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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0512**

Catherine Ann Moore, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 21, 2020
Affirmed
Halbrooks, Judge***

Scott County District Court
File No. 70-CR-17-13028

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and
Halbrooks, Judge.

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant Catherine Ann Moore challenges the postconviction court's denial, without a hearing, of her petition to withdraw her guilty plea to the charges of terroristic threats and domestic assault. We affirm.

FACTS

In July 2017, B.D.R. returned home from work at approximately 4:30 p.m. to find multiple bottles of alcohol throughout the residence he shared with his fiancée, Moore. According to B.D.R., he tried to convince Moore to go to the hospital because she was bleeding from her rectum. But Moore refused and in the process threatened B.D.R. with a knife. While making jabbing motions with the knife, Moore struck B.D.R., causing several small lacerations.

B.D.R. called the police, and stated that Moore was bleeding and that he wanted to see a doctor. He reported that Moore had been drinking alcohol. Upon their arrival, deputies noticed that Moore smelled of alcohol and had bloodshot eyes. Moore denied that she had been drinking and claimed that B.D.R. was trying to take her to the hospital against her will. Moore also denied the incident with the knife, stating that she was defending herself. Moore was arrested and was charged with one count of second-degree assault, one count of terroristic threats, and one count of gross misdemeanor domestic assault.

At the plea hearing, Moore pleaded guilty to terroristic threats and an amended misdemeanor domestic-assault count. In exchange for Moore's plea, the state agreed to a stay of adjudication on the terroristic-threats count, a stay of imposition on the domestic-

assault count, and a dismissal of the second-degree assault count. The parties also agreed that the terroristic-threats offense would be sentenced as a gross misdemeanor if a sentence were ever imposed. The district court accepted Moore's plea and sentenced her according to the plea agreement.

Approximately two years later, Moore petitioned for postconviction relief, seeking to withdraw her guilty plea on the ground that her plea was invalid because it lacked an adequate factual basis. The postconviction court denied her requested relief and denied her request for a hearing. This appeal follows.

D E C I S I O N

A. Plea Withdrawal

“We review the denial of a petition for postconviction relief for an abuse of discretion. A postconviction court abuses its discretion when it has 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.” *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017) (quotation and citation omitted). We will sustain the postconviction court's findings if they are supported by sufficient evidence in the record. *Cuypers v. State*, 711 N.W.2d 100, 103 (Minn. 2006).

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 a court must allow withdrawal if it is necessary to correct a manifest injustice. *Id.* “A manifest injustice exists if a guilty plea is not valid.” *Id.* at 94. A constitutionally valid plea must be accurate, voluntary, and intelligent. *Id.* The defendant bears the burden of showing that his plea was invalid. *Id.*;

see also Lussier v. State, 821 N.W.2d 581, 588 (Minn. 2012). The validity of a guilty plea is a question of law that we review de novo. *Raleigh*, 778 N.W.2d at 94.

Moore argues that withdrawal of her guilty plea is necessary to correct a manifest injustice because her plea was inaccurate and, therefore, invalid. Specifically, Moore contends that there is an insufficient factual basis supporting her guilty plea to terroristic threats because she did not act in reckless disregard of the risk of causing terror and an insufficient factual basis supporting her guilty plea to domestic assault because she did not act with the intent to cause fear of immediate bodily harm.

A guilty plea is accurate if it is supported by 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 [the] defendant is guilty of at least as great a crime as that to which [s]he pled guilty.” *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (quotation omitted).

Minn. Stat. § 609.713, subd. 1 (2016) provides that a person is guilty of terroristic threats if she “threatens, directly or indirectly, to commit any crime of violence with the purpose to terrorize another . . . or in reckless disregard of the risk of causing such terror or inconvenience.” This court has held that “recklessly making terroristic threats is not a specific-intent crime.” *State v. Bjergum*, 771 N.W.2d 53, 58 (Minn. App. 2009). Reckless disregard “means that the defendant, *even though not having the specific purpose of terrorizing another*, recklessly risks the danger that the statements would be taken as threats by another and that they would cause extreme fear.” *Id.* at 57 (quotation omitted). The state does not need to prove that the victim actually experienced extreme fear. *Id.*

Moore admitted that she threatened to cut B.D.R.'s throat while holding a knife and that she intended to cause him fear. She engaged in the following exchange with her attorney at the plea hearing:

Q: . . . You said that you would kill him?

A: I said that if you come closer to me, I will cut your throat.

Q: Okay. And you were holding a knife at that time?

A: I was.

Q: And you understand you are giving up your right to claim self-defense in this matter?

A: I understand that I am giving up that right by making this plea.

Q: Okay. And also you would agree that you intended him to be afraid that you would in fact do that?

A: I wanted him to believe that I would do that, yes. I wanted him to leave me alone.

This record provides an adequate factual basis to support the accuracy of Moore's guilty plea to terroristic threats.

Moore also pleaded guilty to domestic assault. A person is guilty of domestic assault if she "commits an act [against a family or household member] with the intent to cause fear in another of immediate bodily harm or death." Minn. Stat. § 609.2242, subd. 1 (2016). Assault-fear is a specific-intent crime that requires the state to prove that the defendant intended to cause a particular result—namely fear of immediate bodily harm or death. *State v. Fleck*, 810 N.W.2d 303, 309-10 (Minn. 2012). "'With intent to' . . . means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2016).

With respect to the domestic-assault count, the following exchange between Moore and her attorney occurred at the plea hearing:

Q: On that same day and same series of incidents, would you agree that you intended by your actions to make your fiancé afraid that he would be harmed?

A: I intended to make him afraid that he would be harmed if he continued to pursue me, yes.

Q: And you are giving up your right to claim self-defense in that matter?

A: I am giving up that right.

Moore's testimony supports a finding that she intended to cause B.D.R. to fear immediate bodily harm.

We conclude that Moore has not met her burden to show that her pleas were invalid. To the contrary, the record well supports the factual bases for the pleas. Therefore, Moore is not entitled to withdraw her pleas.

B. Denial of Evidentiary Hearing

Moore argues that the postconviction court abused its discretion by denying an evidentiary hearing because her affidavit alleged facts that, if proven, would entitle her to relief. We review the postconviction court's decision to grant or deny an evidentiary hearing for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012).

A postconviction petitioner is entitled to an evidentiary hearing “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2018). But a postconviction court “need not hold an evidentiary hearing when the petitioner alleges facts that, if true, are legally insufficient to entitle him to the requested relief.” *Zumberge v. State*, 937 N.W.2d 406, 411 (Minn. 2019) (quotation omitted). “[A] defendant is not entitled to an evidentiary hearing if her allegations lack factual support and are directly refuted by her own testimony

in the record. *Williams v. State*, 760 N.W.2d 8, 14 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

Here, Moore alleged in a postconviction affidavit that the only reason she pleaded guilty was because she was afraid she might be hospitalized if she did not plead guilty. But this allegation is directly refuted by her own testimony at the plea hearing. *See id.* On this record, the postconviction court properly exercised its discretion by denying Moore an evidentiary hearing on the petition.

Affirmed.