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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2051**

Frederick Laderrell Shaw, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 1, 2009
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-07-125071

Marie L. Wolf, Interim Chief Appellate Public Defender, Cathryn Middlebrook, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges denial of his petition for postconviction relief in which he sought to withdraw his guilty plea based on an insufficient factual basis. Because the district court properly concluded that the facts admitted at the plea hearing satisfy the elements of third-degree burglary, we affirm.

FACTS

Respondent State of Minnesota charged appellant Frederick Shaw, a.k.a. Kwan Manasseh, with damage or theft of energy lines and third-degree burglary based on the events of November 21, 2007, when officers observed appellant carrying copper piping that had fittings and valves attached. According to the complaint, appellant told officers he found the piping in an alley a block away and guided officers to the area. Officers observed a building at 2321 Fremont Avenue that was boarded up and vacant, but had an open window. While officers were present, the caretaker of the building arrived. The caretaker identified the copper piping as that taken from the building and showed officers the space where it had been inside the building. After his arrest, appellant told officers that he had been given the piping by a couple that he did not know. Appellant denied entering the building at 2321 Fremont Avenue, but admitted taking copper from a residence and storing it in an unlocked garage.

On December 4, 2007, appellant pleaded guilty to third-degree burglary. At the beginning of the hearing, the prosecutor indicated that the plea was not based on

removing copper piping from 2321 Fremont Avenue and that count one would be dismissed:

I don't know if the Court wants me to amend or add a charge. There is a third degree burglary charge already. [Appellant] is willing to admit that he entered a *different* building. I think we can just do it under Count 2 because it doesn't give the specific address.

(Emphasis added.) The district court responded, "Okay with me." Appellant's plea and an examination by counsel followed. Appellant offered the following factual basis for his plea:

DEFENSE COUNSEL: [Appellant], on November 21 of 2007 in the city of Minneapolis, County of Hennepin, you admit to the Court that you entered a garage in the area of 24th Avenue and Emerson?

APPELLANT: Yes, sir.

DEFENSE COUNSEL: And you admit to the Court that you did not have permission to enter that garage?

APPELLANT: No, I didn't.

DEFENSE COUNSEL: While you were in that garage you found some copper in the garage?

APPELLANT: Yes, sir.

DEFENSE COUNSEL: And you took it out of the garage, out of the residence - -

APPELLANT: I took it out - -

DEFENSE COUNSEL: - - with the intent to permanently take it, correct?

APPELLANT: Yes.

DEFENSE COUNSEL: And you didn't have permission of the owner - -

APPELLANT: No, sir.

DEFENSE COUNSEL: - - of that property to take that copper piping, correct?

APPELLANT: No, sir.

The district court asked appellant if there was anything he wanted to say and appellant answered, "No, your honor." The court accepted appellant's guilty plea.

On June 27, 2008, appellant filed a petition for postconviction relief and moved to withdraw his guilty plea on the basis that it was not supported by sufficient facts. The strict court denied the petition, rejecting appellant's argument that the record failed to show that appellant lacked a right to the copper. The court concluded that appellant's admissions satisfied the elements of third-degree burglary because appellant admitted that he "took" property without permission of the owner and that he committed theft within a building entered without consent. The court also rejected appellant's reliance on the complaint and a March 28, 2008 affidavit to demonstrate that appellant had a right to the copper, noting that the court did not have the affidavit and that the factual basis for a plea "is determined solely by the facts admitted during the guilty plea." This appeal follows.

D E C I S I O N

"On review of postconviction decisions, [appellate courts] extend a broad review of both questions of law and fact." *State v. Ferguson*, 742 N.W.2d 651, 659 (Minn. 2007). Legal issues are reviewed de novo. *Id.* Factual findings will not be disturbed if sufficient evidence in the record sustains them. *Id.*

A defendant may withdraw a guilty plea after sentencing if withdrawal is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists when a guilty plea was not accurate, voluntary, and intelligent. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

"A proper factual basis must be established for a guilty plea to be accurate." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). The district court is responsible for ensuring that a sufficient factual basis is established in the record. *Id.* The purpose of

requiring an accurate plea is to ensure the defendant does not plead guilty to a greater charge than he could be convicted of at trial. *Id.* “The factual basis must establish 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 v. State*, 749 N.W.2d 335, 338 (Minn. 2008) (quotation omitted). “In a typical plea, where the defendant admits his or her guilt, an adequate factual basis is usually established by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime.” *Ecker*, 524 N.W.2d at 716.

Appellant argues that his guilty plea was not supported by adequate facts. Minnesota Statutes, section 609.582, subdivision 3 (2006), provides in part that third-degree burglary occurs when a person enters a building without consent and with intent to steal or commit any felony or gross misdemeanor while in the building, or enters a building without consent and steals or commits a felony or gross misdemeanor while in the building. Appellant argues that the record does not demonstrate that (1) he stole the copper or (2) he entered the garage for the purpose of stealing.

The district court concluded that the facts appellant admitted at the plea hearing established appellant’s guilt of third-degree burglary. We agree. Appellant admitted he took copper without permission of the owner and with the intent to permanently take the copper. And such “taking” of property is equivalent to stealing property or theft of property. The criminal code does not define the term “steals,” but *Black’s Law Dictionary* defines “steal” as “[t]o take (personal property) illegally with the intent to keep it unlawfully” or “[t]o take (something) by larceny, embezzlement, or false

pretenses.” *Black’s Law Dictionary* 1548 (9th ed. 2009) (parentheticals in original). And Chapter 609 equates stealing with theft. *See* Minn. Stat. § 609.52, subd. 2(1) (2008) (defining theft as intentionally and without claim of right taking movable property of another without the other’s consent and with intent to deprive the other person permanently of possession of the property); Minn. Stat. § 609.525, subd. 2 (2008) (for purposes of the crime of bringing stolen goods into the state, defining property as stolen if the act by which the owner was deprived of the property was a criminal offense that constitutes a theft as defined in chapter 609).

Because taking property without the permission of the owner and with the intention of keeping it permanently is equivalent to stealing property, appellant’s admission satisfies the stealing element of burglary. And because appellant’s admission to “taking” property and appellant’s other admissions at the plea hearing establish “sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge,” appellant’s plea is supported by an adequate factual basis. *See Munger*, 749 N.W.2d at 338 (stating this standard for sufficiency of facts supporting a guilty plea). In addition, because the facts demonstrate guilt of a form of third-degree burglary that does not require proof of intent, the lack of facts regarding intent is immaterial.

Affirmed.