

*This opinion is nonprecedential except as provided by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
A25-1835**

Mai Vu Vang, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 27, 2026
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-17-30436

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Mary F. Moriarty, Hennepin County Attorney, Eder Castillo, Andrew Markquart, Senior Assistant County Attorneys, Minneapolis, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the postconviction court's denial of her request to withdraw her 2020 guilty pleas to multiple counts of felony theft by swindle. We affirm.

FACTS

In 2017, respondent State of Minnesota charged appellant Mai Vu Vang with six counts of felony theft by swindle, alleging that between 2012 and 2014 she orchestrated an investment-fraud scheme and convinced members of the Hmong community to invest in a Ginseng farm that she allegedly owned in Wisconsin.

In May 2020,¹ the district court held an omnibus hearing in Vang's case. The prosecutor indicated that if Vang's charges were "Hernandized,"² then she would face a 57-month prison term on the "top count." The prosecutor also indicated that there were grounds to seek an upward sentencing departure based on the amount stolen. The prosecutor stated that "the final theft in this instance . . . was \$239,000" and that "between the position of trust and the fact that this was a huge amount, above 35,000, the State would have reason for an upward departure."

In June 2020, Vang pleaded guilty to four of the six charges, and the remaining charges were dismissed. In setting forth the terms of the agreement, defense counsel stated that Vang would "waive her right to a jury trial on the aggravated circumstances, that this is a major economic offense." Defense counsel also stated that the parties had agreed to "a 54-month commit to the Commissioner of Corrections, which is somewhat above what [the] sentence would be" if the convictions were "Hernand[ized] or sentenced consecutively."

¹ The state was unable to locate Vang for several years, and she was ultimately extradited from Georgia.

² In *State v. Hernandez*, the Minnesota Supreme Court addressed the issue of sentencing a defendant for multiple convictions on the same day. 311 N.W.2d 478, 481 (Minn. 1981).

Vang pleaded guilty, submitted a signed petition to plead guilty, and demanded execution of her sentences. The plea petition stated that the prosecutor was seeking an upward durational departure because the offenses constituted a “major economic crime” and that Vang waived her right to a jury trial on the existence of that aggravated sentencing factor. The plea petition also stated—albeit incorrectly—that the agreed-upon 54-month sentence constituted an upward durational departure.

In accordance with the plea agreement, the district court sentenced Vang to concurrent sentences resulting in 54 months’ imprisonment, a sentence within the presumptive sentencing range. Vang completed her executed prison term and the supervised-release portion of that term in October 2024. Vang has not satisfied her outstanding restitution obligation; she still owes her victims nearly one-half million dollars.

In March 2025, Vang petitioned for postconviction relief, seeking to withdraw her guilty pleas. She asserted that she “entered her guilty pleas based on the understanding that she risked receiving a double upward durational departure if she went to trial.” She also asserted that the state failed to provide timely notice of its intent to seek an aggravated sentence, that there was no basis for an untimely notice of intent to seek an aggravated sentence, and that, therefore, “the state would have been foreclosed from seeking an aggravated departure.” Vang claimed that “she did not understand the direct consequences of her guilty pleas, rendering her guilty pleas unintelligent.” Alternatively, she claimed that her “guilty pleas were rendered involuntary because she was coerced into pleading guilty by the false threat that if she went to trial, she risked an aggravated sentence.”

In March 2025, the case came before the postconviction court for an evidentiary hearing. Vang did not appear at the hearing because she was in custody on a federal Immigration and Customs Enforcement hold. Neither Vang nor her trial attorney³ testified at the hearing, and Vang did not submit an affidavit in support of her petition. Yet the state did not oppose Vang’s petition. Instead, Vang’s postconviction attorney and the prosecutor⁴ agreed to the following “factual” stipulations—among others—in support of what essentially had become a joint request for plea withdrawal:

The state did not before the [omnibus] hearing file a notice that it would seek an aggravated sentencing departure as required under criminal procedure rule 7.03.

Ms. Vang’s trial counsel advised her that, if she were to proceed to trial, she would face a possible, if not probable upward departure based on the aggravating factor of major economic offense.

Ms. Vang informed her trial counsel that she wished to plead guilty to four counts of theft by swindle in exchange for dismissal of the remaining two counts and to avoid the risks involved with going to trial, including the possibility of an upward departure.

. . . .

The petition [to plead guilty] provided that, “[t]he prosecutor is seeking an aggravated sentence of [u]pward departure based on major economic crime. Defendant waives right of jury trial on the aggravated circumstances of major economic crime.”

³ Consistent with the language in the parties’ stipulations, we refer to the attorney who represented Vang at her plea hearing as her “trial attorney.”

⁴ Although the document was titled “Parties’ Stipulation of the Facts,” only the attorneys signed the document. Vang did not sign it.

The petition further indicated that “the parties agree[d] to [a] 54-month commit to DOC – which is an upward durational departure.”

....

Ms. Vang completed that sentence, including her supervised release term, on or about October 11, 2024.

....

On March 21, 2025, the state filed an answer to Ms. Vang’s petition. In it, the state affirmatively waived the two-year statute of limitations. It additionally conceded: 1) the state could not have sought an aggravated sentencing departure at sentencing had Ms. Vang been found guilty at trial because timely notice was not give[n] pursuant to rule 7.03; 2) the state did not have good cause to file a late 7.03 notice following Ms. Vang’s May 18, 2020 omnibus hearing; and 3) Ms. Vang’s guilty pleas were not knowing, voluntary, and intelligent and she is entitled to plea withdrawal.

The postconviction court rejected Vang’s assertion that her guilty pleas were unintelligent and involuntary, and it denied her petition seeking plea withdrawal.

Vang appeals.

DECISION

Under Minnesota’s postconviction statutes, a person convicted of a crime may seek relief by filing a petition claiming that the conviction “violated the person’s rights under the Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1(1) (2024). When reviewing a postconviction court’s decision to grant or deny relief, issues of law are reviewed de novo. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

Under the Minnesota Rules of Criminal Procedure, “[a]t any time the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the

satisfaction of the court that withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). “To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Id.* “A defendant bears the burden of showing [her] plea was invalid.” *Id.* Whether a plea is valid is a question of law that we review de novo. *Id.*

Vang contends that she is entitled to plea withdrawal because her pleas were neither intelligent nor voluntary. For its part, the prosecution concedes—as it did in district court—that Vang is entitled to plea withdrawal. That concession is immaterial; we have a responsibility to decide cases in accordance with the law. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990). We therefore turn to the merits of Vang’s request.

“The intelligence requirement ensures that a defendant understands the charges against [her], the rights [she] is waiving, and the consequences of [her] plea.” *Raleigh*, 778 N.W.2d at 96. “Consequences refers to a plea’s direct consequences, namely the maximum sentence and fine.” *Id.* (quotation omitted). Vang argues that her guilty pleas were unintelligent because her defense attorney misinformed her that if she were found guilty of the charged offenses at trial, she could be sentenced to more than 68 months in prison, “that is, to an aggravated departure from the presumptive prison term.” She further argues that due to her attorney’s “misadvice,” she “was not properly informed about the direct consequences of going to trial, and for that reason, she did not make an informed and deliberate decision about whether to accept the state’s plea offer.”

“The voluntariness requirement ensures a defendant is not pleading guilty due to improper pressure or coercion.” *Id.* at 96. “Whether a plea is voluntary is determined by considering all relevant circumstances.” *Id.* Vang argues that her guilty pleas “were coerced by the false threat that she could be sentenced to up to twice what the [sentencing] guidelines allowed.” *See Johnson v. State*, 925 N.W.2d 287, 288 (Minn. App. 2019) (“When a defendant enters a guilty plea in consideration of the state’s threat of a sentence unauthorized by law, the plea is coerced and therefore involuntary and invalid.”).

Vang’s arguments that her guilty pleas were unintelligent and involuntary rest on the assumption that, because the state did not file notice of intent to request an upward durational departure before Vang’s omnibus hearing, a departure was not possible. Again, the state stipulated that it “could not have sought an aggravated sentencing departure at sentencing had Ms. Vang been found guilty at trial because timely notice was not give[en]” and that “the state did not have good cause to file a late . . . notice.”

Minn. R. Crim. P. 7.03 provides that “[t]he prosecutor must give written notice at least seven days before the Omnibus Hearing of intent to seek an aggravated sentence.” However, the rule also provides that “[n]otice may be given later if permitted by the court on good cause and on conditions that will not unfairly prejudice the defendant.” Minn. R. Crim. P. 7.03. “We review the interpretation and application of the rules of criminal procedure de novo.” *State v. Chavez-Nelson*, 882 N.W.2d 579, 586 (Minn. 2016).

We are not aware of any precedent supporting Vang’s assertion that an untimely departure notice automatically precludes a departure. Indeed, Vang does not cite precedential authority supporting that assertion, and she acknowledges that “[t]he rule itself

does not indicate whether failure to comply with the rule precludes the state from seeking an aggravated departure.” Vang relies only on a nonprecedential decision of this court, *State v. Langner*, No. A20-0110, 2021 WL 317970 (Minn. App. Feb. 1, 2021), *rev. denied* (Minn. Apr. 28, 2021).

Nonprecedential opinions of this court are not binding, but they “may be cited as persuasive authority.” Minn. R. Civ. App. P. 136.01, subd. 1(c). The postconviction court soundly distinguished *Langner* and rejected its application here. The postconviction court first noted that, unlike this case, the prosecutor in *Langner* requested an upward durational departure and the district court granted that request, even though the state’s notice of its intent to seek a departure was untimely. 2021 WL 317970, at *1, 4. Second, the postconviction court noted that we reversed Langner’s sentence because the district court granted the state’s departure motion after reviewing submissions regarding the untimely notice without making “a finding of good cause for the state’s untimely submission.” *Id.* at *3. We concluded that, “[b]ecause the district court did not make the required good-cause finding, the district court erred by permitting the state to proceed on its late notice.” *Id.*

The postconviction court accurately summarized the limited persuasive value of *Langner* as follows: “*Langner* is a reminder to district courts to make determinations when filings are offered after the deadlines found in the Rules,” but *Langner* “does not create a blanket ban on late notices related to seeking an upward departure.”

Although our review is de novo, we agree with the postconviction court’s careful consideration of the unique circumstances of this case and its ultimate rejection of Vang’s

request for plea withdrawal. We first note, as did the postconviction court, that the parties “presented a stipulation rather than presenting evidence for the Court to evaluate” and that “stipulation relied on very limited information compared to the complete record.” As the postconviction court explained, “[m]ost importantly, the State agreed to [Vang’s] state of mind at the time of the plea despite her not being available for cross examination” and “[n]either side presented evidence from [Vang’s] trial attorney.” Thus, the parties deprived the postconviction court of the opportunity to judge the credibility of Vang’s allegations regarding her state of mind at the time of her guilty pleas and her attorney’s advice regarding the plea. *See Miles v. State*, 840 N.W.2d 195, 201 (Minn. 2013) (“The postconviction court is in the best position to evaluate witness credibility and so we defer to the court’s credibility determinations.”).

The parties also attempted to limit the postconviction court’s analysis of the legal issues. As the postconviction court noted, “[t]he attorneys stipulated that the State could not have sought an upward departure in this case because notice had not been filed in writing before the not guilty pleas were entered” The postconviction court rejected that assertion for several reasons, including that Minn. R. Crim. P. 7.03 does “not prohibit late filing,” it “require[s] the judge to make findings if the filings are late.”

Like the postconviction court, we are not persuaded that the Hennepin County Attorney would not have filed a request for an upward durational departure if Vang had rejected the plea agreement in 2020.⁵ Indeed, the record indicates that the assigned

⁵ A new Hennepin County Attorney assumed the office in January 2023, over two years after Vang pleaded guilty in this case.

prosecutor intended to do so. Again, at the May 2020 omnibus hearing, the prosecutor informed the district court and Vang that there was a basis to seek an upward sentencing departure, stating: “the final theft in this instance . . . was \$239,000,” and “between the position of trust and the fact that this was a huge amount, above 35,000, the State would have reason for an upward departure.” And, Vang’s June 2020 petition to plead guilty recognized the prosecutor’s intent, noting that the prosecutor was seeking an “upward departure based on [a] major economic crime” and that Vang was waiving her “right to [a] jury trial” on the existence of that “aggravated circumstance of major economic crime.” In sum, the record shows that Vang had actual notice that the state intended to seek an upward durational departure if the case did not settle.

Also like the postconviction court, we will not ignore the entire record based on the attorneys’ stipulations in this case.⁶ See *Abendroth v. Nat’l Farmers Union Prop. & Cas. Co.*, 363 N.W.2d 785, 787 (Minn. App. 1985) (“Where parties do not stipulate that the court is bound to consider only evidence permitted under the stipulation, and where the record is replete with other evidence, such other evidence may be considered.”). The record as a whole does not foreclose the possibility that in 2020, the Hennepin County

⁶ Again, the stipulation is titled “Parties’ Stipulation of the Facts.” Although many of the stipulations are factual, others are not. For example, the state conceded that “Ms. Vang’s guilty pleas were not knowing, voluntary, and intelligent and she is entitled to plea withdrawal.” Whether “Ms. Vang’s guilty pleas were not knowing, voluntary, and intelligent” such that “she is entitled to plea withdrawal” is an issue of law. See *Raleigh*, 778 N.W.2d at 94 (stating that whether a plea is valid is a question of law that we review de novo). If we, as an appellate court, are not bound by the district court’s conclusion on that issue, we do not discern a reason why we—or the district court—are bound by the state’s concession of that legal issue.

Attorney would have filed a late notice of intent to seek an aggravated sentence if Vang had not pleaded guilty. And there is no reason to think that the Hennepin County Attorney would not have offered a showing of good cause and lack of prejudice in an attempt to secure an aggravated departure. Ultimately, whether or not good cause existed to justify untimely notice would have been a determination for the district court to make—not the lawyers.

As to that issue, several months before Vang pleaded guilty, the supreme court filed its decision in *State v. Barthman* and indicated that failure to strictly comply with rule 7.03 is not a basis to reverse if the defendant was not prejudiced by the failure. 938 N.W.2d 257, 268-69 (Minn. 2020). The *Barthman* court held “that the State’s failure to include a summary of the factual basis for the aggravating factors listed in its notice of intent to seek a sentencing departure was not reversible error” because defendant did not show that he was “prejudiced by the lack of a factual summary in the notice of aggravating factors that he was given.” *Id.* at 269. Given that caselaw and a record showing that Vang had actual notice of the state’s intent to seek an aggravated sentence and the grounds on which the state would rely, it is likely that the district court would have allowed a late notice in this case.

In conclusion, the attorneys’ stipulations—filed nearly five years after Vang’s guilty pleas—do not compel a conclusion that the filing and allowance of a late notice of intent to seek an aggravated sentence was not possible in 2020. That possibility eliminates the underpinning for Vang’s claims that her guilty pleas were unintelligent and involuntary. We therefore agree with the postconviction court’s assessment of Vang’s request for plea

withdrawal: Vang was not misled because the state could have pursued an aggravated sentence had she not pleaded guilty. Because Vang's guilty pleas were neither unintelligent nor involuntary, we affirm.

Affirmed.