STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2051

Douglas Edwin Minor, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 14, 2020
Affirmed
Worke, Judge

Washington County District Court
File No. 82-CR-12-585

Daniel J. Koewler, Charles A. Ramsay, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota; and

John Carlson, Spears, Carlson & Coleman, Washburn, Wisconsin (for appellant)

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

Derek Archambault, Woodbury City Attorney, Eckberg Lammers, P.C., Stillwater, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Worke, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant argues that the district court erred by denying his request to withdraw his guilty plea to gross-misdemeanor driving while impaired (DWI) because he was represented by an unsupervised certified student attorney, making his plea presumptively invalid. We affirm.

FACTS

In December 2012, appellant Douglas Edwin Minor pleaded guilty to third-degree gross-misdemeanor DWI. At his plea hearing, Minor was represented by a certified student attorney from the public defender's office who reviewed the plea petition with Minor in open court.

> Q: Mr. Minor, I'm showing you a document entitled Petition to Plead Guilty in a DWI Gross Misdemeanor or Misdemeanor Case?
> A: Yes.
> Q: We had a chance to talk about this document?
> A: Yup.
> Q: And we went over it and filled in the blanks on this document, correct?
> A: Correct.
> Q: So we went over it and filled in this document together?
> A: Yes.
> Q: And it's a one-page document?
> A: Mm-hmm.
> Q: On the backside is your signature?
> A: Yes.
> Q: Now we had a chance to speak about this document and about how the fact of the rights that you are giving up by proceeding with this plea?
> A: Yes.
> Q: You're giving up the right to a trial?
> A: Yes.

Q: Either by the bench or by a jury?
A: Yes.
Q: You understand that you're giving up the right to have witnesses testify on your behalf?
A: Yup.
Q: Which does come with the subpoena power of the court?
A: Okay.
Q: And you do understand that you have the right to question witnesses against you?
A: Yes.
Q: You have a right to remain silent--
A: Mm-hmm.
Q: Or to testify on your behalf?
A: Yes.
Q: And you do understand that the prosecutor would have to prove that you were guilty beyond a reasonable doubt?
A: Yes.
Q: And that currently you are under the influence of no drugs or alcohol at this time, or suffering from any mental disability or handicap?
A: Correct.
Q: Now we did have a chance to discuss that pleading to this comes with increased penalties?
A: Yes.
Q: This is currently the second one in ten years, correct?
A: Correct.
Q: And you do understand that every time you would receive another one the penalties do increase?
A: Correct.
Q: For example, if you received a third in ten years it would be a gross misdemeanor with a minimum of ninety days in jail?
A: Yes . . . .
. . . .

Q: You do understand a fourth one in ten years would be a felony level which would come with prison time?
A: Yes.
Q: You do also understand that you would face impoundment of the plates?
A: Yes . . . .
. . . .

Q: And you do understand that you would be faced with vehicle forfeiture?
A: Yes.
Q: And you still want to proceed at this point in time?
A: Yes.

Although it was unsigned by the supervising attorney, who did not appear on the record during the plea colloquy, the district court accepted the plea petition, finding that Minor submitted a valid guilty plea. The district court sentenced Minor to 365 days in jail with 335 days stayed for three years.

On September 17, 2019, Minor moved to withdraw his guilty plea, arguing that "he was denied his constitutional right to legal representation" because the certified student attorney was not a licensed attorney at the time he pleaded guilty. The district court denied Minor's request for postconviction relief, concluding that Minor's guilty plea was valid. This appeal followed.

D E C I S I O N

"When reviewing a postconviction court's decisions, we examine only whether the postconviction court's findings are supported by sufficient evidence" and will reverse "only if that court abused its discretion." *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). "A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

Timeliness

As a preliminary matter, the state argues that Minor's motion should be denied as untimely because his two-year timeframe for seeking postconviction relief ended on

December 17, 2014. The statute of limitations to file a postconviction petition is two years from the "entry of judgment of conviction or sentence if no direct appeal is filed." Minn. Stat. § 590.01, subd. 4(a)(1) (2018). The statute-of-limitations defense is not a jurisdictional bar to postconviction relief. *Carlton v. State*, 816 N.W.2d 590, 606 (Minn. 2012). If the state fails to assert the defense, it is subject to forfeiture. *Id.*

Here, although Minor's 2019 motion was untimely, we conclude that the state failed to assert that defense. Nothing in the record indicates that the state raised the timeliness issue in district court. And the state seemingly concedes that it did not raise the issue earlier, claiming that it did not realize that Minor sought to withdraw his guilty plea in a postconviction proceeding. However, the only way to seek plea withdrawal after the time for direct appeal has passed is in a petition for postconviction relief. *State v. Hughes*, 758 N.W.2d 577, 583 (Minn. 2008). Thus, because the state did not assert the timeliness defense in district court, we conclude that the state forfeited the defense and consider the district court's decision on the merits.

Request to withdraw guilty plea

It is unclear whether Minor presents two arguments on appeal: that his plea was not intelligent because he was represented by a certified student attorney, or that his plea is presumptively invalid because of a violation of the student practice rules. As such, we address each argument in turn.

A district court must allow a defendant to withdraw a guilty plea when 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). A valid

guilty plea is "accurate, voluntary and intelligent." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

> The main purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial. . . . The purpose of the voluntariness requirement is to insure that the defendant is not pleading guilty because of improper pressures. The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.

State v. Trott, 338 N.W.2d 248, 251 (Minn. 1983). "If a plea fails to meet any one of these requirements, it is invalid." *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). Whether a plea is valid is a legal question subject to de novo review. *Raleigh*, 778 N.W.2d at 94.

Certified student attorney

Minor argues that his plea was not intelligent. A plea is intelligent when it is knowingly and understandingly made. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). The record demonstrates that Minor's plea was entered intelligently.

Although he was represented by a certified student attorney, Minor was thoroughly advised of the rights he was waiving, the enhanceable nature of the offense, and the possibility of vehicle forfeiture. After reviewing those rights and consequences, Minor stated that he wanted to proceed with pleading guilty. And Minor read and signed the plea petition. Therefore, we conclude that Minor's plea was made intelligently.

But Minor claims that his plea was per se invalid because the certified student attorney was not licensed to practice law. Although there is little caselaw addressing this issue, Minor asserts that a certified student attorney is similar to an "imposter" attorney, or

someone who has never been admitted to the bar. In cases involving "imposter" attorneys, the supreme court has established a per se violation of one's Sixth Amendment right to counsel. *State v. Smith*, 476 N.W.2d 511, 513 (Minn. 1991) (stating that "[i]f counsel has never been a lawyer, never been admitted to the bar, persuasive authority holds that this creates a per se Sixth Amendment violation"). However, in cases in which a once-licensed attorney loses the authority to practice law, there is no per se Sixth Amendment violation, and courts examine such circumstances on a case-by-case basis. *Id.* at 513-14.

Minor's reliance on *Smith* is misplaced. Although certified student attorneys are not admitted to the bar, Minn. Student Prac. R. 1.01 specifically provides that "[a]n eligible law student . . . may, under the supervision of a member of the bar, perform all functions that an attorney may perform in representing and appearing on behalf of . . . any indigent person . . . who is accused of a crime." According to *Smith*, part of the concern with "imposters" is that it "seems incongruous to entrust a person's liberty to counsel in whom the court has formally declared its lack of trust." 476 N.W.2d at 514. But that concern does not apply to certified student attorneys, in whom the court has formally declared a degree of trust through the student certification process. *See* Minn. Student Prac. R. 1.03.

Because certified student attorneys are not the same as "imposter" attorneys, there was no per se violation of Minor's Sixth Amendment right to counsel, and the district court did not abuse its discretion by determining that Minor's plea was valid.

Student practice rules

Minor additionally argues that a violation of the student practice rules occurred when his plea petition was signed by only the certified student attorney and not the supervising attorney.

Minn. Student Prac. R. 1.04(4) provides that a supervising attorney shall "sign all pleadings." A pleading is defined as "[a] formal document in which a party to a legal proceeding . . . sets forth or responds to allegations, claims, denials, or defenses," "[a] system of defining and narrowing the issues in a lawsuit whereby the parties file formal documents alleging their respective positions," or "[t]he legal rules regulating the statement of the plaintiff's claims and the defendant's defenses." *Black's Law Dictionary* 1394-96 (11th ed. 2019). These definitions do not include a rule 15 plea petition. A plea petition is not a "formal document" setting forth the parties' positions of a case, but instead principally explains in writing the plea agreement and a defendant's constitutional rights. Minn. R. Crim. P. 15.03, subd. 2.

It is important to note that, in addition to filling out the petition in this case, Minor's plea agreement and the contents of the petition were also explained to him in open court. *See id.* (providing that "[a]s *an alternative* to the defendant personally appearing in court, the defendant or defense counsel *may* file with the court a petition to plead guilty" (emphasis added)). Because Minor personally appeared in court to plead guilty, we conclude that the filing of the plea petition may not have been necessary.

Minor lastly argues that the certified student attorney was unsupervised at the time he pleaded guilty. Minn. Student Prac. R. 1.04(6) states that a supervising attorney shall

"appear with the student at all . . . proceedings unless the attorney deems his or her personal appearance unnecessary to assure proper supervision. This authorization shall be made in writing and shall be available to the judge . . . conducting the proceedings upon request." However, the student practice rules do not require that the supervising attorney make his or her appearance known on the record.

It is unclear from the record submitted on appeal whether the supervising attorney was present in the courtroom at the time Minor pleaded guilty. Although Minor contends that the certified student attorney was unsupervised, he provided no additional evidence to support his assertion. As such, because the burden of proof in postconviction proceedings is on the petitioner, and because Minor's assertions are without factual support in the record, the district court did not abuse its discretion by denying Minor's motion to withdraw his plea. *See Fagin v. State*, 933 N.W.2d 774, 779 (Minn. 2019) (noting that, "as a general matter, the petitioner has the burden of proof in postconviction proceedings").

Affirmed.