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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0337

State of Minnesota,
Respondent,

vs.

Isaiah Rakeem Wallace,
Appellant.

Filed March 16, 2020
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-CR-17-11978

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Charles F. Clippert, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Bjorkman, 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 aiding an offender, appellant challenges the accuracy of his guilty plea. Appellant also raises several challenges to his conviction

in a *pro se* supplemental brief. Because appellant's guilty plea was accurate, and because his *pro se* arguments are unsupported by the record, we affirm.

FACTS

On May 15, 2017, the state charged appellant Isaiah Rakeem Wallace with second-degree murder. The complaint alleges that appellant was the driver in a drive-by shooting when a passenger in the vehicle shot and killed a pedestrian. When police interviewed appellant, he initially denied being present at the shooting and denied knowing who fired the shots. After this initial denial, he admitted that the shooting occurred while he was driving and he identified which of his two passengers had fired the shots.

On October 25, 2018, appellant pleaded guilty to an amended charge of aiding an offender after the fact, in violation of Minn. Stat. § 609.495, subd. 3 (2016). At the plea hearing, in response to a combination of open-ended and leading questions, appellant admitted he was driving the vehicle during the shooting and admitted to lying to police about being present during the shooting and knowing the identity of the shooter. The district court accepted the plea and sentenced appellant to 195 months' imprisonment—an upward departure from the sentencing guidelines range that appellant agreed to in the plea agreement. Appellant challenges the validity of his guilty plea in this direct appeal.

D E C I S I O N

A defendant may seek plea withdrawal in a direct appeal from final judgment if the record is sufficient to review the issue. *State v. Iverson*, 664 N.W.2d 346, 350, 354-55 (Minn. 2003); *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). "Assessing the validity of a plea presents a question of law that [appellate courts] review de novo." *State v.*

Raleigh, 778 N.W.2d 90, 94 (Minn. 2010). The burden is on the defendant to show that his plea was invalid. *Id.* "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Id.* Appellant challenges the accuracy of his plea.

Appellant argues that his plea was not accurate because it lacks an adequate factual basis. "A proper factual basis must be established for a guilty plea to be accurate." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). This requirement "protect[s] 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." *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). Typically, a factual basis is established by defense counsel, the prosecutor, or the district court "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. The defendant's explanation "usually will suggest questions to the court which then, with the assistance of counsel, can interrogate the defendant in further detail." *Trott*, 338 N.W.2d at 251. A factual basis may also be established through the "testimony of witnesses and statements summarizing the evidence." *Id.* The district court should not accept the guilty plea "unless the record supports the conclusion that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty." *Id.* at 252.

Appellant argues that the factual basis for his plea is insufficient because his attorney established it solely through leading questions. The supreme court "discourage[s] the use of leading questions to establish a factual basis." *Ecker*, 524 N.W.2d at 717. It has cautioned that the district court, which is responsible for ensuring that a sufficient factual basis is established on the record, "must be particularly attentive to situations in which a

defendant is pleading guilty and is asked *only* leading questions by counsel." *Id.* at 716 (emphasis added). However, while disfavored, leading questions are not necessarily a fatal defect to a plea, and "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, 96 (determining that "the factual basis for [the defendant]'s plea is sufficient, despite its disfavored format").

Contrary to appellant's assertion, the factual basis for his guilty plea was established through both open-ended and leading questions. His attorney began by asking him a combination of open-ended and leading questions, and used open-ended questions for key parts of the factual basis. For example, after ascertaining that appellant stopped the vehicle at the shooter's request, defense counsel had appellant explain the shooting in his own words by asking "what happened from there?" It was only after a comprehensive series of questions that elicited the details of the shooting that appellant's attorney asked specific leading questions that appellant challenges here:

> DEFENSE COUNSEL: Okay. And you agreed to talk to the police; correct?
> APPELLANT: Yes.
> DEFENSE COUNSEL: All right. And nobody forced you to talk to the police; right?
> APPELLANT: No.
> . . . .
> DEFENSE COUNSEL: And, when you talked to the police, you lied and said that you did not know the shooter; correct?
> APPELLANT: Correct.
> DEFENSE COUNSEL: And, at some point, you even said that you weren't there; correct?
> APPELLANT: Correct.
> DEFENSE COUNSEL: And you -- and you agreed that that was not the truth?

> APPELLANT: Correct.
> DEFENSE COUNSEL: And you did know who [the shooter] was; correct?
> APPELLANT: Correct.
> DEFENSE COUNSEL: And you agreed that you did lie so that [the shooter] would not be arrested; correct?
> APPELLANT: Correct.
> DEFENSE COUNSEL: And you agreed that there was participation by three individuals; correct?
> APPELLANT: Correct.

Thus, although appellant's attorney asked him about lying to the police using leading questions, this is not a case in which the *entire* factual basis was established through leading questions. By the time appellant's attorney asked the leading questions at issue, appellant had already described his involvement with the shooting in response to several key open-ended questions. The entire exchange between appellant and his attorney reveals a sufficient factual basis for appellant's guilty plea.

Appellant also argues that his plea was not accurate because the factual basis does not comport with the elements of the crime to which he pleaded guilty. Appellant pleaded guilty to aiding an offender after the fact, in violation of Minn. Stat. § 609.495, subd. 3:

> **Obstructing investigation**. Whoever intentionally aids another person whom the actor knows or has reason to know has committed a criminal act, by destroying or concealing evidence of that crime, *providing false or misleading information about that crime* . . . or otherwise obstructing the investigation or prosecution of that crime is an accomplice after the fact . . . .

(emphasis added.) Appellant argues that he was not questioned about whether he intentionally aided the shooter by providing false or misleading information or otherwise

obstructed the investigation. Appellant's answers support his conviction for violation of Minn. Stat. § 609.495, subd. 3.

The law does not require that appellant's answers provide a verbatim recitation of the offense elements. The well-established standard is that "before a plea of guilty can be accepted, the trial judge must make certain that facts exist *from which the defendant's guilt of the crime charged can be reasonably inferred*." *Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016) (emphasis added). Appellant admitted to facts that establish that he intentionally gave false information to obstruct the investigation. He admitted to lying about his presence at the shooting and knowing the identity of the shooter, and admitted that he did this so that the shooter would not be arrested. His guilt of aiding an offender after the fact "can be reasonably inferred." *Id.*

Appellant also submitted a *pro se* supplemental brief in this appeal that appears to assert two arguments. First, appellant claims that his "attorney and the . . . county attorney" pressured him into pleading guilty. The record indicates otherwise. During the plea hearing appellant repeatedly acknowledged that he was not pressured or forced into pleading guilty. The record contains no evidence to the contrary that allows us to review this claim. *See State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987).

Next, appellant argues that his sentence, which was an upward departure from the sentencing guidelines range, violates *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). *Blakely* requires that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable

doubt." 542 U.S. at 301, 124 S. Ct. at 2536 (quotation omitted). Appellant's *pro se* argument ignores that he waived his rights under *Blakely*. A *Blakely* waiver must be knowing, voluntary, and intelligent. *See State v. Barker*, 705 N.W.2d 768, 773 (Minn. 2005). Appellant waived his *Blakely* rights in the following exchange:

> DEFENSE COUNSEL: And you understand that, with this -- with this plea agreement, you will be receiving an aggravated sentence of 195 months; correct?
> APPELLANT: Correct.
> . . . .
> THE COURT: [A]nd you're relieving the State of any burden to prove any facts that would allow you to be sentenced upwardly.
> APPELLANT: Yes, ma'am.
> . . . .
> THE COURT: And this is what you want to have happen today?
> APPELLANT: Yes, ma'am.
> THE COURT: Very well. Then I find you've made a knowing, intelligent, and voluntary waiver of your rights with regard to those factors -- *Blakely* as well.

Appellant does not contend that this waiver was unknowing, involuntary, or unintelligent. His argument that his *Blakely* rights were violated is without merit.

Affirmed.