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1. [State v. Alowonle, 2004 Minn. App. LEXIS 283](#)

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State v. Alowonle

Court of Appeals of Minnesota

March 30, 2004, Filed

A03-711

Reporter

2004 Minn. App. LEXIS 283 *; 2004 WL 614566

State of Minnesota, Respondent, vs. Shamusideen Adesegun Alowonle, Appellant.

Notice: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

Prior History: Ramsey County District Court. File No. K5-92-1534. Hon. Marybeth Dorn.

Disposition: Affirmed.

Core Terms

guilty plea, withdraw, deportation, consequences, direct consequence, district court, intelligent, sentence, pistol, vacate, ineffective assistance of counsel, factual basis, immigration, questions

Case Summary

Procedural Posture

In 1992, defendant, a foreign national, pled guilty to the gross misdemeanor of possession of a pistol without a permit. Defendant moved to vacate his conviction on grounds that his attorney failed to inform him that deportation was a consequence of his plea. The Ramsey County District Court, Minnesota, denied relief, holding the motion was untimely, and that defendant's plea was knowing, voluntary, and intelligent. Defendant appealed.

Overview

In 1998, defendant had moved to vacate his conviction for the first time. He was denied relief because the motion was untimely. As in the latter proceeding, the appellate court held that defendant did not meet the timeliness requirement of [Minn. R. Crim. P. 15.05, subd. 1](#), for attempting to withdraw his guilty plea, or to have

his guilty plea vacated. The appellate court also rejected defendant's argument that his plea was involuntary or that counsel was ineffective. At the time of defendant's guilty plea, a defense attorney was under no obligation to inform his client about potential immigration consequences, and there was no credible evidence that his attorney misadvised him. Thus, defendant failed to carry his burden of establishing that his attorney's representation fell below an objective standard of reasonableness. Finally, the record established that defendant's plea was intelligent and voluntary because the record showed he clearly understood all the direct consequences of his plea.

Outcome

The judgment of the trial court was affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > Preliminary Proceedings > Entry of Pleas > Changes & Withdrawals

Criminal Law & Procedure > Preliminary Proceedings > Entry of Pleas > General Overview

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > General Overview

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Changes & Withdrawals

Criminal Law & Procedure > Trials > Judicial Discretion

Criminal Law & Procedure > Sentencing > Corrections, Modifications & Reductions > Time Limitations

[HN1](#)  **Entry of Pleas, Changes & Withdrawals**

It is well settled that once a defendant enters a guilty plea and a court accepts that guilty plea, there is no absolute right to withdraw it. A criminal defendant is permitted to withdraw a guilty plea after sentencing only 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](#). The decision whether to permit the withdrawal of a guilty plea is left to the sound discretion of the district court.

Criminal Law & Procedure > Preliminary Proceedings > Entry of Pleas > Changes & Withdrawals

Criminal Law & Procedure > Commencement of Criminal Proceedings > Interrogation > General Overview

Criminal Law & Procedure > Preliminary Proceedings > Entry of Pleas > General Overview

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > General Overview

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Allocution & Colloquy

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Changes & Withdrawals

Criminal Law & Procedure > ... > Entry of Pleas > Role of Court > Factual Basis

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Knowing & Intelligent Requirement

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Voluntariness

Criminal Law & Procedure > Trials > Burdens of Proof > Prosecution

Criminal Law & Procedure > Postconviction Proceedings > Motions to Vacate Judgment

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > General Overview

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > Guilty Pleas

[HN2](#)  **Entry of Pleas, Changes & Withdrawals**

A valid guilty plea must be accurate, voluntary, and intelligent. A judge need not personally interrogate the defendant prior to acceptance of a guilty plea if defense counsel and the prosecutor establish an adequate factual basis. A proper factual basis must be established for a guilty plea to be accurate. The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he could properly be convicted of at trial.

Criminal Law & Procedure > ... > Firearms Licenses > Holders > Carrying & Concealed Permits

Transportation Law > Private Vehicles > Snowmobiles

Criminal Law & Procedure > ... > Firearms Licenses > Holders > General Overview

Criminal Law & Procedure > ... > Weapons Offenses > Possession of Weapons > General Overview

Criminal Law & Procedure > ... > Possession of Weapons > Unregistered Firearm > Elements

[HN3](#)  **Holders, Carrying & Concealed Permits**

[Minn. Stat. § 624.714, subd. 1](#) (1992) provides that a person who carries, holds or possesses a pistol in a motor vehicle, snowmobile or boat, or on or about the person's clothes or the person, or otherwise in possession or control in a public place or public area without first having obtained a permit to carry the pistol is guilty of a gross misdemeanor.

Criminal Law & Procedure > Preliminary Proceedings > Entry of Pleas > General Overview

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > General Overview

Criminal Law & Procedure > ... > Entry of

Pleas > Guilty Pleas > Voluntariness

[HN4](#) **Preliminary Proceedings, Entry of Pleas**

The voluntariness requirement of a valid plea ensures that the guilty plea is not in response to improper pressure or inducements.

Criminal Law & Procedure > Trials > Burdens of Proof > Defense

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > General Overview

Criminal Law & Procedure > Counsel > Effective Assistance of Counsel > Tests for Ineffective Assistance of Counsel

[HN5](#) **Burdens of Proof, Defense**

In the context of guilty pleas, to obtain relief on the ground of ineffective assistance of counsel, a defendant must prove that: (a) his attorney's representation falls below an objective standard of reasonableness; and (b) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would be different. The defendant bears the burden of satisfying both prongs of the latter Strickland v. Washington test.

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > General Overview

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > General Overview

Criminal Law & Procedure > Counsel > Effective Assistance of Counsel > Pleas

Criminal Law & Procedure > Counsel > Effective Assistance of Counsel > Tests for Ineffective Assistance of Counsel

Criminal Law & Procedure > Trials > Burdens of Proof > Defense

[HN6](#) **Standards of Review, Abuse of Discretion**

In the context of guilty pleas, if a postconviction court finds that a defendant does not carry his burden to establish ineffective assistance of counsel, the appellate court will not overturn that finding if there is sufficient evidence to sustain the postconviction court's findings absent an abuse of discretion.

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Changes & Withdrawals

Criminal Law & Procedure > Preliminary Proceedings > Entry of Pleas > Changes & Withdrawals

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > General Overview

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Knowing & Intelligent Requirement

Criminal Law & Procedure > Defenses > General Overview

Immigration Law > ... > Grounds for Deportation & Removal > Criminal Activity > General Overview

[HN7](#) **Guilty Pleas, Changes & Withdrawals**

Only knowledge of the direct consequences of a plea is required. A defense attorney is under no obligation to inform his client about potential immigration consequences. Ignorance of a collateral consequence, such as deportation by the Immigration and Naturalization Service (INS), does not entitle a criminal defendant to withdraw a guilty plea.

Criminal Law & Procedure > Sentencing > Fines

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > General Overview

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Knowing & Intelligent Requirement

[HN8](#) **Sentencing, Fines**

A guilty plea is intelligent as long as the defendant understands the charges, his rights under the law, and the direct consequences of his guilty plea.

Criminal Law &
Procedure > ... > Reviewability > Waiver > Admission of Evidence

Criminal Law & Procedure > Appeals > Procedural Matters > Briefs

Criminal Law &
Procedure > ... > Reviewability > Preservation for Review > General Overview

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > General Overview

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > Evidence

[HN9](#) **Waiver, Admission of Evidence**

If a defendant fails to make any legal argument or cite authority for his position, the issue is not properly before the appellate court on appeal.

Counsel: Mike Hatch, Attorney General, St. Paul, MN; and Manuel Cervantes, St. Paul City Attorney, Jessica McConaughy, Assistant St. Paul City Attorney, St. Paul, MN (for respondent).

Herbert A. Igbanugo, Blackwell Igbanugo, P.A., Minneapolis, MN (for appellant).

Judges: Considered and decided by Kalitowski, Presiding Judge; Shumaker, Judge; and Minge, Judge. MINGE, Judge (concurring specially).

Opinion by: GORDON W. SHUMAKER

Opinion

UNPUBLISHED OPINION

GORDON W. SHUMAKER, Judge

The district court denied appellant's motion to vacate his conviction of possession of a pistol without a permit and to allow withdrawal of his plea of guilty. Appellant

contends that his attorney failed to inform him that deportation was a consequence of his plea. Because appellant's plea of guilty was knowing, voluntary, and intelligent, was supported by an adequate factual basis, and because his motion is untimely, we affirm.

FACTS

On June 19, 1992, appellant Shamusideen Adesegun Alowonle, a Nigerian national [*2] and a permanent resident of the United States, pleaded guilty to the gross misdemeanor of possession of a pistol without a permit. His attorney negotiated an agreement whereby imposition of sentence would be stayed and the state would not oppose an expungement of the conviction if Alowonle satisfied all probationary conditions.

Six years later, in early 1998, a different attorney representing Alowonle moved to vacate the conviction and to allow Alowonle to withdraw his plea of guilty. This motion was based on the contention that Alowonle did not know that his plea of guilty to this offense would subject him to deportation to Nigeria. Finding that Alowonle was not contending that he was innocent, that the state would be prejudiced if Alowonle was permitted to withdraw his plea, and that neither the court nor Alowonle's defense attorney led him to believe that he "would be free from any immigration consequences," the court denied the motion.

A third attorney for Alowonle moved for reconsideration of the court's denial. The court reconsidered its previous ruling and again denied the motion to vacate the plea, finding that Alowonle's plea "was accurate, voluntary and intelligent and [*3] that he understood the direct consequences of his plea at that time."

After a hearing on March 5, 2003, of Alowonle's fourth motion to reconsider the court's prior rulings, the court held that the motion was untimely; that Alowonle failed to show ineffective assistance of counsel; that deportation is not a direct consequence of his plea and thus his attorney "was not obligated to advise him of any deportation possibility at the time of his plea"; and that a withdrawal or vacation of the plea was not necessary to correct a manifest injustice. The court denied the motion, and this appeal followed.

DECISION

Alowonle argues that he should be allowed to withdraw his guilty plea to prevent a manifest injustice. Alowonle concedes "his right to petition may fall short of the timeliness standard," but asserts that his right

"automatically meets the manifest injustice standard if that plea is constitutionally invalid."

[HN1](#) [↑] It is well settled that once a defendant enters a guilty plea and a court accepts that guilty plea, there is no absolute right to withdraw it. [Shorter v. State, 511 N.W.2d 743, 746 \(Minn. 1994\)](#). A criminal defendant is permitted to withdraw a guilty [*4] plea after sentencing only "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](#). The decision whether to permit the withdrawal of a guilty plea is left to the sound discretion of the district court. [Shorter, 511 N.W.2d at 746](#).

Alowonle's motion to withdraw his guilty plea is not timely because he waited almost six years before he first attempted to withdraw his guilty plea or to have his guilty plea vacated, and he waited approximately four more years before making his second attempt. See [State v. Searles, 274 Minn. 199, 200, 142 N.W.2d 748, 749 \(1966\)](#) (denying motion for withdrawal of guilty plea where three years had passed since conviction); [State v. Weisberg, 473 N.W.2d 381, 383 \(Minn. App. 1991\)](#) (stating motion for withdrawal of guilty plea after 17 months is untimely), *review denied* (Minn. Oct. 11, 1991); [State v. Lopez, 379 N.W.2d 633, 636 \(Minn. App. 1986\)](#) (holding motion for withdrawal of guilty plea made 11 months after sentencing was untimely), *review denied* (Minn. Feb. 14, 1986). Thus, [*5] Alowonle does not meet the timeliness requirement of [Minn. R. Crim. P. 15.05, subd. 1](#).

Because Alowonle does not meet the timeliness requirement, the postconviction court did not abuse its discretion in denying Alowonle's motion to withdraw his guilty plea and to vacate the judgment against him.

Even when we review the merits fully, we reach the conclusion that the postconviction court did not abuse its discretion in denying Alowonle's motion to withdraw his guilty plea. [HN2](#) [↑] A valid guilty plea must be accurate, voluntary, and intelligent. [State v. Trott, 338 N.W.2d 248, 251 \(Minn. 1983\)](#). A judge need not personally interrogate the defendant prior to acceptance of a guilty plea if defense counsel and the prosecutor have established an adequate factual basis. [State v. Nelson, 311 Minn. 109, 110, 250 N.W.2d 816, 817 \(1976\)](#). A proper factual basis must be established for a guilty plea to be accurate. [Beaman v. State, 301 Minn. 180, 183, 221 N.W.2d 698, 700 \(1974\)](#). The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he could properly be convicted of at trial. [Brown v. State, 449 N.W.2d 180,](#)

[182 \(Minn. 1989\)](#). [*6]

Alowonle pleaded guilty to possession of a pistol without a permit, in violation of [Minn. Stat. § 624.714, subd. 1](#) (1992). [Minn. Stat. § 624.714, subd. 1, HN3](#) [↑] provides that a person who carries, holds or possesses a pistol in a motor vehicle, snowmobile or boat, or on or about the person's clothes or the person, or otherwise in possession or control in a public place or public area without first having obtained a permit to carry the pistol is guilty of a gross misdemeanor.

The record shows that Alowonle unequivocally admitted that he possessed a pistol in a public place without a permit and, thus, his plea was accurate.

Alowonle argues his plea was involuntary because his counsel's leading questions failed to properly establish an adequate factual basis. [HN4](#) [↑] The voluntariness requirement of a valid plea ensures that the guilty plea is not in response to improper pressure or inducements. [Alanis v. State, 583 N.W.2d 573, 577 \(Minn. 1998\)](#). [HN5](#) [↑] To obtain relief on the ground of ineffective assistance of counsel, Alowonle must prove that (a) his attorney's representation fell below an objective standard of reasonableness; [*7] and (b) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. [Gates v. State, 398 N.W.2d 558, 561 \(Minn. 1987\)](#) (citing [Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 \(1984\)](#)). Alowonle bears the burden of satisfying both prongs of the *Strickland* test. See [King v. State, 562 N.W.2d 791, 795 \(Minn. 1997\)](#). [HN6](#) [↑] The postconviction court found that Alowonle had not carried his burden to establish ineffective assistance of counsel and we will not overturn that finding if there is sufficient evidence to sustain the postconviction court's findings absent an abuse of discretion. [State v. Rainer, 502 N.W.2d 784, 787 \(Minn. 1993\)](#).

Alowonle contends that the use of leading questions and instructions to Alowonle to answer "yes" or "no" deprived Alowonle of the voluntariness required for a valid plea. Just before offering Alowonle's petition to enter a plea of guilty, his attorney asked him the following and received the responses noted:

Q. Do you have any questions about this petition?

A. No.

Q. Or the charges?

[*8] A. No, I don't.

These were not leading questions but rather were clear invitations to Alowonle to respond with such narrative as he might have desired.

The prosecutor then laid the factual basis for the plea and instructed Alowonle to answer "yes" or "no." As evidence that Alowonle was not induced to agree to any factual inaccuracy, we need only to look to the very first question and Alowonle's response:

Q. On June 1st of 1992, you were in your truck?

A. Car.

Alowonle's correction at the outset reveals both his understanding and his voluntariness in responding to the questions. Finally, after Alowonle's attorney addressed the issue of sentencing, the court asked Alowonle if he wanted to say anything. He said nothing.

Alowonle also contends that because he was not warned of the possible immigration consequences of pleading guilty, he was not fully informed of the consequences of pleading guilty. But [HN7](#)¹ only knowledge of the direct consequences of a plea is required. [Alanis, 583 N.W.2d at 578](#). A defense attorney is under no obligation to inform his client about potential immigration consequences. [Id. at 579](#). Ignorance of a collateral [*9] consequence, such as deportation by the Immigration and Naturalization Service (INS), does not entitle a criminal defendant to withdraw a guilty plea. [Id.](#) In addition, there is no credible evidence that his attorney advised him that he would not be deported.

At the time of Alowonle's guilty plea, a defense attorney was under no obligation to inform his client about potential immigration consequences and there is no credible evidence that his attorney misadvised him. Thus, Alowonle fails to carry his burden of establishing that his attorney's representation fell below an objective standard of reasonableness.¹ Alowonle does not satisfy the first [Strickland](#)-test prong and cannot, therefore, carry his burden of showing ineffective assistance of counsel. We note that Alowonle's counsel was able to obtain a stay of imposition with no jail time, and a small

¹We note that effective January 1999, [Minn. R. Crim. P. 15.01\(10\)\(d\)](#) now provides that the court shall question whether defense counsel has told the defendant and the defendant understands that "if the defendant is not a citizen of the United States, a plea of guilty to the crime charged may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen."

fine, which suggests competent and effective legal representation. The maximum punishment for this crime is \$ 3,000 and up to a year in the workhouse. Because Alowonle fails to carry his burden of establishing ineffective assistance of counsel and fails to point to any other evidence that would show his plea was not voluntary, [*10] we conclude that Alowonle's plea was voluntary.

Alowonle also argues that his guilty plea was not intelligent because he was not warned of the possible deportation consequences of his guilty plea. [HN8](#)¹ A guilty plea is intelligent as long as the defendant understands the charges, his rights under the law, and the direct consequences of his guilty plea. [Id. at 578-79](#). The record on appeal shows that Alowonle knew (1) that he was pleading guilty to a gross misdemeanor offense; (2) that the maximum penalty for that offense was a \$ 3,000 fine and up to one year in the county workhouse, (3) [*11] that the negotiated plea agreement called for a stay of imposition of his sentence, (4) that he would pay a fine of \$ 200, and (5) that he would be required to remain law-abiding. As discussed above, INS consequences are not direct consequences of his guilty plea and, thus, knowledge of possible consequences is not necessary to a valid guilty plea. Alowonle's plea was intelligent because the record shows he clearly understood all the direct consequences of his plea.

We note that Alowonle asserts that the district court "abused its discretion by not giving sufficient weight to newly discovered evidence, which corroborates [his] claim of innocence," [HN9](#)¹ but he fails to make any legal argument or cite authority for his position, and does not identify any newly discovered evidence. Thus, this issue is not properly before this court. See [Balder v. Haley, 399 N.W.2d 77, 80 \(Minn. 1987\)](#) (stating issues not briefed are waived on appeal).

Affirmed.

Concur by: MINGE

Concur

MINGE, Judge (concurring specially)

I agree with the majority that Alowonle does not meet the timeliness requirement of [Minn. R. Crim. 15.05, subd. 1](#), and join in its opinion.

The core issue in this [*12] proceeding is deportation. Alowonle argues that deportation on the facts in this case is draconian. The crime occurred 13 years ago, the sentence was stayed, and there is an assertion that the record was adjusted. Alowonle is searching for relief to avoid deportation and all possible arguments are being made. This appellate court may provide such relief only if the district court abused its discretion or made a legal error. The district court may be able to provide relief if, among other things, defense counsel misled or failed to properly advise Alowonle about the consequences of his guilty plea. Alowonle provides no support from his original defense counsel for his claim of inadequate representation. If, indeed, such representation were deficient in this respect, one would expect that counsel to be forthcoming in this setting. The district court thus had little to work with in providing relief. This appellate court has nothing. Alowonle must find relief in the federal system. We cannot disregard the rules of review in the state criminal justice system to solve an alleged shortcoming in the federal deportation process.

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