation omitted).

Bell's argument fails for two independent reasons: First, any promise regarding the department's parole-evaluation process made by the district court did not induce Bell to accept the plea agreement. Second, the district court did not promise Bell that the department would evaluate his parole exclusively based on his in-prison conduct.

First, Bell was not induced to accept the offer because of the district court's description of the department's parole-eligibility decision-making process. Instead, Bell voluntarily accepted the plea agreement in order to avoid a life sentence without the possibility of parole. The district court found as a matter of fact that, following victim's compelling testimony, Bell's risk of being convicted had dramatically increased and that Bell understood that he was at risk of being sentenced to life without the possibility of parole. *See* Minn. Stat. § 609.3455, subd. 2(a)(1). The district court found that, consistent with Bell's actions, the reason that Bell accepted the plea agreement was to "cut his losses" and avoid the risk of a sentence of life without the possibility of parole.

These findings of fact are well-grounded in the record. From the inception of the case, Bell was "very involved" in discussions with counsel regarding potential resolutions to his case. Before trial, Bell had been explicit that he was not interested in accepting a plea agreement and wanted to proceed to trial. Bell understood that the maximum possible sentence for the charged crimes was life without the possibility of parole. *See id.* But Bell reassessed his case after victim completed her testimony and reconsidered his position in accepting a plea agreement. Counsel testified that, upon completion of victim's testimony, Bell communicated to her that "he sensed it might all be over" and that "he . . . saw his life disappearing before his eyes and wanted to grasp at anything he could to save himself."

Counsel asked Bell whether, after victim's testimony, he wanted to attempt to obtain a new plea offer instead of completing the trial. Bell inquired what the terms of such an offer would be. Counsel replied that "it will be a lot of time, but I can try [to obtain a plea agreement], but you need to decide." Bell affirmatively indicated that he wanted counsel to obtain a new plea offer if possible. Counsel followed Bell's directions and obtained a new offer from the state.

As part of discussions about that offer, Bell sought a guarantee that he would be released from prison after completing his minimum sentence. Both counsel and the district court expressly stated that they could not make such a guarantee. Without any assurance that he would be guaranteed release after serving 30 years, and facing a potential life sentence without the possibility of parole, Bell accepted the offer. Bell points to no facts in the record showing that he was induced to accept the state's offer because he believed that he was guaranteed parole after completing the minimum sentence. In short, Bell was not improperly induced to accept the plea agreement.

Second, and independently, the district court did not make an unfulfillable promise to Bell. The district court accurately informed Bell that, upon completion of the minimum term of incarceration, the department would assess Bell's in-prison conduct in determining his parole eligibility. The district court did not inform Bell that his in-prison conduct was the sole basis by which the department would make its decision, guarantee that Bell would automatically be entitled to parole with good behavior, or make any affirmative promise to Bell regarding the department's parole-eligibility process. Instead, the district court

provided Bell with what is best described as incomplete information regarding the department's parole decision-making process.

While we do not excuse the incomplete explanation provided by the district court as to the parole-eligibility process, we do not conclude that such incomplete information amounts to an affirmative promise by the district court that the department would exclusively consider his in-prison conduct as a basis for determining parole-eligibility or that good behavior alone would guarantee his release.

Our conclusion is consistent with *Kochevar v. State*. There, the defendant pleaded guilty and received an indeterminate prison term. 281 N.W.2d 680, 685 (Minn. 1979). The defendant was “very concerned about the amount of time he might have to serve in prison” and was told by counsel in open court that “if everything went well, that if he had a very clean record . . . , and that if the parole board acted favorably . . . he might be out in as early as two to three years.” *Id.* The district court informed the defendant that “the time and duration of your confinement . . . , depends, Mr. Kochevar, upon the way you act and conduct yourself.” *Id.* at 688. “I [the district court] am not in any way indicating that your release will be any earlier than the twelve year maximum . . . , but past history and experience leads me to believe that if you do behave well that you might be considered for an early release.” *Id.* After the defendant began serving his sentence, a new parole system was implemented which required that the defendant “must serve at least six years of prison time, because of the severity of the crime to which he pled, before he will be considered for parole.” *Id.* at 685. Whether the defendant would be released on parole “would be a matter within the discretion of the Corrections authorities.” *Id.* at 687. The supreme court

concluded that “no unqualified promise was made to [the defendant]” and that “he should not be allowed to withdraw his plea because an ‘unwarranted hope’ [of early parole release] has not been realized.” *Id.* at 688 (quotation omitted).

Here, like in *Kochevar*, counsel and the district court provided the defendant with incomplete information regarding the department’s parole determination. And Bell, like the defendant in *Kochevar*, was not expressly promised that he would receive parole at a specified date or that the department would evaluate its parole decision in a specific manner. Accordingly, because the district court did not make an “unqualified promise” to Bell regarding the department’s parole-eligibility process, he is not entitled to withdraw his plea based on an “unwarranted hope.” *Id.*

2. Bell was not prejudiced by allegedly ineffective assistance of counsel.

Bell next argues that he received ineffective assistance of counsel and is therefore entitled to withdraw his guilty plea. Bell specifically contends that counsel provided him with ineffective assistance by telling him that “parole is granted unless there are reasons not to grant,” such as “starting a riot” or “kill[ing] somebody in prison.”

The Sixth Amendment of the United States Constitution guarantees the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984). This right extends to a defendant’s decision to plead guilty. *Padilla v. Kentucky*, 559 U.S. 366, 364 (2010). “A defendant’s guilty plea may be constitutionally invalid if the defendant received ineffective assistance of counsel.” *Sames v. State*, 805 N.W.2d 565, 567 (Minn. App. 2011), *rev. denied* (Minn. Dec. 21, 2011).

“[T]he voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). “[A] defendant may bring an ineffective assistance of counsel claim if he was induced to enter a guilty plea by the objectively unreasonable advice of his attorney.” *Leake v. State*, 737 N.W.2d 531, 540 (Minn. 2007). We review a claim of ineffective assistance of counsel de novo. *Taylor*, 887 N.W.2d at 823. But we defer to a district court’s findings of facts and “will not set them aside” unless they are clearly erroneous. *State v. Anderson*, 784 N.W.2d 320, 334 (Minn. 2010).

We apply the *Strickland* standard to determine whether a criminal defendant received ineffective assistance of counsel in entering a guilty plea. *Campos v. State*, 816 N.W.2d 480, 485 (Minn. 2012). To prevail on an ineffective-assistance claim, Bell must demonstrate (1) that counsel’s representation fell below an objective standard of reasonableness, and (2) “prejudice” in the form of a “reasonable probability” that, but for counsel’s “unprofessional errors,” Bell would not have pleaded guilty. *Strickland*, 466 U.S. at 687-88, 694; *see also Campos*, 816 N.W.2d at 486. “We need not address both the performance and prejudice prongs if one is determinative.” *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003).

Even assuming that counsel’s performance fell below an objective standard of reasonableness, we conclude that Bell was not prejudiced by any incomplete advice as to the factors considered by the department in making a parole-eligibility determination.³ To

³ Bell argues that counsel’s performance was objectively unreasonable because counsel affirmatively misadvised him that the department would determine his parole eligibility

establish prejudice, Bell must show “a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Campos*, 816 N.W.2d at 486 (quotation omitted). As set forth herein, the record does not support Bell’s contention that he would not have pleaded guilty had he understood the full scope of the department’s parole decision-making process.

Instead, the record indicates, as the district court found, that the compelling testimony from victim coupled with Bell’s understanding that his chances of acquittal had dwindled induced Bell’s solicitation of the plea offer and his decision to accept that offer. We note that Bell received a significant benefit from the plea agreement, avoiding the mandatory sentence of life without parole if convicted as charged. Bell requested and accepted the state’s offer to avoid the potential sentence of life without the possibility of parole. The record does not support Bell’s claim that he would not have pleaded guilty had he received complete information regarding the department’s parole-eligibility process.

Accordingly, Bell fails to establish that he was prejudiced by counsel’s incomplete advice. Bell’s ineffective-assistance-of-counsel claim therefore fails, and he is not entitled to withdraw the guilty plea.⁴

based on his in-prison conduct. Bell cites to *Ellis-Strong* for the proposition that affirmative misadvice of a collateral consequence can still amount to ineffective assistance of counsel if both prongs of *Strickland* are met. 899 N.W.2d at 539. Because we conclude that Bell does not satisfy the prejudice prong—he was not induced to plead guilty because of this misadvice—we decline to analyze whether counsel’s representations were objectively unreasonable.

⁴ Bell additionally asserts that the district court erred by denying his motion to withdraw his plea under the fair-and-just standard for plea withdrawal pursuant to Minn. R. Crim. P. 15.05, subd. 2. “We review a district court’s decision to deny a withdrawal motion for

II. Bell is entitled to resentencing.

Bell argues that the district court committed three sentencing errors. First, Bell argues that the district court sentenced the two convictions in the incorrect order. Second, Bell argues that the district court sentenced him using an incorrect criminal-history score. Third, Bell claims that the minimum sentence imposed by the district court was an impermissible upward departure from the Minnesota Sentencing Guidelines. We agree with each of Bell's arguments.

A. The district court sentenced Bell in the incorrect order.

Bell argues, and the state agrees, that the district court erred by imposing sentences in the wrong order. "Multiple offenses sentenced at the same time before the same court must be sentenced in the order in which they occurred." Minn. Sent. Guidelines 2.B.1.e (2018). Where the district court errs by incorrectly imposing a sentence, we remand for resentencing. Minn. Stat. § 244.11, subd. 2(b) (2018); *see State v. Jerry*, 864 N.W.2d 365, 369-70 (Minn. App. 2015), *rev. denied* (Minn. Sept. 15, 2015).

The district court did not sentence Bell for the crimes in the order in which they occurred. The district court first imposed a sentence for count I (criminal sexual conduct)

abuse of discretion, reversing only in the rare case." *Raleigh*, 778 N.W.2d at 97 (quotation omitted). "Under the fair-and-just standard, a court considers the reasons a defendant offers to support withdrawal of a guilty plea and the prejudice to the state should withdrawal be permitted." *State v. Townsend*, 872 N.W.2d 758, 764 (Minn. App. 2015). The district court found that the state "would suffer significant prejudice" based on wasted resources and by forcing victim to endure the trauma of testifying again. The district court additionally found that Bell's rationales did not justify withdrawal because counsel "explicitly . . . told Defendant that there was no guarantee about when Defendant would get out [of prison]." The district court did not abuse its discretion by denying Bell's motion under the fair-and-just standard.

and then imposed a sentence for count III (inducement to prostitution). However, both Bell and the state agree that count III occurred first in time and should have been sentenced first. The district court acknowledged as much at the sentencing hearing, but nevertheless sentenced Bell in the wrong order. On remand, the district court must resentence Bell in the correct order.

B. The district court sentenced Bell using an incorrect criminal-history score.

Bell next argues, and the state also agrees, that the district court erred by sentencing Bell with an incorrect criminal-history score. A sentence based on an incorrect criminal-history score is correctable at any time. *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007); see Minn. R. Crim. P. 27.03, subd. 9 (“The court may at any time correct a sentence not authorized by law.”). The proper calculation of a defendant’s criminal-history score is a question of law that we review de novo. *State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018).

First, the state concedes that the district court erred by attributing two and one-half prior felony points for Bell’s past convictions. Bell’s criminal history includes three prior felony convictions: second-degree riot, violation of a no-contact order, and domestic assault. Although the state calculated these prior convictions as two and one-half felony points, Bell’s domestic-assault charge was sentenced as a gross misdemeanor rather than

as a felony and thus should not have contributed to his felony score.⁵ Therefore, Bell should have been sentenced with one and one-half felony points.⁶

Second, the district court must reduce Bell's custody-status points on resentencing based on changes to the sentencing guidelines in 2019. At sentencing, the district court assigned one custody-status point to Bell for committing the underlying offenses while on probation for a gross-misdemeanor offense. However, the 2019 amendments to the Minnesota Sentencing Guidelines provide that only one-half criminal-history point should be assigned for crimes committed during gross-misdemeanor probation supervision. Minn. Sent. Guidelines 2.B.2.a (Supp. 2019). Although Bell's offense occurred prior to the enactment of the 2019 amendments, Bell was not sentenced until after the amendments became effective. He is therefore entitled to the application of this subsequent modification. *State v. Robinette*, 964 N.W.2d 143, 145, 151 (Minn. 2021).

C. The district court erred by unlawfully imposing an upward-departure minimum sentence.

Bell next argues that the 30-year minimum term of imprisonment is an upward departure from the Minnesota Sentencing Guidelines and that the district court erred by

⁵ The pre-sentence investigation (PSI) and the sentencing worksheet both correctly indicated that Bell's domestic-assault charge was sentenced as a gross misdemeanor, but the district court and the state expressed uncertainty at the sentencing hearing as to the accuracy of the PSI. The state asserted, incorrectly, that the PSI was wrong and that Bell had three prior felony points. The district court accepted the state's argument.

⁶ The sentencing guidelines provide that, when calculating the total prior felony points, "if the sum of the weights results in a partial point, the point value must be rounded down to the nearest whole number." Minn. Sent. Guidelines 2.B.1.i (2018). Thus, Bell's prior felony points must be rounded down from one and one-half to one.

imposing such a sentence without setting forth a basis for departing from the guidelines on the record. We agree.

“Sentencing is within the discretion of the trial court absent an abuse of discretion.” *State v. Warren*, 592 N.W.2d 440, 451 (Minn. 1999). Although the legislature enjoys the power to fix the limits of punishment for convicted criminals, “the imposition of a sentence in a particular case within those limits is a judicial function.” *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002). We recognize “the broad discretion of the trial court in sentencing matters” and are generally “loath to interfere.” *State v. Law*, 620 N.W.2d 562, 564 (Minn. App. 2000), *rev. denied* (Minn. Dec. 20, 2000). But the district court does not enjoy “a limitless grant of power.” *Warren*, 592 N.W.2d at 451.

Although guidelines’ sentences “are presumed to be appropriate for the crimes to which they apply,” a district court “may depart from the presumptive disposition.” Minn. Sent. Guidelines 2.D.1 (2018). “A departure is not controlled by the Guidelines, but rather, is an exercise of judicial discretion constrained by statute or case law.” *Id.* When a district court departs from the sentencing guidelines, it “shall make written findings of fact as to the reasons for departure.” Minn. Stat. § 244.10, subd. 2 (2018); *see Williams v. State*, 361 N.W.2d 840, 844 (Minn. 1985). If a district court imposes an upward departure but fails to place its rationale for the departure on the record, “no departure will be allowed.” *State v. Geller*, 665 N.W.2d 514, 517 (Minn. 2003); *see also Misquadace*, 644 N.W.2d at 72 (“[A]ll departures from the Minnesota Sentencing Guidelines must be supported by substantial and compelling circumstances.”). In other words, a district court has significant

discretion in sentencing a criminal defendant, including to an upward departure, but must affirmatively exercise its discretion and state its reasons for the departure on the record.

When a district court sentences a defendant to life with the possibility of parole, the district court “shall specify a minimum term of imprisonment, based on the sentencing guidelines or any applicable mandatory minimum sentence, that must be served before the offender may be considered for supervised release.” Minn. Stat. § 609.3455, subd. 5.

[A]fter imposing a life sentence pursuant to Minn. Stat. § 609.3455, subds. 3 or 4, the district court must . . . specify a minimum term of imprisonment using the procedures that would have been used to sentence the defendant in the absence of the mandatory life sentence . . . that is, by reference to any applicable mandatory minimum sentence or the sentencing guidelines.

State v. Hodges, 784 N.W.2d 827, 833 (Minn. 2009). A minimum term of incarceration that departs from any applicable mandatory minimum sentence or the sentencing guidelines is an upward departure. *Id.*

When a district court imposes an upward departure, it must articulate a substantial and compelling reason for doing so. *State v. Schmit*, 601 N.W.2d 896, 898 (Minn. 1999). “Substantial and compelling” reasons are those that establish that the defendant’s conduct was significantly more serious than conduct typically involved in the offense at issue. *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009). The presence of a single aggravating factor is sufficient to uphold an upward departure. *See State v. O’Brien*, 369 N.W.2d 525, 527 (Minn. 1985). But “all departures from the Minnesota Sentencing Guidelines must be supported by substantial and compelling circumstances, and that a plea agreement—standing alone—is not a sufficient basis to depart from the sentencing guidelines.”

Misquadace, 644 N.W.2d at 72. A plea agreement that implies that the parties have agreed to an upward departure is insufficient on its own to establish the requisite substantial and compelling rationale to depart. *State v. Rushton*, 820 N.W.2d 287, 290 n.4 (Minn. App. 2012).

Here, the district court sentenced Bell to a minimum term of imprisonment of 30 years. But the maximum presumptive sentence for first-degree criminal sexual conduct under the guidelines was far less than 30 years. Minn. Sent. Guidelines 4.B (2018). Accordingly, the imposition of a 30-year minimum term of incarceration constituted an upward departure. *See Hodges*, 784 N.W.2d at 833. Our review of the record shows that the state did not indicate that the proposed sentence pursuant to the plea agreement constituted an upward departure from the guidelines. We further observe that the district court did not affirmatively state or otherwise indicate that it was imposing an upward-departure sentence. And the district court did not make any substantial-and-compelling aggravating-factor findings. To the contrary, the sentencing report filed by the district court expressly provided that it did *not* impose a sentence that departed from the guidelines.

The district court thus erred by sentencing Bell to an upward departure without stating that it was doing so or articulating any rationale to support an upward-departure sentence. This failure to adequately support a departure requires reversal of the sentence and prohibits any future upward departure from the guidelines. *See Geller*, 665 N.W.2d at 517.

Our decision in *Rushton* is instructive. There, the district court imposed a life sentence with a minimum term of imprisonment of 300 months. 820 N.W.2d at 289. The guidelines, however, provided for a minimum term of incarceration of 144 months. *Id.* at 290. The district court did not state any reason for imposing the upward departure. *Id.* We held that the district court erred by departing from the sentencing guidelines “without stating substantial and compelling reasons when setting the minimum term of imprisonment.” *Id.* We reversed and remanded, instructing the district court to resentence the defendant to a minimum prison term within the guidelines’ presumptive range. *Id.* at 291. Just as in *Rushton*, here too the district court failed to properly exercise its discretion by articulating no substantial and compelling basis on which to impose an upward departure.

The state contends that the departure was legally permissible, notwithstanding the failure of the district court to set forth substantial and compelling reasons for imposing an upward-departure sentence. The state argues that *Hodges* affords authority to an appellate court to independently review the record to find a basis for the imposition of Bell’s upward-departure sentence. We disagree.

In *Hodges*, the district court explicitly found seven aggravating factors to support the imposition of an upward-departure sentence. 784 N.W.2d at 833. There, the district court sentenced defendant to a greater-than-double durational departure. *Id.* at 834. In order to justify a greater-than-double sentence, the district court was obligated to find that those aggravating factors were “severe,” which it did not. *Id.* The supreme court held that it could conduct an independent review of the record to determine whether the aggravating

factors as found by the district court were severe, and ultimately affirmed the district court's upward departure. *Id.*

The state argues that, as in *Hodges*, we too can conduct an independent review of the record and find support for the upward departure imposed by the district court. But here, unlike in *Hodges*, the district court did not identify *any* aggravating factor to support the imposition of an upward departure.⁷ The state cites no authority to support its argument that we can independently review the record to determine the existence of an aggravating factor, and we are aware of none. We therefore reiterate that a district court may not impose an upward-departure sentence without articulating a substantial and compelling rationale in support of that sentence on the record. *See Geller*, 665 N.W.2d at 517; *Williams*, 361 N.W.2d at 844.

We reverse and remand for resentencing consistent with this opinion and the Minnesota Sentencing Guidelines.

DECISION

Bell is not entitled to withdraw his guilty plea. No manifest injustice occurred when Bell solicited and accepted a plea offer from the state and ultimately entered a guilty plea. The department's parole-eligibility decision is a collateral consequence of a guilty plea and does not implicate the intelligence of Bell's plea. Bell was not improperly induced to accept the plea agreement by the district court and counsel's incomplete description of the

⁷ Although Bell pleaded guilty to one of the heinous elements, this element supported imposition of the life sentence and so then could not also be used as an aggravating factor on which to base an additional departure. *See Minn. Stat. § 609.3455, subs. 3, 5* (2018).

department's parole-eligibility process. The district court, however, erred by sentencing Bell in the incorrect order, with an incorrect criminal-history score, and by imposing an impermissible upward departure for the minimum sentence. We therefore affirm the convictions, reverse the sentences, and remand for resentencing consistent with this opinion.

Affirmed in part, reversed in part, and remanded.