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Date and Time: Tuesday, September 26, 2017 12:09:00 PM CST

Job Number: 53982585

Document (1)

1. [State v. Awad, 2007 Minn. App. Unpub. LEXIS 1131](#)

Client/Matter: -None-

Search Terms: 2007 Minn. App. Unpub. LEXIS 1131

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As of: September 26, 2017 6:09 PM Z

State v. Awad

Court of Appeals of Minnesota

November 27, 2007, Filed

A06-2306

Reporter

2007 Minn. App. Unpub. LEXIS 1131 *; 2007 WL 4170822

State of Minnesota, Respondent, vs. Radfan Saleh Awad, Appellant.

Notice: THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

Subsequent History: Review denied by [State v. Awad, 2008 Minn. LEXIS 110 \(2008\)](#)

Habeas corpus proceeding at, Magistrate's recommendation at [Awad v. Cangemi, 2008 U.S. Dist. LEXIS 122751 \(D. Minn., May 6, 2008\)](#)

Prior History: [*1] Itasca County District Court File No. 31-VB-05-3378. Hon. John Hawkinson.

Disposition: Affirmed.

Core Terms

guilty plea, deportation, ticket, consequences, district court, withdraw, fine, intelligently, immigration, firearm, petty misdemeanor, collateral, hunting

Case Summary

Procedural Posture

Defendant sought review of the decision of the Itasca County District Court (Minnesota), which denied his motion to vacate his petty misdemeanor conviction for transporting a loaded firearm.

Overview

Defendant argued that the district court abused its discretion by denying his motion to vacate his 2005 petty misdemeanor conviction for transporting a loaded firearm, asserting that the district court abused its discretion in concluding that his guilty plea was accurate, voluntary, and intelligent. Because

defendant's plea was made accurately, voluntarily, and intelligently, the appellate court affirmed. An affirmative statement made by a defendant's attorney regarding the lack of deportation consequences could have been sufficient to render a guilty plea unintelligent. Although deportation was only a collateral consequence of defendant's plea, being affirmatively misinformed about the collateral consequences of a plea by an attorney could have warranted grounds to withdraw that plea. However, there were no affirmative statements. The district court found that the officer only made statements about what the DNR would not do, but did not speak to any deportation consequences. Ignorance of collateral consequences did not make a plea unintelligent. Deportation, by itself, did not constitute a manifest injustice.

Outcome

The judgment was affirmed.


LexisNexis® Headnotes

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

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

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

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

[HN1](#)  **Procedural Due Process, Scope of Protection**

Once a plea of guilty has been entered, a defendant does not have an absolute right to withdraw that plea. Public policy favors the finality of judgments and courts are not disposed to encourage accused persons to play games with the courts by setting aside judgments of conviction based upon pleas made with deliberation and accepted by the court with caution. Despite a public policy favoring finality, a defendant may withdraw a guilty plea at any time if withdrawal is necessary to correct a manifest injustice, [Minn. R. Crim. P. 15.05, subd. 1](#). A constitutionally valid guilty plea has three requisites: the plea must be accurate, voluntary, and intelligent (i.e., knowingly and understandingly made). The absence of any of the three requisites, if proven by the defendant, results in a "manifest injustice" and allows the criminal defendant to withdraw the plea.

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

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

Criminal Law & Procedure > Postconviction Proceedings > General Overview

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

The accuracy requirement in regard to guilty pleas protects the defendant from pleading guilty to a more serious offense than he could properly be convicted of at trial. A guilty plea will be vacated in a postconviction hearing if a factual basis for the charge is lacking. When the charge is a petty misdemeanor, payment of the fine and signature of the ticket constitutes a guilty plea and a wholesale waiver of rights, including the right to challenge the factual basis on which the charge is based, [Minn. R. Crim. P. 23.03, subd. 3](#). There is no danger of a defendant pleading to a more serious charge than he could have been convicted of when the defendant pled guilty to the petty misdemeanor. The defendant's ability to challenge the factual basis is waived through payment of the fine.

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

[HN3](#) **Guilty Pleas, Voluntariness**

The requirement that a guilty plea be voluntary ensures that a plea is not a response to improper pressure or inducement by law enforcement or the prosecuting authority. Appellant submitted no evidence of any pressure or inducement.

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

Immigration Law > Deportation & Removal > General Overview

Immigration Law > Deportation & Removal > Administrative Proceedings > Hearing Procedures

[HN4](#) **Guilty Pleas, Knowing & Intelligent Requirement**

The requirement that a guilty plea be made intelligently is designed to ensure that the defendant understands the charges, the rights being waived, and the direct consequences of the guilty plea. Direct consequences are those that flow definitely, immediately, and automatically from a guilty plea. Consequences that are not direct and are actions taken by other government agencies are collateral, including deportation consequences. Deportation is "collateral" because immigration consequences are not controlled by Minnesota courts. Ignorance of collateral consequences does not make a plea unintelligent. Deportation, by itself, does not constitute a manifest injustice. It makes sense that deportation is not a direct consequence of the guilty plea because deportation is neither definite, immediate, nor automatic. Before a resident alien can be deported, the INS must exercise its discretion to commence deportation proceedings and, prior to deportation, there are various administrative procedures which must be followed.

Governments > Courts > Judicial Precedent

[HN5](#) **Courts, Judicial Precedent**

Unpublished cases from the Court of Appeals of

Minnesota are not precedential but may be persuasive, [Minn. Stat. § 480A.08, subd. 3\(c\)](#) (2006).

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

Immigration Law > Deportation & Removal > General Overview

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

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

[HN6](#) **Guilty Pleas, Changes & Withdrawals**

Although deportation is only a collateral consequence of an appellant's plea, being affirmatively misinformed about the collateral consequences of a plea by an attorney may warrant grounds to withdraw that plea.

Governments > Courts > General Overview

Immigration Law > General Overview

[HN7](#) **Governments, Courts**

The Court of Appeals of Minnesota is not the proper venue for a challenge to the federal immigration policies.

Counsel: For Respondent: Lori Swanson, Attorney General, St. Paul, MN; and John J. Muhar, Itasca County Attorney, Heidi M. Chandler, Assistant County Attorney, Itasca County Courthouse, Grand Rapids, MN.

For Appellant: Herbert A. Igbanugo, Igbanugo Partners Int'l Law Firm, PLLC, Minneapolis, MN.

Judges: Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Minge, Judge.

Opinion by: HALBROOKS

Opinion

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant Radfan Saleh Awad argues that the district court abused its discretion by denying his motion to vacate his 2005 petty misdemeanor conviction for transporting a loaded firearm. Appellant asserts that the district court abused its discretion in concluding that his guilty plea was accurate, voluntary, and intelligent and his request to withdraw his guilty plea should be granted to avoid a manifest injustice. Because we conclude that appellant's plea was made accurately, voluntarily, and intelligently, we affirm.

FACTS

Appellant is a citizen of Djibouti. Appellant came to this country in 1993 on a B-2 visitor visa and was granted permanent-resident status in 2003. Appellant was first [*2] cited for transporting a loaded firearm on November 20, 2003. He appeared in court and entered a guilty plea on March 9, 2004. The district court issued a stay of adjudication, and appellant was required to pay a fine. Appellant received his second citation for transporting a loaded firearm on November 10, 2005. Appellant signed the ticket and paid a fine, which constituted a guilty plea.¹

On January 27, 2006, Immigration Customs and Enforcement (ICE) charged appellant as removable for violating INA [Section 237\(a\)\(2\)\(C\)](#), which prohibits an alien from carrying a firearm in violation of a law. On March 23, 2006, an immigration judge found appellant removable and stripped him of his permanent-resident status. Appellant appealed to the Board of Immigration Appeals, which dismissed the appeal on June [*3] 8, 2006. On October 26, 2007, the Eighth Circuit Court of Appeals rejected appellant's further challenge to his deportation order.

Appellant does not dispute that he failed to unload his rifle, which led to the 2005 citation. Rather, he alleges that the DNR officer who issued the citation misinformed him as to the deportation consequences. Appellant offered an affidavit to the district court in support of his

¹The court administrator's office mistakenly recorded the charge as a misdemeanor. It should have been recorded as a petty misdemeanor because appellant paid the fine through the mail rather than appearing in court, and no jail time was imposed. While not dispositive here, neither appellant nor respondent could say with certainty that this error has been corrected at the time of this decision.

motion to withdraw his guilty plea that stated:

12. . . . I asked Officer Buria if this ticket would get me into trouble and he told me "No." Officer Buria assured me that the ticket only would stay with the DNR and the only implication would be if I get many tickets like this one, I might not be able to hunt for a few years.

13. Officer Buria also told me that the ticket would not be shared with any other law enforcement agencies, state or federal, and that as long as I paid the ticket I would not get charged with any crimes. I apologized to the Officer and we parted on good terms.

14. A few days later I called the Itasca County District court to inquire into the citation. The Clerk's Office informed me that the ticket was a DNR ticket. I asked if it would go on my criminal record [*4] and the clerk told me "No."

15. I asked if I had to appear before a Judge and the clerk said "No." I was told I could simply pay the fine unless I wanted to challenge the ticket.

16. On November 28, 2005, I paid the minimal fine and assumed the matter was closed. It was less expensive to pay the minimal fine than to travel to the Itasca County Court, a five to six hour drive, to contest the ticket.

Appellant also produced two affidavits from James Kendall and Stanley Formogey, friends with whom he was deer hunting on November 10, 2005, who corroborated that Officer Buria told appellant that the ticket would not be shared with other state or federal governmental agencies. Respondent State of Minnesota submitted an affidavit from Officer Buria stating, in part:

4. To the best of my recollection, I did not make any representations to the [appellant] regarding the reporting of the citation or conviction to any other law enforcement agencies.

5. I can say with confidence that I do not make these sorts of representations to people [to] whom I have issued citations.

6. I have in the past, and might have in these cases, told the [appellant] that these citations will not affect his driver's license [*5] and hunting privileges. If I told [appellant] that the 2005 citation would not affect his hunting privileges, I would have been wrong, because a conviction for the offense of transporting a loaded firearm would cause a suspension of [appellant's] hunting privileges when considering the 2003 offense.

Appellant moved the district court to vacate judgment of

the two firearms convictions that provide the basis for the removal determination. The district court granted appellant's motion regarding the 2004 conviction because the district court failed to elicit the factual basis for appellant's guilty plea on the record at the time of the plea. But the district court denied appellant's motion to vacate the 2005 conviction, concluding that the plea was made accurately, voluntarily, and intelligently. This appeal follows.

DECISION

[HN1](#) [↑] Once a plea of guilty has been entered, a defendant does not have an absolute right to withdraw that plea. [Kaiser v. State, 641 N.W.2d 900, 903 \(Minn. 2002\)](#). "Public policy favors the finality of judgments and courts are not disposed to encourage accused persons to play games with the courts by setting aside judgments of conviction based upon pleas made with deliberation [*6] and accepted by the court with caution." *Id.* (quotation omitted).

Despite a public policy favoring finality, a defendant may withdraw a guilty plea at any time if "withdrawal is necessary to correct a manifest injustice." [Minn. R. Crim. P. 15.05, subd. 1](#). A constitutionally valid guilty plea has three requisites: the plea "must be accurate, voluntary, and intelligent (i.e., knowingly and understandingly made)." [State v. Ecker, 524 N.W.2d 712, 716 \(Minn. 1994\)](#). The absence of any of the three requisites, if proven by the defendant, results in a "manifest injustice" and allows the criminal defendant to withdraw the plea. *Id.* at 715-16. We discuss each requisite in turn as applied to the facts here.

[HN2](#) [↑] "The main purpose of the accuracy requirement is to protect 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 \(Minn. 1989\)](#). A guilty plea will be vacated in a postconviction hearing if a factual basis for the charge is lacking. [State v. Warren, 419 N.W.2d 795, 798 \(Minn. 1988\)](#). Here, appellant made his guilty plea by sending in the signed ticket and accompanying payment. When the charge is a petty [*7] misdemeanor, payment of the fine and signature of the ticket constitutes a guilty plea and a wholesale waiver of rights, including the right to challenge the factual basis on which the charge is based. [Minn. R. Crim. P. 23.03, subd. 3; State v. Aanerud, 374 N.W.2d 491, 492 \(Minn. App. 1985\)](#). There is no danger of appellant pleading to a more serious charge than he could have been convicted of, because appellant pleaded guilty to a petty

misdemeanor. In addition, appellant's ability to challenge the factual basis is waived through payment of the fine. The record therefore supports the district court's conclusion that appellant made an accurate plea.

[HN3](#) [↑] The requirement that a guilty plea be voluntary ensures that a plea is not a response to improper pressure or inducement by law enforcement or the prosecuting authority. [Alanis v. State, 583 N.W.2d 573, 577 \(Minn. 1998\)](#). Appellant submitted no evidence of any pressure or inducement. Although appellant argues that the plea was not voluntary because he was unaware of the consequences of his plea, the fact that another government agency took action contrary to what appellant may have believed would happen does not make appellant's plea involuntary. [*8] See [Alanis, 583 N.W.2d at 578](#) (stating that the actions of an INS agent not under the control of the district court that prevented the defendant from entering a boot-camp program do not negate the voluntariness of defendant's plea). The record supports the district court's conclusion that appellant made a voluntary plea.

[HN4](#) [↑] The requirement that a guilty plea be made intelligently is designed to ensure that the defendant understands the charges, the rights being waived, and the direct consequences of the guilty plea. [Brown, 449 N.W.2d at 182](#). Direct consequences are those that flow definitely, immediately, and automatically from a guilty plea. [Alanis, 583 N.W.2d at 578](#). Consequences that are not direct and are actions taken by other government agencies are collateral, including deportation consequences. *Id.*; see also [State v. Mendoza, 638 N.W.2d 480, 483-84 \(Minn. App. 2002\)](#) ("*Alanis* and its progeny makes it clear that deportation is 'collateral' because immigration consequences are not controlled by Minnesota courts."), *review denied* (Minn. App. 16, 2002). Ignorance of collateral consequences does not make a plea unintelligent. Deportation, by itself, does not constitute a manifest injustice. [*9] [Barragan v. State, 583 N.W.2d 571, 572-73 \(Minn. 1998\)](#).

[I]t makes sense that deportation is not a direct consequence of the guilty plea because deportation is neither definite, immediate, nor automatic. Before a resident alien such as [appellant] can be deported, the INS must exercise its discretion to commence deportation proceedings and, prior to deportation, there are various administrative procedures which must be followed.

[Alanis, 583 N.W.2d at 578-79](#).

Appellant suggests that an unpublished case, [Levkovich](#)

[v. State, C4-03-232, 2003 Minn. App. LEXIS 854, 2003 WL 21694582 \(Minn. App. July 22, 2003\)](#), establishes that if Officer Buria made a misleading affirmative statement, it leads to the conclusion that his plea was not intelligently made. [HNS](#) [↑] Unpublished cases from this court are not precedential but may be persuasive. [Minn. Stat. § 480A.08, subd. 3\(c\)](#) (2006). But *Levkovich* is distinguishable from this case. In *Levkovich*, we held that an affirmative statement made by the defendant's attorney regarding the lack of deportation consequences could be sufficient to render a guilty plea unintelligent. [2003 Minn. App. LEXIS 854, 2003 WL 21694582, at *3](#). [HNG](#) [↑] "[A]lthough deportation is only a collateral consequence of appellant's plea, being affirmatively [*10] misinformed about the collateral consequences of a plea by an attorney may warrant grounds to withdraw that plea." *Id.* (emphasis added). Here, unlike *Levkovich*, there were no affirmative statements. The district court found that Officer Buria only made statements about what the DNR would *not* do, but did not speak to any deportation consequences.

While we conclude that the record supports the district court's denial of appellant's motion to withdraw his guilty plea, we are not unsympathetic to the fact that appellant faces potentially life-altering consequences in federal immigration proceedings as a result of a petty misdemeanor conviction. [HNT](#) [↑] But this court is not the proper venue for a challenge to the federal immigration policies.

Affirmed.

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