

*This opinion is nonprecedential except as provided by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
A21-1727**

Yaasiin Aweis Isxaaq, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 10, 2022
Affirmed
Segal, Chief Judge**

Clay County District Court
File No. 14-CR-17-3896

Cathryn Middlebrook, Chief Appellate Public Defender, Chelsie M. Willett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Brian J. Melton, Clay County Attorney, Moorhead, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this appeal from the denial of his petition for postconviction relief, appellant Yaasiin Aweis Isxaaq argues that the district court erred in denying his request to withdraw his guilty plea to misdemeanor theft. Isxaaq argues that his plea was unintelligent and

therefore invalid because he did not understand the immigration consequences of pleading guilty. We affirm.

FACTS

Isxaaq was born in Somalia and came to the United States as a refugee in 2014. He was convicted of a number of crimes between 2015 and 2017 and, in January 2018, the Department of Homeland Security initiated removal proceedings against him on the grounds that he had been convicted of two or more crimes involving moral turpitude. However, in April 2018, Isxaaq's application for legal permanent resident status was approved, and he was issued a Permanent Resident Card, also known as a green card. The approval meant that his past criminal convictions could not be used against him as a basis for deportation and the removal proceedings were terminated in May 2018.

In October 2018, Isxaaq entered into a plea agreement whereby he agreed to plead guilty to one count of misdemeanor theft and to pay restitution in this case and five other pending theft cases. In exchange, respondent State of Minnesota agreed to dismiss the other five cases. During the plea colloquy, Isxaaq admitted that he stole an item worth \$16.49 from a liquor store. The district court accepted the guilty plea and sentenced Isxaaq to 90 days in jail, with credit for time served, and ordered him to pay a \$50 fine, various fees, and \$139.21 in total restitution. There was no discussion on the record regarding the immigration consequences of Isxaaq's guilty plea.

Isxaaq was subsequently convicted of at least ten other criminal offenses, including three theft convictions in January 2020. Isxaaq was again placed into removal proceedings because he had accrued two or more convictions for crimes involving moral turpitude since

the issuance of his green card in April 2018. An immigration judge ordered Isxaaq deported in March 2020 because of his convictions. Isxaaq was deported to Somalia in January 2021.

Isxaaq filed a petition for postconviction relief in October 2020, seeking to withdraw his guilty plea. The district court held an evidentiary hearing. Isxaaq was the only witness. He testified that his attorney asked him about his immigration status before he pleaded guilty. Isxaaq testified that he was confused and incorrectly told his attorney that his status had been adjusted in 2015 rather than 2018. Based on this incorrect information, the attorney allegedly told Isxaaq that pleading guilty to misdemeanor theft would not have any immigration consequences.¹ Isxaaq also testified that the reason for the misunderstanding was a language barrier and that, if he had understood that the misdemeanor-theft conviction could have deportation consequences, he would not have pleaded guilty.

The district court denied Isxaaq's petition for postconviction relief because Isxaaq "failed to demonstrate that his guilty plea in this particular case is the reason for his deportation." The district court reasoned that Isxaaq's subsequent convictions "would have made him eligible for deportation, regardless of this conviction."

¹ Isxaaq was convicted of two or more crimes involving moral turpitude after 2015, but before his guilty plea in this case. Consequently, if his green card had been issued in 2015, he would already have been deportable based on those convictions.

DECISION

Isxaaq argues on appeal that his guilty plea was unintelligent because he did not understand the immigration consequences of his guilty plea and that the district court thus erred in denying his petition for postconviction relief.² The denial of a petition for postconviction relief is reviewed for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). “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.” *Id.* (quotations omitted). “Assessing the validity of a plea presents a question of law that we review de novo.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

A district court “must allow withdrawal of a guilty plea if withdrawal is necessary to correct a ‘manifest injustice.’” *Id.* at 93 (quoting Minn. R. Crim. P. 15.05, subd. 1). A manifest injustice occurs if a guilty plea is invalid. *Id.* at 94. “To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Id.* And “[t]o be intelligent, a guilty plea must represent a knowing and intelligent choice among the alternative courses of action available.” *Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017) (quotation omitted). “Whether a plea is intelligent depends on what the defendant knew at the time he entered the plea”—including whether the defendant “understood the charges against him, the rights he waived, and the consequences of the plea.” *Id.* (quotation omitted).

² In lieu of filing a respondent’s brief, the state filed a letter stating that it takes no position on this appeal.

Isxaaq argues here that his guilty plea had a clear immigration consequence because federal law provides that “[a]ny alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, . . . is deportable.” 8 U.S.C. § 1227(a)(2)(A)(ii) (2018). And theft is a crime involving moral turpitude within the meaning of the statute. See *Briseno-Flores v. Att’y Gen. of U.S.*, 492 F.3d 226, 228 (3d Cir. 2007); *United States v. Esparza-Ponce*, 193 F.3d 1133, 1136 (9th Cir. 1999). This theft conviction was thus the first of the two “strikes” necessary for Isxaaq to be deported after he was granted permanent resident status. Isxaaq argues that, because he was not aware of this consequence, his guilty plea was unintelligent.

Isxaaq cites to *Padilla v. Kentucky*, 559 U.S. 356 (2010), in support of his argument. In *Padilla*, the Supreme Court held that a criminal defendant’s right to the effective assistance of counsel was violated when counsel failed to advise him that a clear risk of deportation was a consequence of a guilty plea. 559 U.S. at 374. Isxaaq, however, does not argue ineffective assistance of counsel as a basis for withdrawing his guilty plea. His sole contention on this appeal is that his plea was unintelligent. The burden of proving that his plea was unintelligent is on Isxaaq. *Dikken*, 896 N.W.2d at 879.

Based on our review of the record, we conclude that Isxaaq failed to satisfy his burden of proof to demonstrate that his plea was unintelligent. While it may be true that Isxaaq did not receive accurate advice on the potential immigration consequences of his plea, the conviction in this case did not put Isxaaq at immediate risk of deportation. It was

only after Isxaaq accrued a second conviction that Isxaaq was subject to deportation.³ *Cf. Sanchez v. State*, 890 N.W.2d 716, 721 (Minn. 2017) (noting that, in the context of an ineffective-assistance-of-counsel claim, only when “conviction of the charged offense clearly subjects the defendant to removal from the United States[, does] the attorney [have] a constitutional obligation to advise the defendant of this fact before he or she enters a guilty plea”). Even though Isxaaq does not raise an ineffective-assistance-of-counsel claim, the reasoning in *Sanchez* nonetheless supports our conclusion here that, because this conviction did not have the immediate consequence of making him deportable, the inaccurate advice he received did not render his plea unintelligent based on the specific facts of this case.

We also note that we “consider the entire context in which the defendant’s plea of guilty occurred” when reviewing the denial of a request to withdraw a guilty plea. *State v. Lopez*, 794 N.W.2d 379, 382 (Minn. App. 2011) (quotation omitted). Here, Isxaaq had significant prior experience both with the immigration system, having been recently subject to removal proceedings, and with the criminal justice system, having had over 20 criminal convictions prior to his guilty plea in this case. *See State v. Wiley*, 420 N.W.2d 234, 237 (Minn. App. 1988) (stating that the fact that the defendant “had extensive exposure to the criminal justice system” prior to the guilty plea was “a factor which may be considered in determining whether a guilty plea is knowing and intelligent”), *rev. denied* (Minn. Apr. 26,

³ The record shows that Isxaaq was convicted of at least ten offenses after his guilty plea in this case—but before removal proceedings were initiated—including three theft offenses in January 2020.

1988). In light of this context, we conclude that Isxaaq has failed to demonstrate that the district court committed reversible error in denying his petition for postconviction relief.

In reaching this conclusion, we do not intend to diminish the significance of the risk of deportation or the importance of a defendant's right to accurate advice concerning such risks. Our conclusion is based on the nature of the argument presented and the particular facts of this case.

Affirmed.