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**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-0287**

Erick Lamont Lindsey, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 21, 2019**
**Affirmed**
**Rodenberg, Judge**

Ramsey County District Court
File No. 62-CR-16-1887

Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John Choi, Ramsey County Attorney, Adam E. Petras, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Stauber, Judge.[*]

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

## UNPUBLISHED OPINION

**RODENBERG**, Judge

Appellant Erick Lindsey appeals from the denial of his petition for postconviction relief. He argues that (1) the factual basis for his guilty plea was insufficient to establish that he was guilty of first-degree driving while intoxicated (DWI) because the plea colloquy consisted of leading questions and (2) the plea record does not establish all of the elements of first-degree DWI because an incorrect court file number was used to identify his third qualified prior impaired driving incident, and the remaining record does not establish that element. We affirm.

## FACTS

On March 13, 2016, police officers stopped the car appellant was driving. Appellant admitted to officers that he had consumed alcohol before driving. He provided a breath sample which showed an alcohol concentration of 0.22, and the state charged him with two counts of first-degree DWI under Minnesota Statutes sections 169A.20 and 169A.24 (2014). The complaint's probable cause statement listed appellant's qualified prior impaired driving incidents within the past ten years, including the sentencing date, level of conviction, and court file number for each incident. The third qualified prior impaired driving incident was described in the complaint using the correct date and level of conviction, but recited an incorrect court file number: "On April 24, 2012, Lindsey was sentenced on a misdemeanor DWI in Ramsey County District Court file 62-CR-12-10." The correct court file number is 62-CR-12-210.

Appellant pleaded guilty to one count of felony DWI in exchange for the state dismissing the remaining count. During the plea colloquy, the prosecutor again identified appellant's third qualified prior impaired driving incident using the correct date, but the incorrect court file number. The district court found a sufficient factual basis to support the guilty plea. The district court judge accepted the guilty plea and sentenced appellant to 40 months in prison.

Appellant petitioned for postconviction relief arguing that, because the plea record does not support his conviction, his offense of conviction should be reduced from first-degree to second-degree DWI, and he should be resentenced. In the alternative, appellant argued that he should be permitted to withdraw his guilty plea.

The district court denied the petition for postconviction relief, finding that the use of the wrong court file number did not negate appellant's testimony admitting three qualified prior impaired driving incidents. It concluded that the elements of first-degree DWI were sufficiently established by appellant's plea testimony.

This appeal followed.

**D E C I S I O N**

Appellate courts "review the denial of a petition for postconviction relief . . . for an abuse of discretion." *Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). A postconviction court "abuses its discretion if it exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Id.* (quotation omitted). The legal conclusions of a postconviction court are reviewed de novo. *Fox v. State*, 913 N.W.2d 429, 433 (Minn. 2018).

There is no absolute right to withdraw a guilty plea after it has been entered. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). "[A] court must allow withdrawal of a guilty plea if withdrawal is necessary to correct a 'manifest injustice.'" *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010) (quoting Minn. R. Crim. P. 15.05, subd. 1). A manifest injustice occurs if a plea is not valid. *Id.* A constitutionally valid plea must be voluntary, intelligent, and accurate. *Id.*; *see also Perkins*, 559 N.W.2d at 688. A defendant bears the burden of showing that the plea was invalid. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012).

An accurate plea must be established on a proper factual basis. *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007). A proper factual basis exists "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 v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (quotation omitted).

**The plea colloquy establishes the elements of first-degree DWI and provides a proper factual basis for appellant's guilty plea.**

Appellant pleaded guilty to first-degree DWI under Minn. Stat. § 169A.20 and Minn. Stat. § 169A.24. The elements of the relevant first-degree DWI statute include that the offense was committed "within ten years of the first of three or more qualified prior impaired driving incidents." Minn. Stat. § 169A.24, subd. 1(1). A "qualified prior impaired driving incident" means "prior impaired driving convictions and prior impaired driving-related losses of license." Minn. Stat. § 169A.03, subd. 22 (2014). A prior DWI

conviction is a qualified prior impaired driving incident. Minn. Stat. § 169A.03, subd. 20(1) (2014).

Appellant first argues that the record does not establish that he has the three qualified prior impaired driving incidents necessary to prove first-degree DWI under Minn. Stat. § 169A.24 because he does not have a DWI conviction in the third court file number used in the complaint and during the plea colloquy. The state argues that the use of the wrong court file number is a simple clerical error and that the plea colloquy suffices.

The parties agree that the court file number for appellant's third prior offense was incorrectly stated in the complaint and at the plea hearing. The court file number used relates to someone other than appellant. The recited file number is one digit different than the correct court file number. Appellant does not argue that he did not have a third qualified prior impaired driving incident.

The following factual basis was established at the plea hearing concerning appellant's three qualified prior impaired driving incidents:

> STATE: And lastly, Mr. Lindsey, you've been arrested and convicted of drunk driving before, right?
> APPELLANT: Yes.
> STATE: Specifically, you were convicted in Ramsey County District Court File—I'm just going to name the file number that I pulled from your records, and if you have a reason to disagree with it, please let me know. But it was file number 62-CR-14-1545. And in that file, back on March 6, 2014, about two years ago, you were convicted of gross misdemeanor DWI. Does that sound right?
> APPELLANT: Yes, sir.
> STATE: And the previous fall, back in 2013, October 4th, 2013, were you also convicted of DWI then?
> APPELLANT: Yes.

> STATE: And for the record, you have no reason to disagree with the fact that's Ramsey County District Court File Number 62-CR-13-7698?
> APPELLANT: Yes.
> STATE: And lastly, sir, back the year before, so about four years ago we're talking about, April 24th, 2012, was that another day you were convicted of DWI?
> APPELLANT: Yes.
> STATE: And that was again here in Ramsey County in court file 62-CR-12-10?
> APPELLANT: Yes.
> STATE: And you understand that those three prior DWI convictions of yours, they've all occurred in the last ten years?
> APPELLANT: Yes.
> STATE: And that's what enhances this current offense to a felony level, is the fact that you have three or more other DWIs in the last decade?
> APPELLANT: Yes.

Appellant also answered "yes" when asked if he pleaded guilty in each of the previous offenses referenced by the state.

None of appellant's statements during the plea hearing negate the qualified-prior-impaired-driving-incidents element. *See State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003) (stating that a factual basis is inadequate if defendant makes statements during the plea hearing that negate an essential element of the charged crime as such statements are inconsistent with a plea of guilty). The plea colloquy establishes the correct dates for all three of appellant's qualified prior impaired driving incidents. Although the third of those prior incidents was referred to using an incorrect court file number, appellant admitted to having thrice been convicted of DWI. Appellant admitted all three of his prior DWI convictions when asked about each one during the plea colloquy. These admissions suffice to establish that he did have three qualified prior impaired driving incidents. The state was

not required to prove the court file number for each of appellant's qualified prior impaired driving incidents because the court file number is not an element of the offense.[1] The three prior convictions were admitted and thereby proved.

The plea colloquy sufficiently establishes the elements of first-degree DWI and provides a proper factual basis for appellant's guilty plea.

**Leading questions do not render appellant's guilty plea inaccurate.**

Appellant also argues that his guilty plea was inaccurate and therefore invalid because the factual basis for his plea was established "exclusively" using leading questions.

"Ordinarily, an adequate factual basis is established by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime." *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009). A "court should be particularly wary of situations in which the factual basis is established by asking a defendant only leading questions." *Raleigh*, 778 N.W.2d at 94. District courts are "encourage[d] . . . to take an active role in asking direct questions of defendants during plea hearings." *Id.* at 95. "The use of leading questions is therefore disfavored, but it does not by itself invalidate a guilty plea." *Barnslater v. State*, 805 N.W.2d 910, 914 (Minn. App. 2011).

Appellant argues that, if a plea colloquy consists largely of leading questions, the responses to those questions must be disregarded in determining whether the factual basis for the plea suffices.

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[1] The correct court file number does appear elsewhere in the record in an older presentence investigation report.

First, in arguing that leading questions rendered his plea inaccurate, appellant misapprehends *Shorter v. State*, 511 N.W.2d 743 (Minn. 1994). The decision in *Shorter* rested upon the supreme court's supervisory powers. 511 N.W.2d at 747. *Shorter* did not create a rule of law that a guilty plea is inaccurate if leading questions are used; neither does it require that the remaining record after disregarding responses to leading questions must establish every essential element of the crime in order for the factual basis to be sufficient. *See id.*

Second, while many of the questions asked of appellant during the plea colloquy elicited "yes" and "no" answers, the questions were phrased in a way that asked appellant to confirm information as true. The questions were not of the "isn't it true that" variety. And a number of appellant's responses to the state's questions were narrative. Moreover, the district court took an active role in questioning appellant. The district court stopped the state's questioning of appellant at three separate points to ask its own questions. In total, the district court asked over 20 questions of appellant during the plea hearing. Appellant also actively discussed his answers with the district court judge.

The postconviction court did not err in determining that appellant's guilty plea was valid based upon the factual basis provided at the plea hearing.

**Affirmed.**