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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0075**

State of Minnesota,
Respondent,

vs.

Jacob John Friedrichs,
Appellant.

**Filed October 7, 2019
Affirmed
Bjorkman, Judge**

Le Sueur County District Court
File No. 40-CR-18-1123

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brent Christian, Le Sueur County Attorney, Jason L. Moran, Assistant County Attorney,
Le Center, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant seeks to withdraw his guilty plea to felony theft, arguing that his plea was (1) inaccurate because he did not provide a sufficient factual basis and (2) involuntary because it was induced by excessive bail. We affirm.

FACTS

During the fall of 2018, appellant Jacob John Friedrichs became a suspect in numerous thefts in Nicollet and Le Sueur Counties. Investigators obtained a warrant to place a tracking device on Friedrichs's vehicle and discovered that it regularly traveled at night and in the early morning hours in areas where the thefts occurred, and repeatedly stopped at a commercial storage unit. A warranted search of the storage unit revealed stolen property valued at \$28,680, including ATVs, a portable fish house, a trailer, and tires. When interviewed by police on October 8, Amber Murilla admitted stealing tires with Friedrichs. She also stated that Friedrichs had sent her a photo of a stolen trailer with the caption "that's mine" and told her he "got" one of the ATVs. Friedrichs also told her that he exchanged stolen property for drugs and cash.

Friedrichs was charged with one count of felony theft. After learning that Friedrichs had 32 prior arrest warrants "and many failure to appear warrants,"¹ the district court set bail at \$20,000 cash and a \$200,000 bond without conditions, or \$10,000 cash and a \$100,000 bond with conditions. Five days after the bail hearing, Friedrichs appeared in

¹ Friedrichs's warrant history indicates that four bench warrants were issued for his failure to appear at hearings.

court with his attorney to enter a guilty plea. Friedrichs signed a plea petition in which he agreed to plead guilty in exchange for a 26-month executed sentence. Following a hearing, the district court accepted Friedrichs's plea and imposed the agreed-upon sentence. Friedrichs appeals.

D E C I S I O N

A defendant does not have an absolute right to withdraw his guilty plea. *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017). But a court must allow a defendant to do so if “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. This standard is met if the plea is not valid; a guilty plea is valid if it is “accurate, voluntary, and intelligent.” *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). A defendant may challenge the validity of his guilty plea for the first time on appeal. *State v. Anyanwu*, 681 N.W.2d 411, 413 (Minn. App. 2004), *overruled on other grounds by Wheeler v. State*, 909 N.W.2d 558, 568 (Minn. 2018).

Friedrichs argues that his plea is not valid because (1) he did not admit the intent element of the theft offense and (2) he pleaded guilty only because he could not afford bail. We address each argument in turn.

To prove Friedrichs was guilty of the charged theft offense, the state had to establish that he “intentionally and without claim of right” took “movable property of another” valued at more than \$5,000 “without the other’s consent and with intent to deprive the owner permanently of possession of the property.” Minn. Stat. § 609.52, subs. 2(a)(1), 3(2) (2018).

First, Friedrichs argues that his plea was not accurate because he did not admit that he intended to permanently deprive the owners of the property he took. The accuracy requirement ensures that a defendant does not plead guilty to a greater offense than what he could be convicted of after a trial. *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007). Typically, the factual basis for the plea is established when the defendant describes the crime in his own words. *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012).

During his plea colloquy with defense counsel, Friedrichs testified that he took property valued at greater than \$5,000 in Le Sueur County without the owner's consent.² Nothing in Friedrichs's testimony addresses the intent element of the crime. But a colloquy may be supplemented by other parts of the district court record, including the complaint, plea petition, presentence investigation, and specific evidence. *Id.* (citing *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (permitting use of the whole record, including the complaint and photographs); *State v. Hoaglund*, 240 N.W.2d 4, 6 n.9 (Minn. 1976) (permitting use of the whole record, including presentence investigation report); *Burnett v. State*, 195 N.W.2d 187, 188 (Minn. 1972) (permitting use of presentence investigation report that included defendant's detailed version of the crime)).

The criminal complaint alleges that Friedrichs took the identified property "with intent to permanently deprive the owner of possession of the property." And the complaint includes statements Friedrichs made to Murilla indicating that he stole a trailer and an

² Defense counsel's use of the discouraged technique of asking leading questions to establish the factual basis for the plea does not permit Friedrichs to withdraw his plea "if the record contains sufficient evidence to support the conviction." *Lussier*, 821 N.W.2d at 589 (quotation omitted).

ATV, and that he exchanged the stolen property for drugs and cash. At his plea hearing, Friedrichs ratified the allegations of the complaint when he testified that he was “guilty as charged.”³ His plea petition likewise references the felony theft charge and the fact he does not claim that he is innocent. We conclude that Friedrichs’s testimony at the plea hearing, the complaint, and the record establish a sufficient basis for his guilty plea.

Second, Friedrichs argues that his plea was involuntary because “it was induced by the unattainable bail amount imposed.” This argument is belied by both the plea petition and Friedrichs’s testimony. The plea petition states that Friedrichs does “not make the claim that the fact that I have been held in jail since my arrest and could not post bail caused me to decide to plead guilty in order to get the thing over with rather than waiting for my turn at trial.” It also acknowledges that Friedrichs did not plead guilty in response to threats or promises. Friedrichs initially contradicted these sworn statements, telling the district court that he did not commit the crime and that he was taking the plea because he was going to serve the same amount of time for another matter in Nicollet County, could not make bail on that offense, and “just want[ed] to get up and get done with [his] time and be gone.” But the district court immediately informed Friedrichs that it could not accept the plea if Friedrichs claimed innocence, stating it did not “want [him] to plead guilty to something that [he] didn’t do.” Friedrichs then retracted his testimony, stating, “Well, Your Honor, I’m guilty. I’m guilty as charged.” When asked if he was sure, Friedrichs

³ The complaint was not introduced as an exhibit during the plea hearing. But Friedrichs admitted its contents and agreed in his plea petition that he had “received, read and discussed a copy of the . . . complaint.” *See Lussier*, 821 N.W.2d at 588-89.

said, “I’m sure about that.” Friedrichs was obligated to tell the truth at his plea hearing. Minn. R. Evid. 603. The district court was satisfied that he did so, and we defer “to the primary observations and trustworthiness assessments made by the district court.” *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997).⁴ On this record, Friedrichs has not shown that his plea was involuntary.

In sum, Friedrichs has not established that withdrawal of his guilty plea is necessary to correct a manifest injustice.

Affirmed.

⁴ We note that Friedrichs does not directly challenge the amount of his bail. Given his history of arrests and failing to appear for court hearings, we have no reason to question the amount. *See Application of Shetsky*, 60 N.W.2d 40, 42 (Minn. 1953) (stating that dual purpose of bail is to release the defendant from imprisonment pending trial and ensure the defendant’s appearance at trial).