

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2018).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0161**

Venice Felice Walker, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 16, 2019
Affirmed
Halbrooks, Judge**

Chisago County District Court
File No. 13-CR-14-732

Charles F. Clippert, St. Paul, Minnesota (for appellant)

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

Janet Reiter, Chisago County Attorney, David Hemming, Assistant County Attorney,
Center City, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Halbrooks, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the postconviction court's denial of her request to withdraw her guilty plea to murder in the third degree, arguing that the factual basis for her plea was

inadequate because the record does not establish that she proximately caused the victim's death. We affirm.

FACTS

In early spring 2014, appellant Venice Felice Walker met Morgan Pavey at a methadone clinic in Brooklyn Park. On four or five occasions, Walker traded her methadone to Pavey in exchange for other drugs. Pavey then sold the methadone Walker gave her to other individuals, including S.M. On June 30, 2014, S.M. died after using methadone that he had purchased from Pavey.

Pavey was charged with murder in the third degree, and after a jury trial, was convicted. Walker was also charged with murder in the third degree and pleaded guilty in August 2016. In September, Walker was sentenced to 86 months in prison, stayed, and placed on probation. She was also required to serve 365 days in the county jail as a condition of the stayed sentence. In 2018, Walker petitioned for postconviction relief, seeking to withdraw her guilty plea on the ground that the plea was invalid. The postconviction court denied Walker's petition. This appeal follows.

DECISION

Walker contends that the postconviction court erred by denying her petition to withdraw her guilty plea. A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But withdrawal must be permitted if necessary to correct a manifest injustice. *Id.* Manifest injustice exists if a guilty plea is invalid. *Id.* at 94. A constitutionally valid plea must be accurate, voluntary, and intelligent.

Id. The defendant bears the burden of showing that her plea was invalid. *Id.* The validity of a guilty plea is a question of law, which we review de novo. *Id.*

Walker challenges the accuracy of her plea. A plea must be supported by a proper factual basis with “sufficient facts on the record to support a conclusion that 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). We determine the sufficiency of the factual basis for a plea from the record made when the defendant entered it. *State v. Lillemo*, 410 N.W.2d 66, 69 (Minn. App. 1987).

Walker pleaded guilty to third-degree murder in violation of Minn. Stat. § 609.195(b) (2014), which provides “[w]hoever, without intent to cause death, proximately causes the death of a human being by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance classified in Schedule I or II, is guilty of murder in the third degree”

In this case, there is no dispute that S.M. is deceased. Nor does Walker dispute that she directly or indirectly gave away, bartered, or exchanged her methadone to Pavey, or that methadone is a Schedule II substance. The issue on appeal is whether there is a sufficient factual basis to conclude that Walker proximately caused the death of S.M.

Proximate causation exists when a defendant’s conduct is a substantial factor in bringing about the death. 10 *Minnesota Practice*, CRIMJIG 11.40 (2018); *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).¹ A defendant is “criminally liable for all

¹ We apply the civil concept of proximate cause in criminal cases. *State v. Nelson*, 806 N.W.2d 558, 562 (Minn. App. 2011), *review denied* (Minn. Feb. 14, 2012).

the consequences of [her] actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts." CRIMJIG 11.40.

At the plea hearing, Walker stated that she had traded her methadone to Pavey on several occasions. When questioned by the prosecutor, Walker stated the following:

Q: And you're aware that at least one of the bottles, potentially two of those bottles, that you gave to Morgan Pavey, ended up in the hands of a person by the name of [S.M.]?

A: Yes.

Q: And you're aware that two bottles, two empty bottles, at least one with your name on it, your prescription label on it, with your name, ended up in [S.M.]'s house?

A: Yes.

Q: And you're aware that [S.M.] ultimately died after taking methadone?

A: Yes.

Q: And the medical examiner did an autopsy and concluded that the cause of death was, in fact, methadone?

A: Okay. Yes.

.....

Q: Okay. And you also agree that [S.M.] directly received the methadone that killed him from Morgan Pavey?

A: Yes.

Q: And you'd agree that you gave that specific methadone to Morgan Pavey?

A: Yes.

.....

Q: And by giving that methadone to Morgan Pavey that was either directly or indirectly, but that was the cause of [S.M.]'s death?

A: Yes.

Q: Your methadone was the probable cause of [S.M.]'s death?

A: Yes.

On appeal, Walker concedes that the methadone bottles found at S.M.'s home had her name on them, but asserts that “[t]here is no evidence that the methadone from the two bottles with [her] name on them were even involved” in the death of S.M. And despite her admissions at the plea hearing, Walker now asserts that she had “no personal knowledge of where S.M. got the methadone that caused his death.”

On appeal, we look to the record made at the time of the plea to determine the sufficiency of the factual basis of the plea. *Lillemo*, 410 N.W.2d at 69. Walker admitted that she provided the methadone to Pavey, who sold it to S.M. And she admitted that the methadone she had been prescribed was found in S.M.'s home, where he died. While Walker did not directly provide S.M. with the methadone, and may not have known where S.M. had gotten it, Pavey's sales of the traded methadone was a consequence that occurred in the ordinary and natural course of events. Based on the record made at the time of the plea, we conclude that there is a sufficient factual basis to support a conclusion that Walker's admitted conduct satisfied the elements of murder in the third degree.

Walker contends that Pavey's sale of the methadone is an intervening superseding cause of S.M.'s death. An intervening cause must satisfy four elements to be considered superseding. *State v. Hofer*, 614 N.W.2d 734, 737 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000). First, its harmful effects must occur after the initial negligence. *Id.* Second, the cause must not have been brought about by the original negligence. *Id.* Third, “it must have actively worked to bring about a result which would not otherwise have followed from the original negligence.” *Id.* (quotation omitted). Fourth, it must not have been reasonably foreseeable by the original actor. *Id.*

Walker argues that Pavey's sale of the methadone to S.M. "would not have followed from Walker's original negligence" and that S.M.'s overdose "was not reasonably foreseeable." Here, Pavey's sale of the methadone followed directly from Walker's original negligence in trading a controlled substance because Pavey could not have sold the methadone to S.M. if Walker had not provided it to her initially. While Walker argues (and stated during the plea colloquy) that she believed that Pavey wanted the methadone for personal use and was not selling it, we are unpersuaded. It is reasonably foreseeable that a person who traded one controlled substance for another may sell or trade the received methadone. While Walker may not have known that Pavey intended to sell the methadone to S.M., the plain language of the statute makes clear that even "indirectly" transferring controlled substances that results in the death of another person carries liability for third-degree murder. Minn. Stat. § 609.195(b). This includes circumstances such as these, where one person transfers drugs to another, who in turn, provides the drugs to someone who fatally overdoses. Allowing Walker to escape liability for "indirectly" supplying the drugs to S.M. is contrary to the plain language of Minn. Stat. § 609.195(b). Accordingly, Walker's intervening-superseding-cause argument lacks merit.

Based on our review of the record, we conclude that Walker's guilty plea was accurate because it was supported by a sufficient factual basis. Accordingly, we conclude that the postconviction court did not err by denying her petition to withdraw her guilty plea.

Affirmed.