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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-458**

State of Minnesota,
Respondent,

vs.

Adam Patrick McSorely,
Appellant.

**Filed March 19, 2012
Affirmed
Peterson, Judge**

Ramsey County District Court
File No. 62-CR-10-8124

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

Sara R. Grewing, St. Paul City Attorney, Clifford R. Berg, Assistant City Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Cathryn Y. Middlebrook, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Cleary,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from his conviction of gross-misdemeanor interference with privacy, appellant argues that the district court erred when it denied his motion to withdraw his guilty plea before sentencing. We affirm.

FACTS

Appellant Adam Patrick McSorely was arrested and charged with one count of gross-misdemeanor interference with privacy, a violation of Minn. Stat. § 609.746, subd. 1(a) (2010), and one count of misdemeanor trespassing, a violation of Minn. Stat. § 609.605 (2010). Appellant entered a guilty plea to the interference-with-privacy charge, with the understanding that the trespassing charge would be dismissed and a pre-sentence investigation would be prepared. The agreement was stated on the record and memorialized in a written plea petition.

When he entered his plea, appellant was represented by counsel and advised of his rights, and he indicated that he understood his rights. Appellant also indicated that he previously had been a patient in a mental hospital and had been treated for a mental-health condition, but he had discussed his mental-health history with his attorney and was “in [a] clear mind” and “aware of what [he was] doing.” Appellant admitted that he was on private property looking into the front door of a residence and that he was trespassing. The district court accepted appellant’s plea and ordered a pre-sentence investigation.

At sentencing, appellant moved to withdraw his guilty plea on the basis that he “potentially was experiencing a mental health crisis at the time” he pleaded guilty.

Appellant also asserted that he did not know the meaning of the word “surreptitiously” when he entered his plea, but he looked it up later and discovered that it means “sneakily.” Appellant asserted that he was not being sneaky and argued that he did not admit to being sneaky when he entered his plea. The district court agreed, stating:

You were interfering with the privacy of a complete family. And you were not surreptitious in the way that you did it; you were quite overt, quite aboveboard the way that you were looking into the windows at that time of the morning in a relatively isolated part of Ramsey County.

So to a degree I agree with you that you were not surreptitious; you were quite open in the way you were window peeping.

The district court denied the motion, stating that it was “convinced that [appellant] knew exactly what [he was] doing both at the time of the commission of the crime and at the time that [appellant] entered [his] guilty plea.”

D E C I S I O N

“A defendant does not have an absolute right to withdraw a valid guilty plea.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A district court may grant a defendant’s motion to withdraw a guilty plea before sentencing if the defendant establishes that “it is fair and just to do so.” Minn. R. Crim. P. 15.05, subd. 2; *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). When considering whether withdrawal is “fair and just,” the district court must consider not only the reasons advanced by the defendant, but also any prejudice that granting the motion would cause the state because of its reliance on the guilty plea. Minn. R. Crim. P. 15.05, subd. 2; *Kim*, 434 N.W.2d at 266. A defendant bears the burden of advancing reasons to support withdrawal. *Kim*,

434 N.W.2d at 266. The district court's denial of a motion to withdraw a guilty plea is reviewed for an abuse of discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

Appellant advanced two reasons to support withdrawal of his plea: (1) he was experiencing a mental-health crisis when he entered the plea; and (2) he did not understand what "surreptitiously" means. Regarding the first reason, appellant asked the district court to consider his demeanor in court the day of the plea hearing, and the fact that the pre-sentence investigation indicated that he has a history of mental illness.

At the plea hearing, appellant indicated that he was thinking clearly. The pre-sentence-investigation report indicates that appellant reported a history of mental illness, not that appellant was having a mental-health crisis at the plea hearing. Other than citing to his own behavior at the plea hearing, appellant did not substantiate his assertion that he was having a mental-health crisis at the time he entered the plea. The state did not argue that it would suffer prejudice if appellant were allowed to withdraw his plea. But when no prejudice is shown by the state, the district court does not abuse its discretion in denying a motion to withdraw a guilty plea if the defendant's reasons for withdrawal are not substantiated. *State v. Raleigh*, 778 N.W.2d 90, 98 (Minn. 2010). Because appellant did not set forth any evidence substantiating his assertion that he was having a mental-health crisis at the time he entered his plea, the district court did not abuse its discretion in denying appellant's motion to withdraw his plea for that reason.

Appellant argues that the district court abused its discretion in denying his motion to withdraw his plea because the factual basis for the plea was questionable. A guilty

plea must be accurate. *State v. Batchelor*, 786 N.W.2d 319, 323 (Minn. App. 2010), review denied (Minn. Oct. 19, 2010). “The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he [] could be properly convicted of at trial.” *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

A person is guilty of gross-misdemeanor interference with privacy when the person:

- (1) enters upon another’s property;
- (2) surreptitiously gazes, stares, or peeps in the window or any other aperture of a house or place of dwelling of another; and
- (3) does so with intent to intrude upon or interfere with the privacy of a member of the household.

Minn. Stat. § 609.746, subd. 1(a). This court has determined that, when used in Minn. Stat. § 609.746, subd. 1(a), “surreptitiously” means “by stealth, without authority, secret.” *State v. Hartwig*, 355 N.W.2d 333, 335 (Minn. App. 1984) (quotation omitted).

Appellant admitted that he entered onto private property and was looking into the front door of the residence to watch the homeowner. He admitted that he was trespassing and did not have authority to be on the property. Thus, appellant did not have authority to be on the property looking into the front door, and he did so “surreptitiously” within the meaning of the statute. Appellant admitted sufficient facts to provide a factual basis for the crime of interference with privacy. The district court did not abuse its discretion in denying appellant’s motion to withdraw his guilty plea on the grounds that appellant

did not understand the meaning of the word surreptitiously, or otherwise failed to provide an adequate factual basis to support the plea.

Affirmed.