

*This opinion is nonprecedential except as provided by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
A24-2020**

State of Minnesota,
Respondent,

vs.

James Paul Aery,
Appellant.

**Filed March 16, 2026
Affirmed
Connolly, Judge**

Beltrami County District Court
File No. 04-CR-23-1388

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

David L. Hanson, Beltrami County Attorney, Michael V. Mahlen, Assistant County Attorney, Bemidji, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the decisions of the postconviction district court judge not to recuse himself to avoid the appearance of bias and not to allow appellant to withdraw his guilty plea. In the alternative, appellant argues that the district court abused its discretion

by denying appellant's motion for a durational departure. Because we see no abuse of discretion in any of these decisions, we affirm.

FACTS

In December 2020, this court reversed appellant James Paul Aery's conviction of fifth-degree drug possession on the ground that the evidence of drugs on appellant's person should have been suppressed because the circumstances were not sufficient to give rise to the suspicion that appellant had constructive possession of drugs, so law enforcement lacked probable cause to arrest him, and the search of his person was unlawful. *State v. Aery*, No. A19-1845, 2020 WL 7134872 (Minn. App. Dec. 7, 2020). Appellant had already spent 21 months in confinement as a result of the conviction.

In November 2022, appellant James Paul Aery, who was a predatory offender and required to register his address, left jail without providing a permanent address and did not follow the requirement that such individuals check in every week. He was on warrant status as a result. In May 2023, he was charged with one count of failure to register as a predatory offender and three counts of felony assault. He had previously been convicted of numerous felonies, including several assaults, and his criminal history score was nine. The same district court judge whose conviction of appellant had been reversed in 2020 was assigned to this case. He set bail at \$150,000 without conditions or \$100,000 with conditions.

In February 2024, appellant posted bond; the district court ordered the bond forfeited when appellant failed to appear as scheduled in March 2024. Appellant did appear later in March, but again failed to appear in June 2024. After another warrant was issued,

appellant appeared; the district court set bail at \$250,000 without conditions or \$150,000 with conditions.

In August 2024, appellant pleaded guilty to failure to register as a predatory offender; in September 2024, he filed a notice of motion and motion for a downward durational departure. He was sentenced to 31 months in prison, which was near the bottom of the presumptive range in the sentencing guidelines. He filed a notice of appeal, but moved to stay the appeal for postconviction proceedings in district court, and appeared before the same judge who had denied postconviction relief. His postconviction motion included a challenge to the validity of his guilty plea.¹ Appellant then moved to dissolve the stay and reinstate this appeal. He argues that the district court judge abused his discretion in not recusing himself, in denying appellant's motion to withdraw his guilty plea, and in denying appellant a durational departure.

DECISION

The denial of a petition for postconviction relief is reviewed for an abuse of discretion. *Ferguson v. State*, 645 N.W.2d 437, 446 (Minn. 2002).

1. The District Court's Decision Not To Recuse

A judge “shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned.” *Troxel v. State*, 875 N.W.2d 302, 314 (Minn. 2016) (quoting Minn. R. Jud. Conduct 2.11(A)). “A judge is disqualified for a lack of impartiality under Rule 2.11(a) if a reasonable examiner, from the perspective of an

¹ It does not appear that appellant ever filed a separate motion to withdraw his guilty plea.

objective layperson with full knowledge of the facts and circumstances, would question the judge's impartiality." *Id.* (quotations and citations omitted).

Appellant argues first that the district court judge's refusal to discuss this court's 2022 reversal of his earlier conviction during a hearing in this case because it was "not [then] before the court" indicated the judge's lack of impartiality. At that hearing, this exchange occurred:

The Judge: Do you have any other questions that I can answer?

Appellant: Yeah . . . my motion for compensation² for overturning that 21 months that I sat [in confinement].

Prosecutor: Judge, I'm going to object. We're no longer talking about the case at hand. So this is all . . .

Appellant: Whoa. He got p----- at that.

The Judge: Okay. So, yeah.

Appellant: He's getting brawly. Why you so upset?

The Judge: That's not before us here today. So, do you have any questions about these two charges [that are before us]?

Appellant: No. I just wanted to know [why I] haven't been compensated for my 21 months wrongfully sat yet.

The Judge: Well, you can talk to your attorney about that, I guess.

Appellant: Ask me, I'm talking to myself about that I guess, then.

² He actually said "competition," but compensation can be inferred.

The Judge: All right. Good luck.

Appellant: Thank you, [Prosecutor,] for not answering me but answering that. You seem kind of upset.

This exchange shows that it was the prosecutor, not the district court judge, who first objected to appellant's efforts to discuss a matter that had nothing to do with the prosecutor, the district court judge, or the denial of appellant's postconviction petition in this matter.

In his affidavit supporting the postconviction petition, appellant said:

14. I appeared before [this district court judge] for most of my court appearances on both cases.

15. I think [this judge] should have recused himself due to his actual bias or because others may have perceived him to be biased against me based on our shared history.

....

17. [He] presided in that case, and he sent me to prison for drugs found in a car that were not mine.

18. I was wrongly convicted and sentenced to 21 months in prison.

19. I feel that [this judge] was biased toward me in this proceeding or that his actions against me could be perceived to be biased because of that case that was overturned on appeal.

Appellant offers no support for his implied view that any judge whose conviction of a defendant is reversed by this court is permanently biased against the defendant in that case.

Appellant also argues that the amount of bail the district court judge set showed his prejudice against appellant. The amount of bail is discretionary with the district court. *State v. Huber*, 148 N.W.2d 137, 140 (Minn. 1967). Appellant implies that bail was set only for the charge of his failure to register, describing himself as "an indigent criminal

defendant in a non-person offense[.]” He does not mention: (1) the three felony assaults with which he was also charged that were person offenses; (2) the fact that he had numerous prior felony convictions, several of them for assault; (3) his history of failing to appear in court; or (4) his failure to turn himself in, although he knew he was on warrant. These circumstances would have been likely to influence the judge’s decision on the appropriate amount of bail. While the bail may have seemed excessive to appellant, an ”objective lay person with full knowledge of the facts and circumstances” of appellant’s situation would not have seen those amounts as indicative of the judge’s prejudice, *see Troxel*, 875 N.W.2d at 314, (quotations and citation omitted), and the judge’s statement in his memorandum that he “set bail and issued warrants throughout [appellant’s] cases as [was] appropriate considering for someone with [appellant’s] history, his cause for public safety concerns, and [appellant’s] penchant for failing to reappear” explain his conduct more convincingly than any alleged prejudice against appellant.

Finally, appellant argues that the judge’s stated refusal to appoint a different public defender if appellant terminated his public defender without making a searching inquiry as to the deficiencies of the defender’s performance was an indication of prejudice. But neither in his brief nor to the district court judge did appellant give any explanation of any deficiency of his public defender’s performance, and a district court’s obligation to conduct a searching inquiry does not arise unless the defendant has provided something other than personal preference as a reason to appoint a different public defender.³

³ And, as respondent points out, defendants are not allowed to choose their own public defenders.

2. Involuntary Guilty Plea

Withdrawal of a guilty plea is allowed before sentencing if it is fair and just to do so, and it is allowed at any time if it is necessary to correct a manifest injustice. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). A manifest injustice exists if a plea is not valid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). To be constitutionally valid, a plea must be accurate, voluntary, and intelligent, and the defendant has the burden of showing that the plea was invalid. *Raleigh*, 778 at N.W.2d 94.

Appellant argues that his plea was involuntary because of ineffective assistance of counsel. Ineffective assistance in the plea-withdrawal context requires first that counsel's representation was unreasonable and second that, but for counsel's errors, the defendant would not have pleaded guilty but would have gone to trial. *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). Appellant argues that his counsel was ineffective because (1) appellant was suffering from a skin ailment and thought the jail would not medicate him properly and (2) appellant felt forced into pleading guilty because bail was set too high and he had been in custody too long in the Beltrami County jail, which was "untenable" for him. His only support for all these statements is his own affidavit, and he makes no attempt to explain why his attorney was responsible for any of them.

Appellant goes on to say that "[e]ven if this court finds that [appellant's] case does not satisfy the tests for ineffective assistance of counsel," it should "find that his plea was involuntary in light of all the other circumstances," which he elucidates as his belief that the district court judge was prejudiced against him. Appellant has not shown that his guilty plea was involuntary or invalid, and we see no manifest injustice.

3. Downward Durational Departure

A refusal to depart from the sentencing guidelines will not be reversed absent a clear abuse of discretion. *State v. Givens*, 544 N.W.2d 774, 776 (Minn. 1996). Appellant said at his plea hearing that he understood sentencing was up to the court. He was sentenced to 31 months in prison. The district court told him, “I do believe that you are getting a significant break at the 31 months, which is a custody point waived and bottom-of-the box” and wrote in his memorandum that “[w]hile the 31-month sentence is greater than [appellant’s] requested 24 months, it is below the presumptive sentence and exactly follows the plea agreement.”

Appellant does not dispute this, but argues that his offense was less serious than the typical registration failure because, although he did not provide his correct address, he “admitted that he screwed up[,]” he broke his ankle, and his mother passed away. But even if all these were true and could have supported a downward durational departure, appellant does not explain why the district court’s decision not to depart was an abuse of discretion, and absent a clear abuse of discretion, the sentence cannot be reversed.

Affirmed.