

*This opinion is nonprecedential except as provided by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
A21-0342**

State of Minnesota,
Respondent,

vs.

Artavies Raymone Moore,
Appellant.

**Filed August 22, 2022
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-20-21051

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On direct appeal from his convictions of terroristic threats and unlawful firearm possession, and following a remand for postconviction proceedings, appellant argues that

the district court erred in denying his petition to withdraw his guilty pleas without an evidentiary hearing. We affirm.

FACTS

In October 2020, respondent State of Minnesota charged appellant Artavies Moore with seven counts, including unlawful possession of a firearm, second-degree assault, first-degree aggravated robbery, fleeing a peace officer, giving a false name to a peace officer, first-degree burglary, and terroristic threats. Appellant later pleaded guilty to the terroristic-threats and unlawful-firearm-possession charges. The district court dismissed the other counts pursuant to a plea agreement and sentenced appellant to 24 months in prison for the terroristic-threats conviction and a concurrent 60 months in prison for the unlawful-firearm-possession conviction.

Appellant filed a notice of appeal but later asked this court to stay his appeal so he could pursue postconviction relief. This court granted the stay. Appellant then petitioned for postconviction relief, asserting that he did not voluntarily enter his guilty pleas. He submitted an affidavit to support his argument that his guilty pleas were involuntary because of his suspected COVID-19 symptoms, his father's hospitalization with cancer, his best friend's death, and his use of depression and anxiety medications. The district court denied appellant's petition without an evidentiary hearing. Thereafter, this court dissolved the stay and reinstated this appeal.

DECISION

Appellant challenges the district court's denial of his petition for postconviction relief. We review a postconviction court's denial of a petition for postconviction relief for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012).

A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings. Legal issues are reviewed de novo, but our review of factual issues is limited to whether there is sufficient evidence in the record to sustain the postconviction court's findings.

Pearson v. State, 891 N.W.2d 590, 596 (Minn. 2017) (quotations and citation omitted).

We will not reverse the postconviction court's findings unless they are clearly erroneous.

Dukes v. State, 621 N.W.2d 246, 251 (Minn. 2001).

When a defendant initially files a direct appeal and then moves for a stay to pursue postconviction relief, the postconviction court's decisions are reviewed using the standard that would apply on direct appeal. *State v. Maurstad*, 733 N.W.2d 141, 146 (Minn. 2007). A defendant has no absolute right to withdraw a guilty plea after entering it. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). But a defendant may be able to withdraw a guilty plea in two circumstances. First, a postconviction court must allow a defendant to withdraw a guilty plea at any time if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Second, a postconviction court may allow a defendant to withdraw a guilty plea before sentencing "if it is fair and just to do so." *Id.*, subd. 2. Appellant did not seek to withdraw his guilty pleas before sentencing, so the manifest-injustice standard applies.

“A manifest injustice exists if a guilty plea is not valid. To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010) (citation omitted). A guilty plea is not valid if any of these three requirements have not been met. *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). A defendant bears the burden of showing his guilty plea was not valid. *Raleigh*, 778 N.W.2d at 94. The validity of a guilty plea is a question of law that we review de novo. *Id.*

Appellant argues that he was entitled to withdraw his guilty pleas because he entered them involuntarily. The voluntariness requirement ensures that a guilty plea is not in response to improper pressures or inducements. *Id.* at 96. Whether a guilty plea is voluntary is determined by considering all relevant circumstances. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994).

Appellant challenges the voluntariness of his guilty pleas on three bases. First, he argues that his guilty pleas were involuntary because he pleaded guilty due to his fear of contracting COVID-19 in the jail. But the Minnesota Supreme Court has rejected the claim that pleading guilty out of fear renders a plea involuntary when the defendant offers no support in the record for the argument. *Raleigh*, 778 N.W.2d at 96 (holding that the defendant’s fear of receiving the death penalty did not render his guilty plea involuntary because the record showed acceptance and understanding of the plea). The Minnesota Supreme Court has also rejected the claim that a guilty plea negates voluntariness when the defendant competently understands the proceedings and fails to tell the district court about feared or suffered medical conditions influencing his plea decision. *Perkins*, 559 N.W.2d at 690-91.

Here, appellant's alleged fear of contracting COVID-19 in the jail did not render his guilty pleas involuntary. Like the defendant in *Raleigh*, appellant allegedly pleaded guilty out of fear and offers no support in the record for the argument that this renders his pleas involuntary. In fact, the record shows that appellant accepted and understood his pleas. After appellant's counsel described the plea agreement, appellant assured the court that he wanted to plead guilty:

THE COURT: Then most importantly, [appellant], big decision you're making by going forward this morning with this agreement. My job isn't to tell you to take the agreement or not. It's to make sure you understand what the agreement is and the rights you're giving up to get there.

Is what you've been talking to [your counsel] about the same as what I've just heard from him?

APPELLANT: Yes, it is.

THE COURT: All right. You know the rights you're giving up, the responsibilities you're taking on, the things that each person must consider when they're making such an important decision? Comfortable that you have thought about those things?

APPELLANT: Yes, I have.

THE COURT: And do you want to go forward on the basis we talked about? Because once you go forward, as [your counsel] has told you, it's pretty hard to go back.

APPELLANT: Yes.

Appellant voluntarily entered his guilty pleas because the record shows acceptance and understanding of the pleas.

Moreover, appellant's alleged fear of contracting COVID-19 in the jail did not negate the voluntariness of his guilty pleas because he failed to tell the district court about

his fear of COVID-19 influencing his plea decision. Appellant did not express any concerns about COVID-19 before pleading guilty. After pleading guilty, appellant only expressed concerns about COVID-19 to support his request for “house arrest.”

APPELLANT’S COUNSEL: [T]he argument is primarily this. [Appellant] is concerned about health care, Judge. He was actually on the precautions list last week. They thought that he might have COVID since he was exhibiting some symptoms.

He went to the hospital, got some treatment. His test came back negative. But obviously there are concerns about the health conditions, not because of anybody’s fault, but just the nature of the virus at the jail.

I think that’s [appellant’s] primary concern, Judge, is about his safety and stuff. I know, Judge, that there had been issues as far as treatment and non-appearance and stuff beforehand. He has been in custody now for the last two and a half months.

So it’s not like he’s in the throes of withdrawal or using or anything. So that’s the reason for his request. Did I miss something, [appellant]? Is there more than that?

APPELLANT: And I’ll be going to a house that is not even near Minneapolis. It’s in Big Lake. And the person that I am going with I’ll be watching kids. I won’t be around none of this gang stuff. I won’t be doing nothing. I just want to be able to see my mom and see everybody, give everybody a chance to come and see me.

Although appellant did not tell the district court about his fear of COVID-19 influencing his plea decision, appellant suggests that the district court should have inferred this from his hesitation during the plea colloquy. After discussing the enhanceability of the offense, appellant’s counsel asked appellant about his plea to the terroristic threats charge:

Q: Are you still comfortable going forward?

A: Not really. But I just don't want to be sitting in this – I'm just trying to get out of here.

Appellant suggests his hesitation shows he pleaded guilty in order to leave the county jail and avoid exposure to COVID-19. As the plea colloquy continued, however, appellant clarified the enhanceability of the offense “kind of changed my mind, but I am going to just do the plea.” Appellant’s counsel then followed up on this statement:

Q: [Y]ou can't have it both ways. Either it changes your mind, or it doesn't. I understand this is a lot to think about. But what the court just wants to know is you understand this is an impact of your plea. Do you still want to go forward?

A: Yeah.

Appellant did not express any concerns about COVID-19 in this exchange with his counsel. Based on this exchange, the district court could not have reasonably inferred that appellant’s fear of COVID-19 influenced his plea decision.

For these reasons, appellant failed to show that his guilty pleas were involuntary due to his fear of contracting COVID-19 in the jail.

Second, appellant argues that his guilty pleas were involuntary because he pleaded guilty while under stress concerning his father’s hospitalization with cancer and his best friend’s recent death. But stress about personal circumstances is not a sufficient basis to find a guilty plea involuntary. *See Raleigh*, 778 N.W.2d at 96 (rejecting the claim that extreme stress renders a plea involuntary when the facts show acceptance and understanding of the plea). Moreover, appellant did not mention these circumstances at the plea hearing but raised this argument for the first time in his petition and affidavit. And appellant cites no authority permitting a plea withdrawal under these circumstances, nor

have we found any. Finally, as discussed above, the facts show that appellant accepted and understood his pleas.

Third, appellant argues that his guilty pleas were involuntary because he was taking depression and anxiety medications. Use of depression and anxiety medications is not a sufficient basis to find a guilty plea involuntary unless the medications affected the defendant's ability to understand the proceedings. *See Perkins*, 559 N.W.2d at 691 (rejecting the claim that a guilty plea negates voluntariness when the defendant competently understands the proceedings and fails to tell the district court about medications taken). The record shows that appellant completely understood the proceedings, and he failed to tell the district court that he was taking depression and anxiety medications.

In addition, appellant cites no authority for the argument that his guilty pleas were in response to improper pressures or inducements due to his stress about his father's hospitalization with cancer and his best friend's recent death or his use of depression and anxiety medications. Appellant failed to show that his guilty pleas were in response to improper pressures or inducements, and therefore, he failed to show that his guilty pleas were involuntary. *See Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017) (“[A] plea is involuntary when it is induced by coercive or deceptive action,” such as “actual or threatened physical harm, . . . mental coercion,” or “a promise by the prosecutor that goes unfulfilled or was unfulfillable from the start, such as a plea agreement involving the promise of an illegal sentence.” (quotations omitted)); *see also Raleigh*, 778 N.W.2d at 96 (stating that a plea is voluntary when it is made without “improper pressure or coercion”).

Because appellant's asserted bases for withdrawal fail, appellant has not shown that his guilty pleas were involuntary under the totality of the circumstances. Thus, appellant has failed to show that his guilty pleas were not valid. He is therefore not entitled to withdraw his guilty pleas "to correct a manifest injustice."

Appellant also argues that the district court erred by making credibility determinations regarding his asserted bases for withdrawal when denying his petition without a hearing. Specifically, appellant contends that the district court should have held an evidentiary hearing to consider the testimony of appellant and potential witnesses and "to properly assess the weight of the evidence."

A postconviction court must hold an evidentiary hearing on a petition for postconviction relief "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2020). Allegations in a petition for postconviction relief must be more than argumentative assertions without factual support. *State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007). The facts alleged in the petition are to be considered as true and must be construed in the light most favorable to the petitioner. *Andersen v. State*, 913 N.W.2d 417, 422-23 (Minn. 2018). An evidentiary hearing is not required if there are no material facts in dispute that must be resolved to determine the postconviction claims on the merits. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). "When a petitioner alleges facts that, if true, are legally insufficient to entitle him to the requested relief, the postconviction court need not hold an evidentiary hearing." *Greer v. State*, 836 N.W.2d 520, 522 (Minn. 2013) (quotation omitted). The burden rests with "the petitioner to allege facts that, if proven,

would entitle him to the requested relief.” *Wilson v. State*, 726 N.W.2d 103, 107 (Minn. 2007) (quotation omitted). The postconviction court’s decision to deny an evidentiary hearing is reviewed for an abuse of discretion. *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014).

The district court found that appellant’s guilty pleas were voluntary. As previously discussed, review of the record comports with the district court’s finding and shows no material facts in dispute. Appellant’s asserted bases for withdrawal, even if true, are legally insufficient to entitle him to withdraw his guilty pleas. If appellant knew of witnesses who had relevant information, or had additional facts to support his argument that his guilty pleas were involuntary, he could have included them in his petition and affidavit. An evidentiary hearing is not a vehicle to permit appellant to conduct discovery of the testimony of potential witnesses or factual support for his claim. The district court therefore did not abuse its discretion in finding that appellant’s guilty pleas were voluntary. Accordingly, the district court did not abuse its discretion when it denied appellant’s petition to withdraw his guilty pleas without a hearing because the petition and the files and records of the proceeding conclusively show that appellant is entitled to no relief.

Affirmed.