STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1088

State of Minnesota,
Respondent,

vs.

Dylan Alexander Domino,
Appellant.

Filed May 27, 2025
Affirmed
Schmidt, Judge

Anoka County District Court
File No. 02-CR-23-7211

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

Brad Johnson, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Johnson, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this direct appeal from a judgment of conviction for stalking, appellant Dylan Alexander Domino argues that (1) she is entitled to a plea withdrawal or sentence modification because her guilty plea was induced by an unfulfilled promise, and (2) the

requirement that she complete a psychosexual evaluation should be vacated because it was not statutorily authorized. Because the record does not clearly reveal the terms of the plea agreement, we conclude Domino is not entitled to reversal of the conviction on direct appeal but may seek postconviction relief. We also conclude that the district court did not abuse its discretion when it required Domino to undergo a psychosexual evaluation. Accordingly, we affirm.

FACTS

Respondent State of Minnesota charged Domino with stalking, harassment by mail, and violating a restraining order. The charges stemmed from several different incidents.

Pursuant to a plea agreement, Domino agreed to plead guilty to the stalking offense in exchange for the state dismissing the remaining two counts. The state agreed to a dispositional departure for a stayed "top of the box" guidelines sentence of "51 months." The agreement required Domino to, among other things, complete a mental-health evaluation and a chemical-use assessment. The district court accepted the plea.

A presentence investigation (PSI) report recommended an executed 48-month prison sentence. If, however, the district court departed, the PSI writer recommended a stayed 57-month sentence. The 57-month sentence represented the top-of-the-box duration based upon Domino's correct criminal-history score.

At the sentencing hearing, the victim provided an impact statement detailing the trauma that resulted from Domino's harassment. The prosecutor highlighted concerns about the sexual nature of the messages from Domino and noted the victim's desire for Domino to engage in programming. The prosecutor reiterated that the state agreed to a

downward dispositional sentencing departure and asked the court to follow that agreement. Domino's defense counsel then asked the court to accept the plea agreement, noting Domino's significant mental-health issues and her progress with medication compliance. Domino also addressed the court, stating that she did not remember many of the incidents due to her methamphetamine use and expressing remorse for her actions.

The district court accepted the plea. In sentencing Domino, the court stated:

> Having pled guilty to stalking, the plea agreement was top end of the box. I think the criminal history score we have is a little bit different, so now the top end of the box is 57 months.
>
> It will be the sentence of this Court that I commit you to the Commissioner of Corrections for a period of 57 months. I'll stay execution of that sentence, [and] place you on probation for five years under [numerous] conditions . . . .[1]

The district court ordered Domino to complete a psychosexual evaluation. Defense counsel objected, arguing that "the statute doesn't require [a psychosexual evaluation] for this type of charge." The district court agreed that the statute did not require the evaluation, but did not think the statute prohibited one either.

Domino appeals.

[1] Domino neither objected to the PSI that recommended a top-of-the-box sentence of 57 months, nor objected to the district court's statement at sentencing that 57 months was the proper number based upon the correct criminal-history score.

DECISION

First, Domino argues that she is entitled to withdraw her plea or have her sentence modified because her plea was not voluntary based on the unfulfilled promise of a top-of-the-box 51-month prison sentence. Second, Domino argues that the imposition of a psychosexual evaluation should be vacated because it was not statutorily authorized. We address each argument in turn.

I. Domino is not entitled to withdraw her plea or have her sentence modified.

Domino challenges the voluntariness of her plea, arguing that she was induced to plead guilty by the promise of a stayed 51-month sentence, but she actually received a stayed 57-month sentence. The state argues that Domino's guilty plea was valid because she agreed to the stayed execution of a top-of-the-box sentence.

A defendant may challenge the validity of a guilty plea for the first time on direct appeal. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). To be "valid, a guilty plea must be accurate, voluntary, and intelligent." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The appellant bears the burden of proving that her guilty plea is invalid. *Id.* "Assessing the validity of a plea presents a question of law that [appellate courts] review de novo." *Id.*

Domino only challenges the voluntariness of her plea. In determining whether a guilty plea was voluntary, appellate courts "examine[] what the parties reasonably understood to be the terms of the plea agreement." *Id.* at 96. A guilty plea is not voluntary if it was based on "any improper pressures or inducements." *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (quotation omitted).

Domino argues that her guilty plea rested on the unfulfilled promise of a stayed 51-month sentence. The state counters that Domino voluntarily agreed to a stayed top-of-the-box sentence, which changed only because an accurate criminal-history score was used.

Because both interpretations of the plea are reasonable, we determine that the plea agreement is ambiguous. Since "the record does not clearly reveal the terms of the plea agreement," Domino "is not entitled to reversal of the conviction" in this direct appeal. *See State v. Arola Johnson*, 999 N.W.2d 103, 109-10 (Minn. App. 2023) (holding lack of clarity of plea precluded evaluation of appellant's claims on appeal). Domino, however, may petition for post-conviction relief within the statutory timeframe, which would permit the development of "a factual record concerning the terms of the plea agreement." *Id.* at 109.

II. The district court acted in its discretion by ordering a psychosexual evaluation.

Domino also challenges the district court's requirement that she complete a psychosexual evaluation. Appellate courts "afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion." *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted).

Domino argues that Minn. Stat. § 609.3457, subd. 1 (2024)—requiring the district court to order an assessment of the need for sex offender treatment for a person convicted of a sex offense—is inapplicable to Domino's stalking conviction because it is not a sex offense. Domino argues that the stalking statute—Minn. Stat. § 609.749, subd. 5 (2022)—does not authorize a district court to order a psychosexual evaluation. We disagree.

The district court did not order the psychosexual evaluation pursuant to Minn. Stat. § 609.3457, subd. 1, as Domino argues. Instead, the district court ordered the psychosexual

evaluation as a condition of probation. *See* Minn. Stat. § 609.135, subd. 1(a)(2) (2024) (allowing a district court to impose probation on "terms [it] prescribes, including intermediate sanctions"); *id.*, subd. 1(b) (2024) (stating that "intermediate sanctions" include "mental health treatment or counseling")

We addressed a similar issue in *State v. Meredith*. No. A06-2234, 2008 WL 942616 (Minn. App. Apr. 8, 2008).[2] In *Meredith*, the appellant contended that the district court lacked the authority to require him to undergo a psychosexual evaluation after it convicted him for child endangerment, which is not a sex offense under Minnesota statute. *Id.* at *3. We rejected appellant's argument because the district court properly exercised its discretion by ordering the psychosexual evaluation as a condition of probation under section 609.135, subdivision 1(a)(2). *Id.* We concluded that the psychosexual evaluation was an intermediate sanction under subdivision 1(b) of that statute. *Id.* at *3-4.

Here, the court stayed execution of Domino's 57-month sentence and placed her on probation for five years under multiple conditions, including that she complete a psychosexual evaluation. As we determined in *Meredith*, a psychosexual evaluation constitutes "mental health treatment or counseling" under section 609.135, subdivision 1(b). Because the district court properly ordered the psychosexual evaluation as an intermediate sanction under section 609.135, subdivision 1(a)(2)—rather than a sex-offender assessment under section 609.3457, subdivision 1—it did not abuse its discretion.

Affirmed.

[2] We cite this nonprecedential opinion for its persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).