

*This opinion is nonprecedential except as provided by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
A21-0824**

State of Minnesota,
Respondent,

vs.

Gail Lynn Schauer,
Appellant.

**Filed February 13, 2023
Affirmed
Reyes, Judge**

Scott County District Court
File No. 70-CR-20-406

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Faison T. Sessoms, Minneapolis, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Reyes, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues in this postconviction appeal that her guilty plea and conviction must be vacated because: (1) she did not make a knowing, intelligent, or voluntary guilty plea; (2) she received ineffective assistance of trial counsel; (3) the state engaged in

prosecutorial misconduct; and (4) the district court failed to follow Minn. R. Crim. P. 15.04, subd. 3(2). We affirm.

FACTS

On February 3, 2019, appellant Gail Lynn Schauer ran a stop sign with her vehicle and struck another vehicle. The crash killed a 14-year-old passenger in the vehicle that appellant struck. It also resulted in injuries to the driver of that vehicle and to an individual in a third vehicle. According to the complaint, moments before the collision, appellant placed a call and texted using her cell phone. Respondent State of Minnesota charged appellant with one felony count of criminal vehicular homicide in violation of Minn. Stat. § 609.2112 subd. 1(a)(1) (2018), and two gross-misdemeanor counts of criminal vehicular operation in violation of Minn. Stat. § 609.2113 subd. 3(1) (2018). As a severity-level-eight offense, the felony criminal-vehicular-homicide charge has a presumptive commitment to prison of 41 to 57 months. Minn. Sent’g Guidelines 5.B, 4.A (2018).

Appellant’s Guilty Plea

At a hearing in October 2020, the state provided the terms of a plea offer:

Well, the -- the general framework is plea to Count I, the Criminal Vehicular Homicide count. The other counts dismissed, a stay of execution of 48 months, supervised probation for five years, *serve 365 days in the Scott County Jail with work release*, and then other conditions: remain law abiding, no traffic violations, no use of cellphones, electronics in vehicles, 80 hours of community work service, and there is some stipulations on how that would be done, pay restitution

Appellant’s counsel requested, and the district court granted, a continuance for time for appellant to consider the state’s offer. The district court noted that “the victims in this

case . . . need some finality so there won't be any additional continuances.” Moreover, the district court verified with the state that if there was not a resolution with the offer at the next hearing, then the offer would be withdrawn, and the state would “ask[] for a guideline sentence.”

Later that month, appellant signed a guilty-plea petition, stating that appellant agreed to plead guilty to one count of felony criminal vehicular homicide with the remaining charges dismissed and the following: “[s]tay of [e]xecution 48 months; [s]upervised probation for five years; [s]erve 365 Scott County Jail with work release.” At the plea hearing, the state orally presented the plea agreement without mention of work release. Appellant’s counsel confirmed that the state’s representation was consistent with appellant’s understanding, also without mention of work release. The district court and the state then questioned appellant to establish the factual basis, during which she confirmed all facts relevant to the guilty plea. The district court deferred acceptance of the plea, ordered a presentence investigation report (PSI), and set a sentencing date.

In December 2020, appellant met with a probation officer as part of the PSI. The probation officer informed appellant that “work release” was shut down at the time. The PSI described the plea agreement without any mention of work release. Appellant then contacted her attorney, C.C., to ask about the status of the work-release program, and C.C. stated that he would check into it.

Sentencing

At the April 16, 2021 sentencing hearing, appellant requested that the district court delay her report date until August 1, 2021, because “the Scott County Jail is currently not

offering [work release] due solely to the covid pandemic.” The state acknowledged that work release was unavailable but opposed any delayed report date longer than two weeks. The state argued, in part, that appellant’s report date should not be delayed because appellant “should not have the freedom to choose her turn-in date” as her argument that income was necessary for restitution “really pales in comparison to everything else in this case: the loss of a son, the loss of a brother, nephew, the loss of a grandson, the loss of a best friend.”

The district court denied appellant’s request, accepted her guilty plea, stayed execution of a 48-month prison sentence, a downward dispositional departure, and placed appellant on supervised probation for five years. The sentencing order did not mention work release.

Post-Sentencing

On April 21, 2021, appellant emailed her attorney and stated the following:

Am I wrong or does the plea agreement I signed not have anything stating work release if eligible or anything to that effect? From what I am seeing, it says: 365 days Scott County jail work release. Doesn’t the Court have to honor that contract? I am sorry I just still do not understand this.

C.C. responded with the following:

You are correct in the wording contained in the plea agreement. However, the “if eligible” aspect is always considered to be a part of any work release term. A plea agreement never spells out the if eligible part. Happy to answer any other questions.

Shortly after the jail reinstated work release, the district court granted appellant's motion for work release and amended the warrant of commitment to reflect that. Appellant served approximately 45 days of "straight time" in jail before she started work release.

Postconviction Court Proceedings

On July 1, 2021, appellant filed a notice of appeal. This court granted appellant's motion to stay her direct appeal so she could petition for postconviction relief. Appellant's postconviction petition sought to withdraw her guilty plea because (1) her plea was not knowing, intelligent, or voluntary; (2) she received ineffective assistance of counsel; (3) the state committed prosecutorial misconduct; and (4) her conviction was obtained in violation of Minn. R. Crim. P. 15.04, subd. 3(2). At the hearing, the postconviction court heard testimony from four witnesses: appellant's best friend K.R., C.C., appellant, and the prosecutor. The postconviction court denied all of appellant's claims in an order issued on March 1, 2022, and this court reinstated this appeal.

DECISION

We review a denial of postconviction relief for an abuse of discretion. *Crow v. State*, 923 N.W.2d 2, 9 (Minn. 2019). "A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record, or exercises its discretion in an arbitrary or capricious manner." *Id.* (quotation omitted). We review the "postconviction court's legal determinations de novo, and its factual findings for clear error." *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017).

All of appellant's arguments depend on the role of work release in her plea agreement.¹ Appellant contends that her plea agreement included a promise of 365 days of work release as inducement for the plea, which was violated when she had to spend a month-and-a-half in jail. Appellant therefore asserts that her guilty plea was not valid for four reasons: (1) appellant's guilty plea was not knowing, intelligent, or voluntary; (2) ineffective assistance of trial counsel; (3) prosecutorial misconduct; and (4) the district court violated Minn. R. Crim. P. 15.04 during the sentencing hearing. We address each issue in turn.

I. The postconviction court did not abuse its discretion by finding that appellant's guilty plea was voluntary, accurate, and intelligent.

A criminal defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But under Minn. R. Crim. P. 15.05, subd. 1, a postconviction court must allow a defendant to withdraw a guilty plea if it is necessary to correct a manifest injustice. A manifest injustice exists when a plea is not constitutionally valid because it is not voluntary, accurate, or intelligent. *Raleigh*, 778 N.W.2d at 94. The constitutional validity of a guilty plea is a question of law that we review de novo. *See id.*

¹ Work release allows for the "continuation of . . . employment" when a defendant is "sentenced to a term in a county jail." 9 Minn. Prac. Series § 36:16.

A. Work release was not an unfulfillable or unfulfilled promise that provided material inducement for the plea.

Appellant first argues that her guilty plea was not voluntary because (1) the plea agreement contained an unfulfillable or unfulfilled promise of work release which (2) provided a material inducement for the plea. We disagree.

“A guilty plea cannot be induced by unfulfilled or unfulfillable promises” *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). “A guilty plea is involuntary when it rests ‘in any significant degree’ on an unfulfilled or unfulfillable promise” *Uselman v. State*, 831 N.W.2d 690, 693 (Minn. App. 2013) (quoting *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997)). If there is a promise that is part of a plea agreement that is not honored, the guilty plea may be withdrawn. *Kochevar v. State*, 281 N.W.2d 680, 687 (Minn. 1979). However, “[w]hile the government must be held to the promises it made, it will not be bound to those it did not make.” *Brown*, 606 N.W.2d at 674 (quotation omitted).

Whether the plea agreement contained a promise of work release is a question of fact. A postconviction petitioner bears “the burden of proof . . . to establish the facts by a fair preponderance of the evidence.” Minn. Stat. § 590.04, subd. 3 (2020). The postconviction court is in the best position to evaluate witness credibility to which we defer. *Miles v. State*, 840 N.W.2d 195, 201 (Minn. 2013).

The postconviction court found that most of the testimony from two witnesses, including appellant, who asserted that work release was a promise or guaranteed to her to be not credible. But it found the testimony from two witnesses, C.C. and the prosecutor, who asserted that work release was only available to appellant *if eligible* to be credible.

This finding is supported by the record. While, at one point, C.C. told appellant that work release was automatic or guaranteed, he eventually clarified that “if eligible” is “always considered to be a part of any work release term” and a “plea agreement never spells out the ‘if eligible’ part.” While appellant’s plea petition references work release without mention of “if eligible,” the state did not make any mention of work release as a term of the agreement at the plea hearing. Moreover, the prosecutor never agreed to an unconditional promise of work release. Additionally, even after all parties, and the district court, were aware of the unavailability of work release at the time of sentencing, appellant did not object or move to withdraw her guilty plea and, ultimately, the initial warrant of commitment did not include work release. We conclude that appellant has not met her burden to demonstrate that work release amounted to a promise made by the state as part of the guilty-plea agreement.²

Further, the alleged “promise” of work release in appellant’s case is similar to one related to parole eligibility in a recent case decided by this court. *See State v. Bell*, 971 N.W.2d 92 (Minn. App. 2022), *rev. denied* (Minn. Apr. 27, 2022). Bell argued that his guilty plea was involuntary because it was based on an unfulfillable promise by the district court. *Id.* at 104-05. The district court provided Bell with “incomplete information regarding the department’s parole decision-making process” during the plea hearing, but

² Appellant also seems to assert that her plea agreement is analogous to a contract and that the principles of contract law dictate whether the plea agreement has been fulfilled. *See In re Ashman*, 608 N.W.2d 853, 858 (Minn. 2000) (“In Minnesota plea agreements have been analogized to contracts . . .”). Because we conclude that work release was not a promise, we are not persuaded by analogizing work release to a term in a contract.

this court concluded that the “incomplete information” did not “amount[] 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.” *Id.* Similar reasoning applies here. The state asserts that any work-release term within a plea agreement is universally understood to be conditioned on eligibility. Therefore, the work-release component of appellant’s plea agreement was not a promise and simply included “incomplete information” that was unobjected to by appellant at both the plea hearing and at sentencing.

Because we conclude that work release did not amount to an unfulfillable promise, we need not address whether it induced appellant’s guilty plea.

B. Appellant made a knowing and intelligent guilty plea because work release was not a direct consequence of the plea.

Appellant argues that she did not make an intelligent (i.e., knowingly and understandingly made) plea because she did not know that work release was unavailable at the time of her plea and because it is a direct consequence of the plea, her guilty plea is invalid. We are not persuaded.

To assess the intelligence of a plea, courts consider whether the defendant understood the charges, rights, and consequences of the plea. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983); *see Williams v. State*, 760 N.W.2d 8, 15 (Minn. App. 2009), *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). Rather, only direct consequences are relevant. *See id.*

(citing *Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998), *abrogated in part by Padilla v. Kentucky*, 559 U.S. 356, 374 (2010)); *see also Campos v. State*, 816 N.W.2d 480, 485 (Minn. 2012). Direct consequences are those “which flow definitely, immediately, and automatically from the guilty plea—the maximum sentence and any fine to be imposed.” *Alanis*, 583 N.W.2d at 578. Collateral consequences, in contrast, are those which do not punish, “‘serve a substantially different purpose’ than to punish, and ‘are imposed in the interest of public safety.’” *Bell*, 971 N.W.2d at 101 (quoting *Kaiser v. State*, 641 N.W.2d 900, 905 (Minn. 2002)). A defendant’s lack of knowledge about the collateral consequences of their guilty plea “does not render the guilty plea unintelligent and entitle a defendant to withdraw it.” *Taylor*, 887 N.W.2d at 823 (Minn. 2016).

The postconviction court concluded that work release was a collateral consequence because it is only provided “if eligible” and, therefore, appellant’s lack of knowledge about the availability of work release “does not render the guilty plea unintelligent and entitle [appellant] to withdraw it.” *Bell*, 971 N.W.2d 92 at 101 (quoting *Taylor*, 887 N.W.2d at 823). We agree for several reasons.

First, appellant asserts that work release is a direct consequence because an inmate “may serve work release within the correctional facility,” so it is still incarceration. *State ex rel. Huseby v. Roy*, 903 N.W.2d 633, 637 (Minn. App. 2017). *Roy*, however, considered whether an inmate participating in a work-release program had been released from prison to start a five-year conditional-release term. *Id.* at 635. It did not address the validity of a guilty plea. *Id.* at 635. Second, work release is not a consequence “which flow[s] definitely, immediately, and automatically from the guilty plea.” *Alanis*, 583 N.W.2d at

578. Rather, work release is a discretionary decision made by the sentencing court. *See* Minn. Stat. § 631.425, subd. 2 (2022). Third, work release is not a punishment. Rather, work release is referred to as a “privilege.” *See, e.g., State v. Bachmann*, 521 N.W.2d 886, 887 (Minn. App. 1994); *State v. Larson*, 393 N.W.2d 238, 243 (Minn. App. 1986); *State v. Wilwert*, 317 N.W.2d 346, 347 (Minn. 1982).

We conclude that appellant provided a knowing and intelligent plea because she understood the charges, rights, and direct consequences of the plea.

II. Appellant did not receive ineffective assistance of counsel.

Appellant argues that her guilty plea and conviction must be vacated because C.C. provided appellant with ineffective assistance of counsel. We are not persuaded.

Claims of ineffective assistance of counsel in a petition for postconviction relief present mixed questions of law and fact, and appellate courts review the postconviction court’s decision de novo. *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). If appellant makes a successful showing of ineffective assistance of counsel, she has demonstrated a “manifest injustice” requiring plea withdrawal. *See State v. Ellis-Strong*, 899 N.W.2d 531, 541 (Minn. App. 2017).

The Sixth Amendment of the United States Constitution guarantees criminal defendants the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984). We apply the two-prong *Strickland* test to determine whether a defendant received ineffective assistance of counsel. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020). The *Strickland* test requires appellant to prove that: (1) her “counsel’s representation fell below an objective standard of reasonableness” and (2) “there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Zumberge v. State*, 937 N.W.2d 406, 413 (Minn. 2019) (quotations omitted). The claim must satisfy both of the *Strickland* prongs, so if one prong is not met, the claim fails, and we need not apply the other prong. *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016). Because it is dispositive, we address only the second *Strickland* prong. Appellant can show prejudice by demonstrating "a reasonable probability that, but for counsel's errors, [they] would not have pleaded guilty and would have insisted on going to trial." *Campos*, 816 N.W.2d at 486 (citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

Appellant first argues that "she would not have entered a guilty plea had she known that she would not receive work release." She does not cite any legal authority or facts to support this argument, therefore, we do not consider it. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *rev. denied* (Minn. Aug. 5, 1997) (concluding that an inadequately briefed argument is waived on appeal).

Appellant next contends that the evidence shows that she is not guilty. Specifically, she argues that holding her phone at the time of the accident did not violate any law, the state does not have any evidence indicating that she manually used her phone immediately prior to the crash because she may have used a talk-to-text function, and the accident would not have occurred but for *decedent's father's* speeding, as shown by the state's evidence. The record does not support her arguments.

First, appellant's argument is in direct conflict with the testimony she provided at her plea hearing:

THE COURT: Okay. And would you agree with me that based on your text message and your call that you were, in fact, distracted?

THE DEFENDANT: I was distracted.

THE COURT: Okay. And you've indicated already that the result of the crash ended with somebody dying; is that correct?

THE DEFENDANT: Correct.

THE COURT: And you now know that the person that died was a 14 year old; is that correct?

THE DEFENDANT: Correct.

THE COURT: And would you agree with me that you were not only the cause of the crash but you were the cause of his death? Would you agree with me with that?

THE DEFENDANT: Yes.

THE COURT: And would you agree that based on the fact that you were on your phone, and that you did not see the stop sign, that you operated your motor vehicle in a grossly negligent manner? Would you agree with that?

THE DEFENDANT: Yes.

Second, the postconviction court found credible the testimony from both appellant's attorney, C.C., and the prosecutor. We defer to the postconviction court's credibility determinations. *See Miles*, 840 N.W.2d at 201. Further, the record supports their testimony, including: information from interviews with the two surviving victims, three witnesses, and appellant herself; details related to accident reconstruction; data from the vehicles involved; and the results from examination of appellant's cell phone. In sum, appellant has not shown that there is "a reasonable probability" that she would not have pleaded guilty and instead would have insisted on going to trial. *See Campos*, 816 N.W.2d at 486.

III. Appellant's prosecutorial misconduct argument fails.

Appellant argues that the prosecutor committed misconduct by “knowingly offer[ing] the [a]ppellant a program that did not exist and thereby violat[ing] his responsibility to both the [c]ourt and the defense.” We are not persuaded.

When, as here, the appellant failed to object, appellate courts review prosecutorial misconduct under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 296 (Minn. 2006) (stating when defendant fails to object at trial, they generally forfeit consideration of prosecutorial misconduct on appeal, but reviewing court can still address the misconduct under the plain-error doctrine). Plain error consists of (1) an error, (2) that is plain, and (3) affects substantial rights. *State v. Leake*, 699 N.W.2d 312, 327 (Minn. 2005) (citing *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998)). The appellant bears the burden of satisfying the first two prongs of the plain-error test. *Ramey*, 721 N.W.2d at 302. “An error is plain if it was clear or obvious,” and plain error may be demonstrated “if the error contravenes [caselaw], a rule, or a standard of conduct.” *Id.* (quotations omitted).

Because we have concluded that work release did not amount to an unfulfillable or unfulfilled promise by the state, inducement is not at issue. As a result, the prosecutor’s conduct does not clearly contravene any caselaw, rule, or standard of conduct. There was no plain error. Appellant’s claim fails.

IV. The district court followed Minn. R. Crim. P. 15.04.

Appellant argues that the postconviction court erred by determining that the district court followed the rules of criminal procedure because it “failed to honor the unqualified promise contained in the plea agreement that . . . [a]ppellant would serve all 365 days on

‘work release.’” Minnesota Rule of Criminal Procedure 15.04, subd. 3(2), provides the following:

When a plea is entered and the defendant questioned, the district court judge must reject or accept the plea of guilty on the terms of the plea agreement. The court may postpone its acceptance or rejection until it has received the results of a pre-sentence investigation. If the court rejects the plea agreement, it must advise the parties in open court and then call upon the defendant to either affirm or withdraw the plea.

This argument depends on the assumption that work release amounted to an unfulfillable or unfulfilled promise. Because we concluded otherwise above, we discern no error by the district court or in turn by the postconviction court.³

Affirmed.

³ Appellant raises additional issues regarding various alleged errors made by the postconviction court’s findings of fact and conclusions of law. Appellant asserts that the postconviction court erred (1) by citing to two federal cases when it determined that there was no liberty interest or violation under the due-process clause when appellant did not receive work release for approximately a month-and-a-half; (2) by determining that the loss of work release was not the result of any action from the state, appellant, or the district court; (3) by commenting on the prejudice to the state should plea withdrawal be allowed; (4) by making an adverse credibility determination about appellant; and (5) by commenting on whether appellant’s case was “moot.” We have carefully reviewed these alleged errors and conclude that these arguments do not impact any of the above analyses.