

*This opinion is nonprecedential except as provided by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
A19-1059**

State of Minnesota,
Respondent,

vs.

Joshua Raymond Armendariz,
Appellant.

**Filed January 11, 2021
Affirmed
Hooten, Judge**

Blue Earth County District Court
File Nos. 07-CR-18-319, 07-CR-17-4136, 07-CR-17-4198, 07-CR-18-5197

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

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Halbrooks, Judge.*

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

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this appeal from the denial of his postconviction petition, appellant claims that he must be permitted to withdraw his guilty plea because the district court violated the plea agreement by imposing consecutive, rather than concurrent, sentences for his multiple convictions. Appellant argues that he did not voluntarily agree as a condition to concurrent sentences that he remain law abiding between the time of his plea and his sentencing hearing, and that, even if he had agreed, the district court erred by concluding that he failed to remain law abiding. We affirm.

FACTS

The charges and guilty pleas

In 2017 and 2018, appellant Joshua Armendariz was charged with multiple offenses in Blue Earth County. He pleaded guilty to the following charges: (1) one count of felony threats of violence, (2) one count of felony domestic assault, (3) a felony violation of a no-contact order, (4) felony fleeing a police officer in a motor vehicle, and (5) a gross-misdemeanor DWI. All remaining charges were dismissed as part of a plea agreement.

The plea petitions and plea hearing

Before the plea hearing, Armendariz reviewed and signed four plea petitions for the four separate matters in which he was entering guilty pleas, describing the terms and conditions of his agreement. All four petitions specified concurrent sentences, but none contained a condition that Armendariz must remain law abiding in order to be sentenced concurrently.

At the outset of the plea hearing, the district court explained that the attorneys “did their best to summarize what the resolution was” before entering the courtroom. The district court stated that he would recite the agreement and instructed Armendariz, “I want you, your attorney and the State to let me know if, ah, you think I understand it correctly.” After detailing the agreement in the signed plea petitions, the district court explained that the concurrent sentencing described in the written agreement was dependent on Armendariz remaining law abiding:

The agreement, as I understand it, would call for all four of these files, ah and five counts to be sentenced concurrently so long as Mr. Armendariz remains law abiding between his re— ah, between his plea and the date he appears for sentencing. Um, if Mr. Armendariz fails to remain law abiding, the State would then, if it so desired, argue that the sentences, either entirely or-or in part, should be sentenced consecutively.

After confirming that each attorney correctly understood the agreement, the district court asked Armendariz, “Mr. Armendariz, you’ve heard me give my recitation. Does that recitation accurately represent your understanding of the resolution?” Armendariz responded, “Yes.” Next, the judge asked Armendariz, “Having heard that, is it your intention and desire to enter into that resolution today?” Armendariz answered, “Yes, it is.”

The district court reviewed Armendariz’s trial rights with him and found his waivers to be intelligent. Then, the district court questioned Armendariz regarding his reasons for entering into the plea agreement, asking, “Do some of those reasons also pertain to the agreement that three of the files will be dismissed . . . and there’s an agreement, contingent on law abiding behavior, that your sentence would be concurrent? Are-are those all

benefits you recognize?” Armendariz replied, “Yes.” After the district court found Armendariz’s waivers to be voluntary, it accepted his guilty pleas. Next, the district court asked Armendariz, “[D]o you feel you understand the significance of the agreement that the sentences, per agreement, would be concurrent so long as you’re law abiding between now and sentencing?” Armendariz replied, “Yes.” The district court then asked Armendariz, “So you understand, to some degree, you’ve got a lot to lose if that doesn’t go that way? Is that correct?” Armendariz responded, “Correct.” Finally, the district court ordered a presentence investigation (PSI).

Presentencing events

Between the plea hearing and sentencing, Armendariz was arrested for failing to complete the PSI. Armendariz was charged with felony violation of a no-contact order for circumstances surrounding the arrest. He was also charged with three felonies and a gross misdemeanor for his behavior in jail following the arrest. The state charged Armendariz for these incidents in district court files 07-CR-19-1307 and 07-CR-19-1099. These matters were unresolved at sentencing.

The PSI report contains the following comments regarding Armendariz’s behavior between the plea hearing and sentencing:

The defendant has been non-compliant with probation, law enforcement, correctional staff, and the Court. On 3/11/2019, an apprehension and detention order was issued by probation for the defendant because of his alleged non-compliance with his conditions of release. On 3/17/2019, the defendant was involved in an 11 hour standoff with law enforcement where he locked himself in a house while he made threatening statements against law enforcement. Currently, the defendant is in custody in the Blue Earth County Jail. The defendant has

been both threatening and assaultive to jail correctional staff. On 3/22/2019, the defendant assaulted a jail correctional officer by throwing a food tray at the officer's head. In addition to assaultive behavior, the defendant caused approximately \$500.00 in damages to the Blue Earth County Jail. The defendant's history of non-compliance and on-going criminal behavior is troublesome. It seems highly likely he will continue to engage in illegal behavior and it is this agent's opinion, the defendant possesses a significant threat to the community if released.

The PSI report also recommended consecutive sentencing.

Nothing in the record suggests that Armendariz sought to withdraw his plea before sentencing.

Sentencing

Armendariz appeared with his defense counsel in district court for sentencing at a combined hearing on the multiple court files. The four files in which Armendariz had entered guilty pleas were set for sentencing, and district court file 07-CR-19-1099, pertaining to the charge for the felony no-contact order violation, was set for an omnibus hearing. The complete record before the district court at the time of sentencing included the record contained in 07-CR-19-1099.

At sentencing, the state provided the following summary of its claim that Armendariz failed to remain law abiding between the plea hearing and sentencing:

[I]mmediately after [Defendant] was released [at his plea hearing,] he went right back to the, ah, residence where he was prohibited from going to. Ah, in fact, he had to be—ah, the tactical team, in fact, had to go to that residence and attempt to get him out of that residence. Additionally, while in jail awaiting sentencing, he's assaulted a custody officer and he now has felony charges for that offense and for the felony DANCO violation that he received while he was out on

custody—ah, while he was out of custody pending sentencing. This [c]ourt was very clear to the defendant and the—the State was very clear to the defendant that if he didn't remain law abiding that we were gonna likely ask for consecutive sentencing. And you informed the defendant—

Armendariz interjected: “Waste of breath, man.” Then, the state continued its summary by stating “that he had to remain in good behavior, and he has not done that.”

The state argued that the PSI recommended consecutive sentencing due to Armendariz's failure to remain law abiding. Defense counsel requested concurrent sentencing:

[W]hen Mr. Armendariz entered his plea it was to the agreement that he would be sentenced to 30 months, um, everything would run concurrent, ah, which would be the sentences in, ah 319, 4198, 4136 and 5197. He is asking the Court to follow that agreement. * * * [H]e is asking the Court to sentence him according to the agreement that was made between the State and himself.

Nothing in the record from the sentencing hearing suggests that Armendariz either challenged the PSI or denied any of the evidence that he had failed to remain law-abiding. Before allocution, the district court asked if there was “any additional record anyone wishe[d] to make before [proceeding to allocution]?” Defense counsel noted Armendariz's attempts to complete the PSI, but made no denial of his failure to remain law abiding. Armendariz then exercised his right to allocution, again entering no denial that he had failed to remain law abiding.

The district court stated that his recollection, notes, and the record reflected that Armendariz's sentences would be concurrent as long as he remained law abiding between the plea and sentence. The district court then sentenced Armendariz to consecutive sentences totaling sixty-nine months and three days.

Postconviction proceedings

Armendariz filed a notice of appeal to this court. We stayed the appeal and remanded the case to the district court for postconviction proceedings. Armendariz then filed a postconviction petition, challenging the voluntariness of his plea. Armendariz argued that (1) the imposition of a 33-month sentence in file 07-CR-17-4136 violated his plea agreement, (2) imposition of consecutive sentencing violated the terms of his agreements, and (3) being charged with a new offense did not violate any conditions of his plea. The postconviction court amended Armendariz's sentence in file 07-CR-17-4136. However, it denied Armendariz's claims that his plea was involuntary by concluding that (1) Armendariz's plea allowed for consecutive sentencing if he failed to remain law abiding, and (2) findings that Armendariz failed to remain law abiding were implicit in, and supported by, the record.

This court dissolved the stay and reinstated Armendariz's appeal.

DECISION

This case requires us to determine whether the postconviction court abused its discretion when it refused to allow Armendariz to withdraw his guilty plea. *Sanchez v. State*, 890 N.W.2d 716, 719–20 (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.” *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017) (quotation omitted). “We review findings of fact for clear error and issues of law de novo.” *Sanchez*, 890 N.W.2d at 720.

I. The district court did not violate the plea agreement by imposing consecutive sentences, rather than concurrent sentences, based upon Armendariz’s failure to remain law abiding between the time of his plea and the sentencing hearing.

Armendariz argues that the district court must allow him to withdraw his guilty plea because his sentence violated the plea agreement. “A defendant has no absolute right to withdraw a guilty plea after entering it.” *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). However, a district court “must allow” a defendant to withdraw a plea at any time if it is necessary to correct a “manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice results from an invalid guilty plea. *Raleigh*, 778 N.W.2d at 94. To be valid, “a guilty plea must be accurate, voluntary, and intelligent.” *Id.* at 94. Whether a plea is valid is a question of law that we review de novo. *Id.* It is the defendant’s burden to show that his or her plea was not valid. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

A. Voluntariness of plea

Armendariz argues that his guilty plea was involuntary because he never agreed to remain law abiding as a condition of concurrent sentencing. He also argues that the district court improperly participated in the plea negotiations by adding a law-abiding condition to the agreement.

“The voluntariness requirement insures that a guilty plea is not entered because of any improper pressures or inducements.” *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (quotation omitted). “A guilty plea is involuntary when it rests in any significant degree on an unfulfilled or unfulfillable promise.” *Uselman v. State*, 831 N.W.2d 690, 693 (Minn. App. 2013) (quotation omitted). If an unqualified promise in a plea agreement is not honored, then the guilty plea may be withdrawn. *Kochevar v. State*, 281 N.W.2d 680,

687 (Minn. 1979). If this court determines that a plea agreement has been breached, it may also “order specific performance, or alter the sentence if appropriate.” *Brown*, 606 N.W.2d at 674. However, when a defendant seeks to withdraw a plea because the sentence deviates from the plea agreement, there is no basis for the withdrawal if the sentence accords with the plea agreement. *See State v. Hamacher*, 511 N.W.2d 458, 460 (Minn. App. 1994).

In determining whether a plea agreement has been violated, we must look at what the parties to the plea bargain “reasonably understood to be the terms of the plea agreement,” which is a question of fact. *Raleigh*, 778 N.W.2d at 96. Courts consider “all of the relevant circumstances” in making this determination. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994) (quotation omitted). Factual findings are reviewed for clear error. *See State v. Robledo-Kinney*, 615 N.W.2d 25, 32 (Minn. 2000). But “[i]ssues involving the interpretation and enforcement of plea agreements” are reviewed de novo. *Brown*, 606 N.W.2d at 674.

Armendariz argues that the plea agreement specified unconditional concurrent sentencing. He contends that the only conditions of the plea agreement were the ones found in the plea petitions and that no conditions were added to the agreement at the plea hearing. Thus, we must determine whether Armendariz’s plea agreement included a condition that he remain law abiding between the time of his plea and the sentencing in order to receive concurrent sentencing.

A guilty plea agreement includes both the terms of a written plea agreement as well as any terms clearly and unequivocally expressed by the parties at a plea hearing. *See In re Ashman*, 608 N.W.2d 853, 858 (Minn. 2000). A defendant, however, must be

questioned on his understanding of the terms of the plea agreement. Minn. R. Crim. P. 15.01, subd. 1. None of the petitions Armendariz signed contained a condition that he must remain law abiding in order to be sentenced concurrently. However, because the plea agreement includes any oral agreements expressed in the plea hearing transcript, we must consider it to determine the parties' understanding of the plea agreement.

This court has previously upheld a guilty-plea agreement, even when the entire agreement was not contained in the written petition and certain terms were agreed to on the record at the guilty-plea hearing. *Hamacher*, 511 N.W.2d at 459–60. In *Hamacher*, the defendant, Hamacher, sought to withdraw his guilty plea after the district court declined to stay the execution of his sentence. *Id.* Hamacher's petition stated that he would receive a stayed sentence if the district court concluded that it was in the best interest of the victim's family. *Id.* at 459. When the district court could not reach this conclusion and executed Hamacher's sentence, Hamacher argued that he should be able to withdraw his plea. *Id.* at 460. The district court denied Hamacher's request, and Hamacher appealed. We concluded that although the petition was ambiguous, "[t]he plea agreement as explained on the record at the guilty plea hearing did not promise Hamacher . . . a chance to withdraw his guilty plea if the sentence were executed." *Id.* Under the district court's reasoning in *Hamacher*, Armendariz's guilty-plea agreement includes terms contained in the petition as well as terms agreed to at the guilty-plea hearing.

Armendariz argues that he never agreed to remain law-abiding as a condition of concurrent sentencing. He contends that he "only indicated that he agreed with a lengthy list of conditions and benefits; he was never asked specifically if he agreed to consecutive

sentencing as a possible outcome for violating the court's new condition." (Emphasis omitted). Armendariz is correct that he was never asked this specific question. However, Armendariz is essentially asking this panel to either misconstrue or ignore the questions that Armendariz was asked and the conditions to which he agreed on the record.

A review of the transcript from the plea hearing confirms that Armendariz agreed to remain law abiding from the date of his plea until he was sentenced in order to receive concurrent, rather than consecutive, sentencing. At three separate points during the plea hearing, Armendariz clearly and unequivocally stated on the record that he understood this obligation. First, the district court asked Armendariz, "Do some of those reasons also pertain to the agreement that three of the files will be dismissed . . . and there's an agreement, contingent on law abiding behavior, that your sentence would be concurrent? Are those all benefits you recognize?" Armendariz replied, "Yes." Second, the district court asked, "Mr. Armendariz, do you-do you feel you understand the significance of the agreement that the sentences, per agreement, would be concurrent so long as you're law abiding between now and sentencing?" Again, Armendariz replied, "Yes." Third, the district court asked Armendariz, "So you understand, to some degree, you've got a lot to lose if that doesn't go that way? Is that correct?" Armendariz responded, "Correct." In these three instances during the plea hearing, Armendariz agreed to remain law abiding as a condition of concurrent sentencing.

Further, the record indicates that the district court informed Armendariz that a violation of the condition could lead to consecutive sentencing when it stated on the record, "[I]f Mr. Armendariz fails to remain law abiding, the State would then, if it so desired,

argue that the sentences, either entirely or-or in part, should be sentenced consecutively.” Armendariz indicated that this statement was an accurate representation of his understanding of the plea agreement. The record is clear that Armendariz agreed to remain law abiding between his plea hearing and the sentencing hearing as a condition of concurrent sentencing, that he knew and understood this condition, and that he was aware that any violation of this condition could result in a consecutive sentence. Thus, Armendariz’s plea includes both the written plea petitions and his oral agreement to remain law abiding as a condition of concurrent sentencing.

Armendariz makes one additional argument regarding whether his plea was voluntary. Specifically, he contends that the district court improperly participated in plea negotiations by adding a law-abiding condition to the agreement.

A district court should not participate in the plea bargaining negotiation itself. *Wheeler v. State*, 909 N.W.2d 558, 564 (Minn. 2018). This principle “is not solely a prohibition on judicial plea offers, promises, or threats. It also prohibits unsolicited judicial comments regarding the propriety of the parties’ competing settlement offers.” *Id.* at 560. Judicial participation includes “generat[ing] and propos[ing] a plea deal not presented by the parties.” *Id.* at 567. But “a judge does not participate in the plea bargaining negotiation by merely inquiring into the status of the parties’ plea negotiations, sharing general sentencing practices, or disclosing nonbinding plea and sentencing information at the joint request of the parties.” *Id.* at 560.

Here, the district court did not participate in the plea bargaining negotiation because it never generated or proposed a plea deal which was not already presented by the parties.

Instead, the district court recited the agreement that the attorneys had previously summarized to him, asking Armendariz and the attorneys to confirm that he correctly understood the agreement. There is no case law suggesting that the mere recitation of an agreement presented by the parties could constitute unlawful participation in a plea bargaining negotiation. Thus, the district court neither improperly participated in the plea negotiations nor independently added a condition to the plea agreement.

Because Armendariz clearly and unequivocally agreed to remain law abiding as a condition of concurrent sentencing, and because there is nothing in the record suggesting that the district court improperly participated in plea negotiations, we hold that Armendariz's plea was voluntary.

B. Failure to remain law abiding

Armendariz argues that even if his plea agreement included a valid clause that required him to remain law abiding prior to sentencing, the district court erred by finding that he failed to comply with this condition. The state argues that “the district court had sufficient evidence to determine [Armendariz] did not remain law abiding as required by the plea agreement.” The parties' disagreement on this issue centers around which burden of proof should be applied. Armendariz contends that a district court determines whether a defendant violates a condition to remain law abiding in a plea agreement using a clear and convincing evidence standard. The state argues that it must only prove that Armendariz failed to remain law abiding by a preponderance of the evidence.

No Minnesota case law has clearly stated the burden of proof to be applied in this situation. However, we need not resolve the parties' burden-of-proof dispute because the

record adequately supports the district court's factual finding that Armendariz failed to remain law abiding even under the clear-and-convincing standard he proposes. The district court reviewed the PSI report describing how probation's investigation revealed that Armendariz had violated the law after his plea. The PSI describes specific instances between Armendariz's plea hearing and sentencing where he threatened and assaulted law enforcement officials and jail staff, in addition to causing approximately \$500 in damages to the Blue Earth County Jail. This evidence, if credited by a factfinder, establishes Armendariz's failure to remain law abiding.

The district court, as the factfinder in this case, assessed the evidence and determined that Armendariz failed to remain law abiding. At the sentencing hearing, neither Armendariz nor his defense counsel made any evidentiary objections to the district court's reliance on the statements contained in the PSI in its finding that Armendariz failed to remain law abiding. And when the district court specifically inquired of Armendariz and his defense counsel as to whether either of them had anything to add to the record regarding whether Armendariz had remained law abiding, neither Armendariz nor his defense counsel disputed the facts as described by probation in its PSI report regarding the crimes.

A defendant who does not object to the admission of evidence waives the right to appeal such admission, even if the evidence should not have been admitted. *State v. Litzau*, 650 N.W.2d 177, 189 (Minn. 2002). Therefore, regardless of the evidentiary standard for finding a violation of the plea agreement, the state met its burden of proof because the statements in the PSI admitted and credited by the district court established Armendariz's

failure to remain law abiding between the plea hearing and sentencing by clear and convincing evidence. Because we conclude that the record supports the district court's finding that Armendariz breached the plea agreement by failing to remain law abiding, we have no basis upon which to permit Armendariz to withdraw his guilty plea.

Affirmed.