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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1523**

State of Minnesota,
Respondent,

vs.

Jack Kramer Allen, Jr.,
Appellant

**Filed August 14, 2017
Affirmed
Worke, Judge**

Wadena County District Court
File No. 80-CR-15-697

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

Kyra L. Ladd, Wadena County Attorney, Joseph P. Glasrud, Assistant County Attorney,
Wadena, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Smith, John,
Judge.*

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

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his conviction for third-degree sale of a controlled substance, arguing that he is entitled to withdraw his guilty plea because it lacked an accurate factual basis. We affirm.

FACTS

In August 2015, appellant Jack Kramer Allen Jr. was charged with one count of second-degree controlled-substance crime and two counts of third-degree controlled-substance crime. The complaint alleged that on June 18, 2015, Allen sold Percocet, a prescription drug containing acetaminophen and oxycodone, to a confidential reliable informant (CRI). Police observed the CRI pull to the side of the road and Allen enter the CRI's vehicle. The CRI and Allen drove around for a few minutes before Allen exited the vehicle. Police then followed the CRI to an undisclosed location. The CRI gave police three white pills and said that Allen charged him \$10 per pill. The CRI said that Allen was supposed to sell him three morphine pills but instead sold him Percocet. Because the CRI gave Allen \$60, Allen owed the CRI three additional pills.

Minutes later, police observed the CRI pick Allen up a second time. The CRI and Allen drove around for a couple of minutes. After the CRI dropped Allen off, police again followed the CRI to an undisclosed location. The CRI gave police three more white pills. The CRI said that Allen identified the pills as Percocet. All six pills had the markings "RP" "10 325." From the markings, police confirmed that the pills were "acetaminophen/oxycodone 10 mg."

Allen pleaded guilty to one count of third-degree sale of a controlled substance. The remaining counts were dismissed. Allen's attorney questioned him about the facts underlying his plea:

ATTORNEY: If I can turn your attention back to June 18th, 2015, last year, would you agree that you were here in the City and County of Wadena on that date?

ALLEN: Yes.

ATTORNEY: And you understand that this case involves a [CRI]?

ALLEN: Yes.

ATTORNEY: And on that date did you meet with the [CRI]?

ALLEN: Yes.

ATTORNEY: And did you sell that [CRI] some pills, or more specifically, Percocet pills?

ALLEN: Yes.

ATTORNEY: And you would agree that those Percocet pills are a narcotic?

ALLEN: Yes.

The prosecutor then had the following exchange with Allen:

PROSECUTOR: Mr. Allen, do you recall how much you sold those pills for?

ALLEN: I sold them three pills for 60 bucks.

Finally, the district court questioned Allen:

THE COURT: Mr. Allen, I just want to make sure I understand this. It wasn't your prescribed medication; is that right?

ALLEN: No, it wasn't, Your Honor.

THE COURT: Where did you get that?

ALLEN: From someone else.

THE COURT: And then you sold it to this other person?

ALLEN: Yes.

The district court then found a sufficient factual basis for Allen's guilty plea.

The district court sentenced Allen to 33 months in prison, stayed that sentence, and placed Allen on probation for 20 years. This appeal followed.

D E C I S I O N

Allen argues that he must be allowed to withdraw his guilty plea because it was not supported by an accurate factual basis. A defendant may withdraw his guilty plea after sentencing if “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). To be valid, “a guilty plea must be accurate, voluntary, and intelligent.” *Id.* A defendant may appeal directly from a judgment of conviction and maintain that the record made at the plea hearing does not establish the requirements of a valid guilty plea. *State v. Johnson*, 867 N.W.2d 210, 214 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015). We review a challenged guilty plea de novo. *Raleigh*, 778 N.W.2d at 94.

The purpose of the accuracy requirement is to prevent the defendant from pleading guilty to a more serious offense than he could be convicted of at trial. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). A guilty plea is inaccurate if it is not supported by a sufficient factual basis. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). A sufficient factual basis exists if there are “facts on the record to support a conclusion that [the] defendant’s conduct falls within the charge to which he desires to plead guilty.” *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (quotation omitted). In other words, “before a plea of guilty can be accepted, the [district court] must make certain that facts exist from

which the defendant's guilt of the crime charged can be reasonably inferred." *Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016) (quotation omitted).

An adequate factual basis establishes all of the elements of the crime. *Barnslater v. State*, 805 N.W.2d 910, 914 (Minn. App. 2011). The elements of third-degree sale of a controlled substance are: (1) the defendant sold one or more mixtures containing a narcotic drug; (2) the defendant knew or believed that the substance sold was a narcotic drug; and (3) the sale was unlawful. Minn. Stat. § 152.023, subd. 1(1) (2014); 10A *Minnesota Practice*, CRIMJIG 20.16 (2015).

Allen first argues that his plea is invalid because he did not admit that it was unlawful for him to sell Percocet. While Allen did not specifically state that the sale was unlawful, he admitted to facts that allowed the district court to make that reasonable inference. *See Nelson*, 880 N.W.2d at 861. Allen admitted that he sold Percocet and did not have a prescription for Percocet. Allen also admitted that Percocet is a narcotic, and the complaint states that the Percocet pills contained oxycodone. We may look to the complaint in assessing the factual basis for Allen's plea because, by pleading guilty and admitting to the underlying sale to the CRI, Allen effectively admitted to the allegations contained in the complaint. *See Trott*, 338 N.W.2d at 252 (stating that "defendant, by his plea of guilty, in effect judicially admitted the allegations contained in the complaint"); *Sanchez v. State*, 868 N.W.2d 282, 289 (Minn. App. 2015) ("The complaint may provide a factual basis for a defendant's plea, and we are permitted to examine the complaint to assess whether a defendant's plea was accurate."), *aff'd*, 890 N.W.2d 716 (Minn. 2017). Oxycodone is a Schedule II controlled substance. Minn. Stat. § 152.02, subd. 3(b)(1)(ii)(J)

(2014). It is unlawful to “dispense” a Schedule II controlled substance without a prescription. Minn. Stat. § 152.11, subd. 1a (2014). Accordingly, the facts in the record allowed the district court to reasonably infer that the sale was unlawful.

Allen next argues that his plea is invalid because he did not admit that he knew or believed at the time of the sale that the substance he sold was a narcotic drug. Again, while Allen did not specifically admit this during his plea colloquy, the record contains facts that allowed the district court to reasonably infer it. *See Nelson*, 880 N.W.2d at 861. To satisfy this element, the record must establish that Allen “had actual knowledge of the nature of the substance[,]” *State v. Papadakis*, 643 N.W.2d 349, 354 (Minn. App. 2002) (quotation omitted), or knew that the substance was illegal. *State v. Ali*, 775 N.W.2d 914, 920 (Minn. App. 2009), *review denied* (Minn. Feb. 16, 2010). Allen admitted that he sold three Percocet pills for \$60. This sale indicates that Allen knew the nature of the substance. Generally, a person does not sell something without knowing what it is. Moreover, Allen’s admission that he did not have a prescription for Percocet and obtained it from another person, rather than a doctor, a store, or a pharmacist, indicates that he knew that the substance was illegal. In addition, the complaint states that the CRI asked for morphine pills and Allen sold him Percocet pills instead, Allen told the CRI that the pills were Percocet, and the pills had identifying markings. These are all indications that Allen knew the nature of the substance he sold. The complaint also states that the sale took place while driving around in the CRI’s vehicle. The surreptitious character of the transaction indicates that Allen knew the substance was illegal. *See id.* at 919 (stating that efforts to conceal a substance or the sale of a substance shows knowledge that the substance is illegal). The

facts in the record allowed the district court to reasonably infer that Allen knew the nature of the substance and/or knew that the substance was illegal

There were sufficient facts in the record to allow the district court to reasonably infer that the sale was unlawful and that Allen knew the nature of the substance and/or knew that the substance was illegal. Allen's plea was accurate, and he is not entitled to withdrawal.

Affirmed.