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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0004**

State of Minnesota,
Respondent,

vs.

Elwin Louis Klimek,
Appellant.

**Filed August 20, 2018
Affirmed
Schellhas, Judge**

St. Louis County District Court
File No. 69VI-CR-17-707

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

Mark S. Rubin, St. Louis County Attorney, Karl G. Sundquist, Assistant County Attorney,
Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, F. Richard Gallo, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Schellhas, Judge; and Randall,
Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his conviction of fleeing a peace officer in a motor vehicle, arguing that he should be allowed to withdraw his guilty plea because his plea was invalid. We affirm.

FACTS

In June 2017, respondent State of Minnesota charged appellant Elwin Klimek with fleeing a peace officer in a motor vehicle after he drove away from a St. Louis County deputy sheriff during a traffic stop. Appearing pro se, Klimek pleaded guilty to the charged offense. The district court accepted the plea and sentenced Klimek to one year and one day, stayed for three years.

This appeal follows.

DECISION

A defendant must be permitted to withdraw his or her guilty plea at any time 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.” *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). The validity of a guilty plea is a question of law that is reviewed de novo. *Nelson v. State*, 880 N.W.2d 852, 858 (Minn. 2016).

Klimek challenges the accuracy of his guilty plea to fleeing a peace officer in a motor vehicle. “The accuracy requirement exists to protect a defendant from pleading

guilty to a more serious offense than he could be convicted of if he were to go to trial.” *Matakis v. State*, 862 N.W.2d 33, 37 (Minn. 2015) (quotation omitted). For a guilty plea to be accurate, a proper factual basis must be established. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). “The factual-basis requirement is satisfied if the record contains a showing that there is credible evidence available which would support a jury verdict that defendant is guilty of at least as great a crime as that to which he pled guilty.” *Nelson*, 880 N.W.2d at 859 (quotation omitted). A defendant may challenge the lack of a factual basis to support a guilty plea for the first time on appeal. *See State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003) (stating that “by pleading guilty, a defendant does not waive the argument that the factual basis of his guilt was not established”).

Under Minnesota law, “[w]hoever by means of a motor vehicle flees or attempts to flee a peace officer who is acting in the lawful discharge of an official duty, and the perpetrator knows or should reasonably know the same to be a peace officer, is guilty of a felony.” Minn. Stat. § 609.487, subd. 3 (2016).¹ “[T]he term ‘flee’ means to increase speed, extinguish motor vehicle headlights or taillights, refuse to stop the vehicle, or use other means with intent to attempt to elude a peace officer following a signal given by any peace officer to the driver of a motor vehicle.” *Id.*, subd. 1 (2016).

Klimek argues that his plea lacked a proper factual basis because “there is no evidence to support the notion that he intended or attempted to elude the peace officers.” We disagree. The term “elude” is defined as “[t]o evade or escape from, as by daring

¹ A deputy sheriff is a peace officer under the statute. *See* Minn. Stat. § 609.487, subd. 2 (2016).

cleverness, or skill: *The suspect continues to elude the police.*” *The American Heritage Dictionary of the English Language* 582 (4th ed. 2006). And the Supreme Court has articulated that a valid traffic stop does not end until “the police have no further need to control the scene, and *inform* the driver and passengers they are free to leave.” *Arizona v. Johnson*, 129 S. Ct. 781, 788, 555 U.S. 323, 333 (2009) (emphasis added).

Here, Klimek admitted at the plea hearing that during a traffic stop he “just left,” and “shouldn’t have.” By “just le[aving]” the scene of the traffic stop, Klimek was “eluding” the deputy following his signal to stop his motor vehicle. And by admitting that he “shouldn’t have” left the scene, Klimek acknowledged that he knew that he was not free to leave. Although a more thorough examination of Klimek’s actions may have been appropriate, Klimek’s admissions at the plea hearing establish a sufficient factual basis that he committed the offense of fleeing a peace officer in a motor vehicle. *See* Minn. Stat. § 609.487, subd. 3 (codifying elements of motor-vehicle fleeing offense).

Moreover, “a defendant may not withdraw his plea simply because the court failed to elicit proper responses if the record contains sufficient evidence to support the conviction.” *Raleigh*, 778 N.W.2d at 94. Thus, a “plea petition and colloquy may be supplemented by other evidence to establish the factual basis for a plea.” *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012). Other evidence includes the complaint since a defendant “by his plea of guilty, in effect judicially admit[s] the allegations contained in the complaint.” *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983).

The complaint here supports the factual basis of Klimek’s plea. The complaint alleges that while the deputy contacted the probation office during a stop of Klimek’s

vehicle, Klimek decided to leave because “he was done with the traffic stop.” The complaint also alleges that when the deputy “noticed the brake lights on Klimek’s vehicle illuminate and the engine start,” he “got out of his squad car with his emergency lights still on and told Klimek that they were not finished yet and [that] he was not able to leave.” *See Johnson*, 129 S. Ct at 788, 555 U.S. at 333 (stating that a traffic stop normally ends when the police inform the driver that he or she is free to leave). The complaint further alleges that despite the deputy’s instructions, Klimek drove away. The allegations in the complaint that Klimek drove away from the deputy during a valid traffic stop, in conjunction with Klimek’s admission at the plea hearing that he left the stop and “shouldn’t have,” establish an adequate factual basis that Klimek intended to elude the deputy. Klimek’s guilty plea therefore was valid, and he is not entitled to withdraw his plea.

Affirmed.