

*This opinion is nonprecedential except as provided by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
A21-0727**

Edward Richard Krasky, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 6, 2021
Affirmed
Klaphake, Judge ***

Benton County District Court
File No. 05-CR-18-1708

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

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

Philip K. Miller, Benton County Attorney, Kathleen L. Reuter, Assistant County Attorney, Foley, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Klaphake, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant Edward Richard Krasky challenges the district court's denial of his petition for postconviction relief in which he sought to withdraw his guilty plea. Because we conclude that Krasky's plea was accurate, voluntary, and intelligent, we affirm.

DECISION

In April 2019, Krasky pleaded guilty to one count of first-degree criminal sexual conduct for sexually abusing a ten-year-old boy. The district court sentenced Krasky to 306 months' imprisonment and required Krasky to register as a lifetime predatory offender.

In 2021, Krasky petitioned for postconviction relief, seeking to withdraw his guilty plea. According to Krasky, his admission to the criminal sexual conduct charge was neither intelligent nor voluntary because of his "state of mind and disability." The district court denied Krasky's petition, noting that Krasky's "intelligence and mental health were considered in depth at the time of the entry of his guilty plea" and that Krasky's argument "lack[ed] factual support."

Validity of plea

Krasky argues that the district court abused its discretion by denying his postconviction petition because his guilty plea was neither intelligent nor voluntary. "We review the denial of a petition for postconviction relief for an abuse of discretion." *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). In doing so, we consider legal issues de novo and review factual findings for clear error. *Id.*

A defendant has no absolute right to withdraw a guilty plea after entering it. *Dikken v. State*, 896 N.W.2d 873, 876 (Minn. 2017). After sentencing, a court must allow a defendant to withdraw a guilty plea if “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 valid, “a guilty plea must be accurate, voluntary, and intelligent.” *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). The validity of a guilty plea is a question of law that we review de novo. *Id.*

Krasky first contends that his guilty plea was not intelligent because he has “below-average intellectual functioning and is a vulnerable adult.” “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), *rev. denied* (Minn. Apr. 21, 2009).

There is support in the record for Krasky’s contentions that he has below-average intellectual functioning and is a vulnerable adult. Nonetheless, the record still supports the district court’s findings that Krasky understood the plea, the proceedings, and the consequences of pleading guilty, and its determination that his plea was intelligent.

Krasky was represented by counsel throughout the plea hearing and sentencing hearing. The plea petition, which Krasky discussed with his attorney and then signed, acknowledges the consequences of pleading guilty and the terms of the plea agreement. At the plea hearing, Krasky’s counsel acknowledged Krasky’s level of intelligence and mental

health, stating that he would go through the plea “more thoroughly than maybe in every case.” Krasky then told the district court that his attorney explained to him his rights, the charges, the terms of the plea agreement, and the consequences of pleading guilty. Krasky said that he had enough time to discuss these issues with his attorney. He also denied taking any medications or that he had any questions. Krasky’s attorney explained to him the registration requirement for predatory offenders and the conditional-release term. In total, there are six transcribed pages from the plea hearing covering Krasky’s understanding of the plea, and he answered every question without indicating any confusion. We therefore conclude that Krasky’s guilty plea was intelligent.

Krasky also contends that his guilty plea was not voluntary because his vulnerability “resulted in pressure and coercion to plead guilty.” “The voluntariness requirement helps [e]nsure that the defendant does not plead guilty because of any improper pressures or inducements.” *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). Improper pressures and inducements may include threatened or actual physical harm, mental coercion, or deception. *See State v. Ecker*, 524 N.W.2d 712, 719 (Minn. 1994); *see also Dikken*, 896 N.W.2d at 877.

Here, nothing in the record shows that Krasky was coerced or pressured into pleading guilty.¹ Krasky testified at the plea hearing that he freely and voluntarily decided

¹ Krasky briefly argues that leading questions should not have been used to elicit responses from him during the plea hearing because they are disfavored. Leading questions, however, raise concerns about the *accuracy* of a factual basis for a guilty plea, *see Rosendahl v. State*, 955 N.W.2d 294, 297 (Minn. App. 2021), and Krasky does not allege that his guilty plea is inaccurate.

to give up his rights and to plead guilty, and that no one had threatened, coerced, or forced him to do so. He testified that he did not need more time to think about his plea and that he was comfortable with the plea agreement. Accordingly, based on Krasky's testimony at the plea hearing, we conclude that his guilty plea was voluntary. Krasky therefore failed to establish that his plea is invalid.

Evidentiary hearing denial

Krasky next argues the district court committed reversible error when it failed to hold an evidentiary hearing on his claim that his guilty plea was neither intelligent nor voluntary because he alleged sufficient facts entitling him to relief.

Under Minn. Stat. § 590.04, subd. 1 (2020), a postconviction court must hold an evidentiary hearing on issues raised in a petition “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” A defendant is not entitled to an evidentiary hearing if his allegations lack factual support and are directly refuted by his own testimony in the record. *See Stutelberg v. State*, 741 N.W.2d 867, 872 (Minn. 2007) (noting that petitioner's allegations must be more than argumentative assertions without factual support).

Krasky's allegations are directly refuted by the record. His plea petition acknowledges that he had sufficient time to discuss the case with his attorney, that he was satisfied his attorney represented his interests and fully advised him, and that no one had promised him or threatened him in order to obtain the guilty plea. Krasky testified at the plea hearing that he was not taking any medications, and he acknowledged in his plea

petition that he understood the charges against him. The district court therefore did not err in summarily rejecting Krasky's claim that his plea was neither intelligent nor voluntary.

Ineffective assistance of counsel

Krasky's brief to this court alleges that he received ineffective assistance of counsel. "It is well settled that a party may not raise issues for the first time on appeal from denial of postconviction relief." *Azure v. State*, 700 N.W.2d 443, 447 (Minn. 2005) (quotation omitted). Krasky failed to raise this issue in the district court, and we therefore decline to consider it. Krasky's remaining arguments challenge the validity of his guilty plea. Because we concluded that Krasky's plea is valid, we do not readdress them here.

Affirmed.