This opinion is nonprecedential except as provided by Minn.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
A25-0629

State of Minnesota,
Respondent,

vs.

Robbie Garnet Johnson,
Appellant.

Filed July 27, 2026
Affirmed
Ross, Judge

Stearns County District Court
File No. 73-CR-23-8697

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Worke, Judge; and Jesson, Judge.*

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

NONPRECEDENTIAL OPINION

ROSS, Judge

The state's criminal complaint accused Robbie Johnson of theft by swindle for having misled three victims into lending him a total of $870,000 using fraudulent promises of a massive, rapid payoff. After Johnson entered an *Alford* guilty plea, the district court sentenced him to serve 46 months in prison. He unsuccessfully petitioned the district court for postconviction relief, arguing that his guilty plea was unintelligent and involuntary and therefore invalid and, alternatively, that the sentencing court erroneously failed to dispositionally depart from the presumptive prison sentence. On appeal from the decision, we affirm because Johnson's plea was voluntary and intelligent and he never requested a downward sentencing departure, and because, concerning Johnson's supplemental argument, the district court had financial evidence that he did not qualify for court-appointed legal counsel.

FACTS

According to the state's criminal complaint, Robbie Johnson fraudulently induced three investors in 2022 to lend him $350,000, $500,000, and $20,000, respectively, to develop software for his options-trading firm and to invest in other lucrative opportunities. He duped the $350,000 lender into expecting a $700,000 return within six months, the $500,000 lender into expecting a $1,000,000 return within six months (with an additional $4,000,000 bonus), and the $20,000 lender into expecting a $200,000 return in just one month. The lenders got nothing, but Johnson got real estate and vehicles, serviced his personal debt, and completed various home-improvement projects.

The lenders complained and the Minnesota Bureau of Criminal Apprehension (BCA) investigated, discovering that Johnson had invested less than 5% of the funds as promised. The BCA learned that Johnson had altered a screenshot of his $312.00 brokerage account by adding four digits (3866) to misrepresent to the lenders that it was worth "$3,866,312.00." The state charged Johnson with three counts of theft by swindle in violation of Minnesota Statutes section 609.52, subdivision 2(a)(4) (2022). The district court continued the case three times to allow Johnson to retain counsel, but Johnson chose instead to represent himself.

The parties reached a plea agreement. Johnson would enter an *Alford* guilty plea on each count and, if he paid $991,973.93 in restitution before his first sentencing date, the state would join him in requesting a downward dispositional departure. Johnson agreed that, if he failed to fully pay restitution, the state would argue instead for a 34-to-46-month executed prison sentence.

At Johnson's October 4, 2024 plea hearing, the district court seemed stunned by his promise to pay the restitution in full, given his apparent financial struggle to retain legal counsel. After the court asked, "Who can come up with $900,000?" the prosecutor informed the court, "This is something that Mr. Johnson had proposed to us . . . . This is what he told us he's willing to do." The district court pressed directly, "Mr. Johnson, do you honestly think that you can get access to $900,000?" Johnson answered, "I do," and he assured the court that he was working with his employer to secure the funds and could pay the restitution if the district court postponed sentencing for "[l]ike six months." The district court judge advised Johnson that she would not delay sentencing for that long, but added, "I'm going to put sentencing on in three months or four months. And if you've paid a substantial portion, I'm very likely to give you another three months. Because my goal is [to] try and have the alleged victims made whole."

The district court and the prosecutor engaged Johnson in a colloquy during which he testified in a manner indicating he was pleading guilty knowingly, intelligently, and voluntarily, acknowledging and waiving his multiple trial rights, and admitting that the state would present evidence in far greater detail of the facts summarized above. The district court accepted Johnson's guilty plea. It then scheduled sentencing to occur on January 29. And it cautioned, "Mr. Johnson, I strongly encourage you, even if you can't come up with all the money, to make at least monthly payments because that will be a significant factor whether we go to sentencing on January 29th or not." The district court immediately observed, "And for the record, Mr. Johnson is nodding in the affirmative."

Johnson appeared for sentencing as scheduled at the end of January 2025. He implied vaguely to the district court that a Colorado county court had sold real estate that he owned and released the proceeds—$225,000—to one of his victims. But he gave the district court no documentary support for the assertion. The district court summarized, "This is the first I'm hearing, Mr. Johnson, that you owned any land anywhere." Johnson gave no details of the alleged payment, and the record at the time of his sentencing contains no evidence that Johnson directed any funds toward restitution.

The state requested an executed prison term of 46 months, the top of the presumptive-sentence range. The district court sentenced Johnson accordingly. Johnson later unsuccessfully petitioned for postconviction relief, arguing that his *Alford* guilty plea was invalid.

Johnson appeals.

DECISION

Johnson argues on appeal that the postconviction court erroneously denied his petition, contending that his guilty plea was constitutionally invalid because it was neither voluntary nor intelligent. He argues also that the district court abused its discretion by denying his motion for a downward dispositional departure. He argues too that the district court erroneously failed to appoint him counsel. These arguments are uncompelling.

I

Johnson first challenges the decision dismissing his petition for postconviction relief, asserting that his *Alford* guilty plea was invalid because it was neither voluntary nor intelligent. A defendant has the right to withdraw his guilty plea when allowing withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists when, among other things, the plea was not voluntary or intelligent. *Dikken v. State*, 896 N.W.2d 873, 876–77 (Minn. 2017). We review an appellant's plea-validity challenges *de novo*. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). Our *de novo* review of the record of the district court's thorough proceeding raises no apparent concerns about whether Johnson's plea was voluntary and intelligent, and, fatal to his appeal, Johnson presents no actual legal argument as to why we might reach a different conclusion.

Under the heading asserting that Johnson should have been allowed to withdraw his plea because it was not voluntary or intelligent, Johnson's appellate brief spends about two pages outlining the legal standard for valid plea agreements and nearly another page recounting the proceedings in the postconviction court. He then presents his legal argument:

> The court's decision to deny the request without a hearing was an abuse of the court's discretion when Johnson wanted private counsel but could not afford to hire any, did not qualify for the public defender, and "needed" counsel. Johnson told the court that he understood the information presented to him, but he did not. Johnson felt misled as to the results of the plea deal, in that he was told by the court that if he paid a sizeable sum toward the restitution the court would very likely allow him more time to pay. But that was not what happened. And rather than reconsider the issue on post-conviction when Johnson was finally able, with counsel, to provide documentation that there had indeed been a land sale in Colorado, the court denied his post-conviction petition without even a hearing at which Johnson could have offered explanation. Accordingly, Johnson asks this Court to reverse and remand his case with instructions to allow him to withdraw his guilty plea to theft by swindle to prevent a manifest injustice.

We pluck from this passage several representations, but no actual legal argument supporting his assertions bearing on the voluntariness or intelligence of his guilty plea.

Johnson says here that he needed an attorney but was stuck between having too few means to afford one and too many to have one appointed. This says nothing about the voluntariness or intelligence of his guilty plea. He represents also that, although he told the district court that he understood the information in his plea agreement and plea colloquy, he really didn't understand it. This is merely an unsupported assertion rather than a legal argument. And he implies that the district court reneged on its promise to allow him more time to pay the restitution in full "if he paid a sizeable sum toward the restitution," asserting, "[T]hat was not what [later] happened." The accusation against the district court is not an argument supporting his legal assertions, and it is also factually flawed. The record at the sentencing hearing included no evidence establishing that Johnson had paid any restitution at all in the four preceding months despite his representation during the plea hearing that he had arranged with a current employer to pay the restitution. Although he claimed at sentencing that property he owned in Colorado had been sold with the proceeds seized by one or more of the victims, he did not provide any evidence of this until months later, during his postconviction proceedings. None of this bears on the voluntariness or intelligence of his guilty plea. In sum, because Johnson presents no legal argument supporting his invalid-plea assertions, the assertions fail.

II

Johnson's contention that the district court erroneously denied his motion for a downward sentencing departure fails also, but for an even more fundamental deficiency: he never made a motion to depart. The record establishes that the plea agreement contemplated that Johnson would make a departure motion and that the state would join it if Johnson paid the restitution in full by the scheduled sentencing date. The agreement also recognized that if Johnson failed to pay the restitution, he could still unilaterally move for a downward departure unsupported by the state. But not only did Johnson fail to pay his restitution in full and thereby secure the state's support for his departure motion, he failed to even make the motion. At most, he urged the district court at his sentencing to be lenient and allow him more time to pay the restitution. We will not assign error to the district court's having failed to grant a motion it never received.

III

Johnson implies in his supplemental brief that the district court erred by not appointing legal counsel to represent him. The federal and state constitutions guarantee a defendant the right to assistance of counsel in his criminal proceedings. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Court-appointed counsel is limited to defendants financially unable to find representation, *State v. Jones*, 772 N.W.2d 496, 502 (Minn. 2009), meaning that he receives means-tested government benefits or that any combination of liquid assets and income would be insufficient for retaining private counsel, Minn. R. Crim. P. 5.04, subd. 3 (citing Minn. Stat. § 611.17 (2024)). We review the denial of a defendant's application for appointed counsel for an abuse of discretion. *Jones*, 772 N.W.2d at 502. The district court found that Johnson did not qualify for appointed counsel based on his means. It had information that Johnson earned $3,500 monthly, held liquid assets valued at $185,000, and received no public assistance. Given the information about Johnson's financial circumstances, the district court acted within its discretion by not appointing counsel to represent him.

Affirmed.