STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1993

State of Minnesota,
Respondent,

vs.

Bradly James Haddock,
Appellant.

Filed January 6, 2020
Affirmed
Slieter, Judge

Nobles County District Court
File No. 53-CR-17-1050

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

Joseph M. Sanow, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Reyes, Judge; and Slieter, Judge.

U N P U B L I S H E D O P I N I O N

SLIETER, Judge

In this direct appeal from his conviction for second-degree criminal sexual conduct, appellant challenges the accuracy and intelligence of his *Norgaard* plea. Because appellant's plea was accurate and intelligent, we affirm.

FACTS

On November 29, 2017, the state charged appellant Bradly James Haddock with three counts of second-degree criminal sexual conduct related to an 11-year-old victim. On July 2, 2018, appellant agreed to plead guilty to count 1 of the complaint. In exchange, the state agreed to dismiss the remaining charges and forego an aggravated sentence.

The district court held a plea hearing on July 18, 2018. The district court questioned appellant about his trial rights; appellant stated he understood and waived those rights. The district court also asked appellant if he "ma[d]e any claim that [he is] innocent." Appellant answered, "No, Your Honor." The state then questioned appellant to obtain a factual basis for his guilty plea. As appellant answered the questions, he stated, "Well, look, I really don't know what happened. . . . It's – could be accidental. I don't know what – where it's coming from. That's why I can't explain anything about it." The district court recessed to allow appellant to talk with his attorney.

Approximately five minutes later, the plea hearing resumed and the state laid the factual basis for the plea. The district court then questioned appellant about his lack of memory and the basis for a *Norgaard* plea.

DISTRICT COURT: Why is it that you don't remember?
APPELLANT: I was — I was drinking and it was a while ago and I — I don't remember. I guess I blocked it out.
DISTRICT COURT: Have you read the, uh, complaint and the police reports, um —
APPELLANT: Yes.
DISTRICT COURT: — provided to your attorney?
APPELLANT: Yes, I have.
DISTRICT COURT: Okay. And do you have any recollection at all of the events referenced in those reports?
APPELLANT: No, I do not.
DISTRICT COURT: Were you intoxicated at the time the events referred to in those reports occurred?
APPELLANT: Yes, Your Honor.
DISTRICT COURT: Do you have any reason to doubt the accuracy of those reports?
APPELLANT: No, Your Honor.
DISTRICT COURT: Do you understand that if you went to trial the State's witnesses, and, uh, specifically the juvenile here, would testify that on two separate occasions, uh, you, uh, touched her breasts with sexual intent?
APPELLANT: Yes, Your Honor.
DISTRICT COURT: And do you believe the evidence the State would likely offer in that regard, uh, would be sufficient for a jury to find you guilty of Count One beyond a reasonable doubt?
APPELLANT: Yes, Your Honor.
DISTRICT COURT: And are you entering this plea of guilty to obtain the benefit of the plea bargain that I, uh, read when we first began?
APPELLANT: Yes, Your Honor.
DISTRICT COURT: And are you making any claim that you are innocent?
APPELLANT: No, Your Honor.

The district court found a sufficient basis for a *Norgaard* plea but deferred accepting the plea pending the presentence investigation report.

On September 12, 2018, the district court accepted the *Norgaard* plea, adjudicated appellant guilty, and sentenced appellant to a presumptive 90 months' imprisonment. This appeal follows.

D E C I S I O N

Appellant challenges the validity of his *Norgaard* plea on direct appeal. A defendant may seek plea withdrawal in a direct appeal from final judgment provided that the record is sufficient to review the issue. *See State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. 1987), *review denied* (Minn. Nov. 13 1987); *see also State v. Ecker*, 524 N.W.2d 712, 717 Minn. 1994 (suggesting the same standard in reviewing pleas under *Norgaard*). "Assessing the validity of a plea presents a question of law that [appellate courts] review de novo." *See State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

"It is well established that one who has entered a plea of guilty to a criminal complaint does not have the absolute right to withdraw it." *State v. Knight*, 192 N.W.2d 829, 832 (Minn. 1971). A defendant is allowed to withdraw a guilty plea at any time "to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. "A manifest injustice exists if a guilty plea is not valid." *Raleigh*, 778 N.W.2d at 94. To be valid, a "guilty plea must be accurate, voluntary, and intelligent." *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983).

Appellant argues that his plea was inaccurate and unintelligent. We address each argument in turn.

Accuracy

To be accurate, a guilty plea must be established on a proper factual basis. *Ecker*, 524 N.W.2d at 716. This "is to protect a defendant from pleading guilty to a more serious

offense than he could be convicted of were he to insist on his right to trial." *Trott*, 338 N.W.2d at 251.

Generally, a factual basis is laid by "questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime." *Ecker*, 524 N.W.2d at 716. When a defendant enters a *Norgaard* plea, however, "the record must establish that the evidence against the defendant is sufficient to persuade the defendant and his or her counsel that the defendant is guilty or likely to be convicted of the crime charged." *Id.* "[A]n adequate factual basis" requires "two related components: [1] a strong factual basis, and [2] the defendant's acknowledgment that the evidence would be sufficient for a jury to find the defendant guilty beyond a reasonable doubt." *Williams v. State*, 760 N.W.2d 8, 12-13 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009). "The strong factual basis and the defendant's agreement that the evidence is sufficient to support his conviction provide the court with a basis to independently conclude that there is a *strong* probability that the defendant would be found guilty of the charge to which he pleaded guilty . . . ." *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007).

Appellant plead guilty to second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(h)(iii) (2016). Under this subdivision, a person is guilty of second-degree criminal sexual conduct when that person: (1) "intentionally touched [the victim's] intimate parts," (2) "with sexual or aggressive intent," (3) "the defendant . . . is [the victim's] parent, stepparent, or guardian," (4) "[the victim] was under" the age of 16 at the time of the act, and (5) "the sexual abuse involved multiple acts committed over an extended period of time." 10 *Minnesota Practice*, CRIMJIG 12.17 (2015).

The record shows a strong factual basis for appellant's guilty plea. First, "[t]he 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." *Sanchez v. State*, 868 N.W.2d 282, 289 (Minn. App. 2015), *aff'd*, 890 N.W.2d 716 (Minn. 2017). The probable-cause portion of the complaint alleges that appellant touched the 11-year-old victim's breasts on two occasions and referenced text messages between appellant and the victim in which appellant appears to admit that sexual contact occurred.

Second, the record also supports the accuracy of the factual basis. It contains an interview with appellant in which he admits to sexual contact with the victim, and an interview with the victim in which she describes the sexual contact. There is thus a "strong factual basis" for appellant's plea. *Theis*, 742 N.W.2d at 649.

The record from the plea hearing also shows that appellant acknowledged that the state's evidence was sufficient to prove him guilty beyond a reasonable doubt. Appellant testified expressly that he understood that the state must prove him guilty beyond a reasonable doubt, and that the evidence showed he was guilty beyond a reasonable doubt.

> DISTRICT COURT: Do you understand that if you did go to trial you would be presumed innocent until your guilt were proven beyond a reasonable doubt.
> APPELLANT: Yes, Your Honor.
> . . . .
> DISTRICT COURT: Do you understand that if you went to trial, the State's witnesses, and, why, specifically the juvenile here, would testify that on two separate occasions, uh, you, uh, touched her breasts with sexual intent?
> APPELLANT: Yes, Your Honor.
> DISTRICT COURT: And do you believe the evidence the State would likely offer in that regard, uh, would be sufficient

> for a jury to find you guilty of Count One beyond a reasonable doubt?
> APPELLANT: Yes, Your Honor.

The record shows that appellant entered the guilty plea based on his awareness that a jury would convict him. *Ecker*, 524 N.W.2d at 717.

There is a strong factual basis for appellant's plea, and appellant acknowledged that the evidence was sufficient to prove him guilty beyond a reasonable doubt. Appellant's plea therefore satisfies the *Norgaard* requirements, and his plea was accurate.

Intelligence

"The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea. 'Consequences' refers to a plea's direct consequences, namely the maximum sentence and fine." *Raleigh*, 778 N.W.2d at 96 (citation and quotation omitted).

The district court questioned appellant about the charges against him, his trial rights, and the presumptive prison sentence. Appellant waived his trial rights and acknowledged in his plea petition that he understood the charges against him and the presumptive prison sentence he faced.

Appellant argues that his plea was not intelligent because he did not understand that he was entering a *Norgaard* plea. The supreme court has said that "it is important for either counsel or the trial court to indicate explicitly on the record that the defendant is entering an *Alford*-type guilty plea," and, consistent with that directive, the district court did so here. *Ecker*, 524 N.W.2d at 717. After questioning appellant about his lack of memory, the district court stated it was "satisfied that there exists . . . a basis for a *Norgaard* plea."

In sum, appellant's plea was accurate and intelligent. We therefore affirm appellant's conviction.

Affirmed.