STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0084

State of Minnesota,
Respondent,

vs.

Dennis Rioba Nyandiekda,
Appellant.

Filed November 9, 2020
Affirmed
Frisch, Judge

Dakota County District Court
File No. 19WS-CR-19-6209

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

Alina Schwartz, Assistant Eagan City Attorney, Campbell Knutson Professional Association, Eagan, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Frisch, Judge; and Smith, John, Judge.*

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

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

FRISCH, Judge

Appellant argues that his guilty plea to driving under the influence of alcohol was inaccurate and that reversal and remand for plea withdrawal is necessary to correct a manifest injustice. We affirm.

FACTS

On April 9, 2019, a state trooper stopped appellant Dennis Rioba Nyandiekda for speeding, observed signs of Nyandiekda's intoxication, heard him admit to drinking, and learned that Nyandiekda had two qualifying impaired-driving incidents on his record. The state charged Nyandiekda with driving under the influence of alcohol in violation of Minn. Stat. §§ 169A.20, subd. 1(1), .25, subds. 1(a), 2 (2018), and he later agreed to plead guilty.

At his plea hearing, Nyandiekda testified that he had reviewed and signed a written plea petition, which contained the following handwritten description: "I am pleading guilty because on [April 9, 2019,] in the city of Eagan, I operated a motor vehicle after consuming alcohol [and] that consumption impaired my ability to operate that motor vehicle. I have a prior in 2018 and 2017." The district court received the written plea petition and examined Nyandiekda as follows:

> Q: [W]ere you operating a motor vehicle in the city of Eagan, Dakota County, Minnesota?
> A: Yes, ma'am.
>
> Q: You came to the attention of a police officer because you were driving in excess of the speed limit. Would you agree?
> A: Yes.

Q: In fact . . . they say that they clocked you going 97 in a 70. Would you agree?
A: Yes.

Q: Upon having stopped the vehicle having contact with you, they could smell an odor of a[n] alcohol beverage. Would you agree?
A: Yes.

Q: Had you been consuming alcohol before you drove?
A: Yes.

Q: Are you not sure?
A: Yes. No, I—I am sure.

Q: Okay. So you were drinking before you were driving?
A: I had had a drink earlier, yes.

Q: And would you agree that the alcohol impaired your ability to drive?
A: Yes.

. . . .

Q: Sir, you would agree that you have two prior DWI convictions?
A: Yes.

Q: One is from June 5, 2018, and the other one is from October 21, 2017?
A: Yes.

The district court accepted Nyandiekda's plea, adjudicated the conviction, and placed Nyandiekda on supervised probation. This appeal follows.

D E C I S I O N

Nyandiekda urges us to reverse his conviction and remand for plea withdrawal, arguing that his guilty plea was inaccurate and therefore invalid. We review the validity of a guilty plea de novo. *State v. Johnson*, 867 N.W.2d 210, 214-15 (Minn. App. 2015),

review denied (Minn. Sept. 29, 2015). A defendant must be permitted to withdraw his guilty plea when it is necessary to correct a manifest injustice. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A guilty plea is invalid, and a manifest injustice exists, if the plea is inaccurate. *See State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). "Accuracy requires that the plea be supported by a proper factual basis[:] that there must be 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). The district court typically satisfies the accuracy requirement by asking a defendant to explain the circumstances of his offense, and it must be "particularly wary" of using leading questions to develop a factual basis. *Raleigh*, 778 N.W.2d at 94.

The pertinent elements of second-degree driving under the influence of alcohol are (1) that the defendant drove a motor vehicle, (2) while under the influence of alcohol, and (3) with two "qualified prior impaired driving incident[s] within the ten years immediately preceding" the offense. *See* Minn. Stat. §§ 169A.03, subd. 3(1), .20, subd. 1(1), .25, subd. 1(a) (2018). "A person is under the influence when a person does not possess that clearness of intellect and control of himself that he otherwise would have." *State v. Ards*, 816 N.W.2d 679, 686 (Minn. App. 2012) (quotation omitted).

Nyandiekda argues that the district court failed to develop an adequate factual basis because it asked Nyandiekda only a short series of leading questions. Although we discourage the use of leading questions, "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 94-95. Here, the plea colloquy is

supplemented by the written plea petition, signed by Nyandiekda, in which Nyandiekda admitted (1) "I operated a motor vehicle after consuming alcohol," (2) "consumption [of alcohol] impaired my ability to operate that motor vehicle," and (3) "I have a prior in 2018 and 2017." The plea petition contains affirmative admissions to each element of the crime independent of the district court's leading questions. The plea colloquy and written petition, considered together, established an adequate factual basis.

Nyandiekda poses questions that the district court *could* have asked to better develop additional context. But we do not review whether the district court could have developed a more detailed factual basis; we instead consider whether there are "sufficient facts on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *Iverson*, 664 N.W.2d at 349 (quotation omitted). Here, Nyandiekda admitted sufficient facts to support the conclusion that he drove while under the influence of alcohol within ten years of two qualifying impaired-driving incidents.[1] His guilty plea was therefore accurate, and reversal is not necessary to correct a manifest injustice.

Affirmed.

[1] This case is unlike those cited by Nyandiekda where the supreme court has reversed and remanded for plea withdrawal. *See Shorter v. State*, 511 N.W.2d 743, 744, 746 (Minn. 1994) (reversing postconviction court and remanding where factual basis was established solely on leading questions *and* the police department found exculpatory evidence after the plea, admitting that the original investigation was incomplete); *State v. Hoaglund*, 240 N.W.2d 4, 4-5 (Minn. 1976) (concluding that district court and attorneys failed to ask any questions regarding a necessary element of the offense).