

*This opinion is nonprecedential except as provided by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
A24-0286**

State of Minnesota,
Respondent,

vs.

Noah Steven Sovde,
Appellant.

**Filed November 12, 2024
Reversed and remanded
Worke, Judge**

Beltrami County District Court
File No. 04-CR-22-2252

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

David L. Hanson, Beltrami County Attorney, Ashley A. Nelson, Assistant County Attorney, Bemidji, Minnesota (for respondent)

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

Considered and decided by Larson, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his first-degree criminal sexual conduct conviction, arguing his guilty plea was involuntary. Because the state breached the terms of the plea agreement,

we reverse the conviction and remand to the district court for further proceedings consistent with this opinion.

FACTS

In July 2022, respondent State of Minnesota charged appellant Noah Steven Sovde with first-degree criminal sexual conduct, pursuant to Minn. Stat. § 609.342, subd. 1a(e) (Supp. 2021), with reference to Minn. Stat. § 609.342, subd. 2(a) (Supp. 2021). The state subsequently filed a *Blakely* notice indicating its intent to seek aggravated sentencing.

On August 28, 2023, the parties informed the district court that a plea agreement had been reached. At his August 31 plea hearing, Sovde pleaded guilty, and in exchange the state agreed to withdraw the *Blakely* motion and recommend a 216-month sentence. At the sentencing hearing, the state recommended “17 years actual time” in prison, rather than the 216-month sentence it agreed to recommend at the plea hearing. The district court imposed a sentence of 360 months. This appeal followed.

DECISION

Sovde argues he must be allowed to withdraw his guilty plea because the state failed to fulfill the terms of the plea agreement, making his plea involuntary and therefore invalid.

A defendant is entitled to withdraw a guilty plea when “withdrawal is necessary to correct a manifest injustice.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010) (quoting Minn. R. Crim. P. 15.01, subd. 1). “A manifest injustice exists if a guilty plea is not valid.” *Id.* A guilty plea is not valid unless it is “accurate, voluntary, and intelligent.” *Id.* The validity of a plea is “a question of law that we review de novo.” *Id.*

“[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Santobello v. New York*, 404 U.S. 257, 262 (1971). “When a guilty plea is induced by unfulfilled . . . promises, the voluntariness of the plea is drawn into question,” and due process requires that the defendant be allowed to withdraw the plea. *State v. Wukawitz*, 662 N.W.2d 517, 526 (Minn. 2003). “On demonstration that a plea agreement has been breached, the court may allow withdrawal of the plea.” *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000).

In Minnesota, a felony “sentence” has two components: (1) a specified minimum term of imprisonment, and (2) a specified maximum term of supervised release. Minn. Stat. § 244.01, subd. 8 (2022); *State ex rel. Peterson v. Fabian*, 784 N.W.2d 843, 846 (Minn. App. 2010). The term of imprisonment is equal to two-thirds of the offender’s sentence and is the minimum duration of the offender’s incarceration. Minn. Stat. § 244.01, subd. 8 (2022); Minn. Sent’g Guidelines 1.B.7 (Supp. 2021).

At his plea hearing, Sovde agreed to plead guilty in exchange for the state’s unqualified promise to recommend a sentence of 216 months.

DEFENSE COUNSEL: Mr. Sovde will be pleading to the charge to the sole count of criminal sexual conduct in the first degree for sexual contact under the age of 14. And the agreement is for 216 months.

. . . .

THE COURT: And that’s going to be the recommendation to the Court for a sentence?

DEFENSE COUNSEL: Yes, Your Honor.

THE COURT: Okay. . . . and is that correct [prosecutor]?

PROSECUTOR: That's correct, Your Honor. The state has agreed to waive Blakely and agreed to recommend 216 months. . . .

. . . .

THE COURT: They have calculated . . . a 216 month[] prison sentence. And that's what they will be recommending to me - for sentencing. Is that your understanding?

SOVDE: Yes.

However, at Sovde's sentencing hearing, the state recommended "17 years *actual time*."

(Emphasis added.) Sovde argues the state's recommendation breached the plea agreement.

We agree.

By recommending "*actual time*," the state recommended a term of imprisonment, *not* a sentence. (Emphasis added.) And because a 17-year term of imprisonment is two-thirds of a 306-month sentence, the state's recommendation exceeded the 216-month sentence it agreed to in exchange for Sovde's guilty plea. Thus, the state breached the plea agreement and Sovde is entitled to withdraw his plea.

Because we conclude that the state breached the plea agreement, and Sovde's plea is therefore involuntary and invalid, we reverse and remand to the district court for proceedings consistent with our opinion and we need not reach the additional arguments Sovde raises on appeal.

Reversed and remanded.