**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-337**

State of Minnesota,
Respondent,

vs.

Gary Lee Hanson,
Appellant.

**Filed February 21, 2012**
**Reversed and remanded**
**Bjorkman, Judge**

Dakota County District Court
File No. 19HA-CR-10-2139

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and Huspeni, Judge.*

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

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

**BJORKMAN**, Judge

Appellant challenges his conviction of failure to register as a predatory offender, claiming that he is not required to register and the factual basis of his guilty plea is inadequate to support his conviction. We hold that (1) the record is inadequate to determine whether appellant is required to register as a predatory offender and (2) the factual basis of his plea is inadequate to support his conviction. We therefore reverse and remand.

## FACTS

In 1996, appellant Gary Lee Hanson was charged with rape, misdemeanor indecent exposure, and first-degree burglary in California. The rape charge was dismissed, but appellant was convicted of misdemeanor indecent exposure and first-degree burglary. On this basis, appellant is allegedly required to register as a predatory offender in Minnesota.

Appellant moved to Minnesota in 2004 and registered with the Minnesota Bureau of Criminal Apprehension (BCA) as a predatory offender. In February 2009, he was incarcerated for domestic assault. He was paroled in January 2010 and registered his change of address with the BCA in February 2010. In April 2010, he moved to the Cochran halfway house in Hastings, allegedly at the direction of his corrections officer, but did not register his new address. When asked by Cochran counselors, appellant twice denied being a sex offender. In June 2010, Cochran informed local police that appellant's corrections officer reported appellant as an unregistered predatory offender.

Police met with appellant, who claimed that he thought his corrections officer had registered his recent change of address, as the officer had done in the past. Appellant's corrections officer advised the police that he had not registered appellant's change of address and that appellant was responsible for doing so. The state charged appellant with failing to register as a predatory offender.

Appellant pleaded guilty. The transcript of the guilty plea hearing reveals that the parties and the district court believed that appellant was required to register because he had been convicted of a crime in California arising out of the same set of circumstances for which he was initially charged with rape, and he violated the registration statute by lying to Cochran counselors about his status as a sex offender. Accordingly, appellant testified that he (1) knew he was required to register as a predatory offender, (2) never notified the BCA of his new address, and (3) falsely told Cochran counselors that he was not a convicted sex offender. The district court accepted appellant's plea and convicted him of the charged offense. This appeal follows.

**D E C I S I O N**

Minn. Stat. § 243.166 (2010) classifies certain criminals as predatory offenders and requires them to register their addresses and other information with the BCA or a corrections officer. Predatory offenders who knowingly violate the registration requirements or intentionally provide false information to a corrections agent, law enforcement authority, or the BCA are guilty of a felony. Minn. Stat. § 243.166, subd. 5(a). Appellant argues that he is not required to register as a predatory offender because neither his out-of-state criminal charges nor his out-of-state convictions qualify him as a

predatory offender. Because our decision turns on the interpretation of Minn. Stat. § 243.166, we review the district court's implicit determination that appellant is required to register as a predatory offender de novo. *See State v. Anderson*, 733 N.W.2d 128, 135 (Minn. 2007).

## I. The record is inadequate to determine whether appellant is required to register as a predatory offender.

Appellant argues that he is not required to register as a predatory offender because he was not convicted in California of an offense enumerated in Minn. Stat. § 243.166, subd. 1b(a). The state contends that registration is required because appellant's California conviction arises out of the same set of circumstances as the rape alleged in the California complaint. Resolution of this issue turns on the language of the registration statute.

A person with a Minnesota conviction must register if:

> (1) the person was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following, and convicted of or adjudicated delinquent for that offense or another offense *arising out of the same set of circumstances:*
>
> [list of laws prohibiting certain offenses] [or]
>
> (2) the person was charged with or petitioned for a violation of, or attempt to violate, or aiding, abetting, or conspiring to commit [list of laws prohibiting certain offenses], and convicted of or adjudicated delinquent for that offense or another offense *arising out of the same set of circumstances* . . . .

Minn. Stat. § 243.166, subd. 1b(a) (emphasis added). By contrast, a person with an out-of-state conviction must register as a predatory offender if "the person was convicted of

or adjudicated delinquent in another state for an offense that would be a violation of a law described in paragraph (a) if committed in this state." *Id.*, subd. 1b(b).

The state argues that this reference to paragraph (a) broadly incorporates its "arising out of the same set of circumstances" language. We disagree. Where a statute is unambiguous, we must construe it according to its plain language. *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008). Subdivision 1b(b) expressly incorporates offenses that violate "a law described in paragraph (a)" but does not incorporate the entirety of paragraph (a). We do not read subdivision 1b(b) to extend the predatory-offender classification to out-of-state offenders charged with but not convicted of enumerated offenses. To do so would inject uncertainty into the registration requirements, contrary to their plain language. It would also ignore the legislature's choice to define a registration requirement for an out-of-state conviction differently than a requirement based on a Minnesota offense. Thus, an out-of-state offender is only required to register if he was convicted in another state of an offense enumerated in subdivision 1b(a), and not if he was convicted of an offense arising from the same set of circumstances as a charged enumerated offense.

Appellant urges us to conclude that he is not required to register as a predatory offender because the offenses of which he was convicted in California—misdemeanor indecent exposure and first-degree burglary—are not enumerated in subdivision 1b(a). We are not persuaded. *Hill v. State*, 483 N.W.2d 57 (Minn. 1992), guides our analysis. In *Hill*, the issue was whether an out-of-state conviction constituted a felony for purposes of calculating the defendant's criminal-history score. The supreme court rejected the

argument that a sentencing court is constrained to look only at the definition of the out-of-state conviction, stating that a sentencing court should consider both the nature of the offense and the sentence imposed. *Hill*, 483 N.W.2d at 61. As in *Hill*, application of subdivision 1b(b) requires more than simply comparing the names of the out-of-state and Minnesota offenses. Rather, courts must compare the elements of the out-of-state offense and the underlying facts supporting the conviction to the elements of the Minnesota offense. The limited record before us contains no information about the facts underlying appellant's California convictions and the elements of the offenses.[1] Accordingly, we remand to the district court to determine whether appellant's California convictions could constitute any of the offenses enumerated in subdivision 1b(a).

## II. Appellant is entitled to withdraw his guilty plea because it lacks an adequate factual basis.

Appellant argues that even if he was required to register as a predatory offender, the factual basis is inadequate to support his guilty plea. Withdrawal of a guilty plea is warranted where the plea is inaccurate because it is not supported by a factual basis that "establish[es] sufficient facts on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *Munger*, 749 N.W.2d at 337-38. The validity of a plea is a matter of law, which this court reviews de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

First, appellant contends that the factual basis of his guilty plea is inadequate because it fails to show that he violated any of the registration requirements. We agree.

[1] Appellant submitted the California complaint to this court, but because appellant did not file the document with the district court, we ordered it stricken from the record.

A person required to register as a predatory offender must provide written notice of his change of address to his corrections officer or a law enforcement authority, and he must do so in person. Minn. Stat. § 243.166, subd. 3(b). Although appellant admitted that he did not directly notify the BCA of his new address, the statute makes it clear that an offender may register with his corrections agent or the BCA. The question, therefore, is whether appellant *personally* provided his corrections agent or the BCA with *timely written* notice—a question the record does not address. We conclude that the factual basis for appellant's plea is inadequate.

Second, appellant argues that the factual basis does not establish the requisite mens rea to support his conviction. We agree. A person is guilty of a felony if he "knowingly violates any of [the registration] provisions or intentionally provides false information to a corrections agent, law enforcement authority, or the [BCA]." *Id.*, subd. 5(a). Appellant admitted that he intentionally lied to Cochran counselors about his status as a sex offender, but Cochran counselors are not "corrections agent[s], law enforcement authorit[ies], or the [BCA]." Accordingly, appellant's admission that he lied to his counselors does not provide a factual basis for his guilty plea. For this reason, too, we conclude that appellant's guilty plea is invalid.

**Reversed and remanded.**