STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1151

State of Minnesota,
Respondent,

vs.

Ron Wesley Epps,
Appellant.

Filed July 12, 2021
Reversed and remanded
Bryan, Judge

Hennepin County District Court
File No. 27-CR-20-6645

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Reilly, Presiding Judge; Slieter, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal, appellant challenges the accuracy of his guilty plea and the district court's decision to deny his presentence motion to withdraw his guilty plea. Because appellant's plea colloquy did not establish a sufficient factual basis for every

essential element of the offense, we conclude that the guilty plea is not valid. We therefore reverse and remand for further proceedings.

FACTS

According to the complaint, in November 2019, the district court issued a Domestic Abuse No Contact Order (DANCO) that prohibited appellant Ronn Wesley Epps[1] from contacting T.R. In March 2020, officers went to T.R.'s residence for a welfare check, where the officers found Epps. Respondent State of Minnesota charged Epps with one count of violating a DANCO within ten years of the first of two or more qualifying convictions under Minnesota Statutes section 629.75, subdivision 2(d)(1) (2018). Epps waived his right to trial and entered a guilty plea.

At the plea hearing, Epps confirmed that he understood the plea petition and the rights that he was waiving by pleading guilty. Prior to entering the plea, Epps stated that he "need[ed] to be free" because of the coronavirus and because he did not know when he could have a trial. The district court told Epps that it would not accept a guilty plea "from someone who is telling [the district court that] they're not guilty." Epps replied "I'm guilty," and the district court proceeded with the plea hearing. Epps's attorney then asked the following questions to establish a factual basis:

> Q: Mr. Epps, I want to direct your attention to March 7th of 2020. On that day were you in the City of Minneapolis, which is located in Hennepin County?

[1] The caption in the district court lists appellant as "Ron Wesley Epps," and that spelling is used in the caption on appeal. Minn. R. Civ. App. P. 143.01 (directing that the title of an action "not be changed in consequence of [an] appeal"). Because appellant spells his name as Ronn, that spelling is used here.

EPPS: Yes.

Q: And prior to you arriving at a residence in Minneapolis, this Court has ordered you not to have contact with somebody with the [initials]—an adult male with the initials T.R.; is that correct?

EPPS: Yes.

. . . .

Q: Okay. So you agree that there was an order in place, a court order, that directed you not to have a contact with this individual[?]

EPPS: Yes.

Q: —is that right?

EPPS: Yes.

Q: And you were aware of that order?

EPPS: Yes.

Q: And you went to this individual's residence anyhow?

EPPS: Yes . . . .

Epps did not admit to the allegations in the complaint and did not admit that he had prior DANCO violations.

Prior to sentencing, Epps moved to withdraw his guilty plea because he "entered his plea under duress caused from being in custody during the [coronavirus] pandemic." The district court found no duress and denied Epps's motion to withdraw his guilty plea. The district court then imposed a sentence of fifteen months, but stayed execution of that term for a period of three years. This appeal follows.

DECISION

Epps argues that because he did not admit to any prior qualifying convictions, his guilty plea was inaccurate and invalid. Because the factual basis did not include an admission regarding this essential element of the offense, we agree with Epps, reverse his conviction, and remand the matter to the district court.[2]

"To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "If a guilty plea fails to meet any of these three requirements, the plea is invalid." *State v. Johnson*, 867 N.W.2d 210, 214 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015). Epps challenges only the accuracy of his plea. "The accuracy requirement protects a defendant from pleading guilty to a more serious offense than that for which he could be convicted if he insisted on his right to trial. To be accurate, a plea must be established on a proper factual basis." *Raleigh*, 778 N.W.2d at 94 (citations omitted); *see also Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008) ("The factual basis must establish sufficient facts on the record to support a conclusion that [the] defendant's conduct falls within the charge to which he desires to plead guilty." (quotation omitted)). It is well-established that a factual basis must be established for each and every element of the offense to which the defendant is pleading guilty. *State v. Jones*, 921 N.W.2d 774, 779 (Minn. App. 2018) ("For a guilty plea to be accurate, a factual basis must be established showing that the defendant's conduct meets

[2] Epps also appeals the denial of his presentence motion to withdraw the guilty plea. Because we remand Epps's guilty plea as invalid, we need not review the denial of this motion.

all elements of the offense to which he is pleading guilty."), *review denied* (Minn. Feb. 27, 2019). The appellant "bears the burden of showing that his plea was invalid," *id.* at 778, and we review de novo the validity of a guilty plea, *Raleigh*, 778 N.W.2d at 94.

Pursuant to *Jones*, the factual basis underlying Epps's guilty plea must establish each of the following six essential elements of the charged offense: (1) an existing DANCO prohibited Epps from having contact with the protected person; (2) Epps knew of the DANCO and its terms; (3) Epps violated the DANCO by having contact with the protected person; (4) Epps knew that his behavior was prohibited by the DANCO; (5) Epps had two or more previous qualified domestic-violence-related offense convictions; and (6) venue was proper in the district court. *See State v. Watkins*, 820 N.W.2d 264, 267 (Minn. App. 2012) (reversing Watkins's conviction because the jury instructions omitted an essential element: "the jury must first find that [Watkins] was aware that his behavior was prohibited by the order"), *aff'd on other grounds*, 840 N.W.2d 21 (Minn. 2013). It is undisputed that Epps did not admit to, and was not asked about, whether he had any previous qualifying convictions. It is also undisputed that this is an essential element of the offense. Pursuant to *Jones*, the guilty plea in this case was invalid because the factual basis failed to establish this element.[3]

[3] The state argues that Epps cannot challenge his plea for the first time on appeal. We disagree. Epps can directly appeal a conviction obtained by a guilty plea. *See State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003) (concluding that a first-time challenge on appeal to the validity of a guilty plea is not waived); *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) (stating that "[a] defendant is free to simply appeal directly from a judgment of conviction and contend that the record made at the time the plea was entered is inadequate"); *Johnson*, 867 N.W.2d at 214 (quoting *Brown*).

The state argues, however, that we should disregard this deficiency in cases where the complaint, the presentence investigation report, or some other undefined information available to the district court can establish the omitted essential element. We disagree. As this court recently explained in *Rosendahl v. State*, "consideration of evidence not expressly acknowledged and admitted by the defendant during the colloquy is not proper for a reviewing court to consider in a 'typical' plea." 955 N.W.2d 294, 301 (Minn. App. 2021). While we have permitted district courts to rely on statements in the complaint or in a grand jury transcript when making inferences from admitted facts, the documents relied on must have been properly presented to the district court at the time of the guilty plea and the defendant must have acknowledged them or otherwise admitted to specific facts themselves in the plea colloquy. *Id.* at 301-02 (observing that reliance on a complaint to supplement the factual basis was permitted only after "the district court judge carefully interrogated the defendant" and "the defendant freely admitted the allegations in the complaint," distinguishing *State v. Trott*, 338 N.W.2d 248 (Minn. 1983) and *Lussier v. State*, 821 N.W.2d 581 (Minn. 2012)).

The state also relies on *State v. Rewitzer*, 617 N.W.2d 407, 411 (Minn. 2000), *State v. Robinson*, 718 N.W.2d 400, 413 (Minn. 2006), and *State v. Huber*, No. A18-0225, 2019 WL 509944 (Minn. App. Feb. 11, 2019), in support of its proposition that courts can rely on documents not presented or acknowledged at the time of the guilty plea to supplement the factual admissions and establish an essential element. We reject this argument because none of the cited cases supports the state's proposed legal rule. In *Rewitzer*, appellant sought review of his sentence—not his conviction—on the grounds that the fine imposed

violated the Excessive Fines Clauses of the United States and Minnesota Constitutions. 617 N.W.2d at 412-15. The supreme court denied a motion to strike because the challenged materials contained "various Minnesota and federal sentencing statistics . . . [that were] public record and the state did not contest the submission of similar material in the courts below." *Id.* at 411. Contrary to the state's argument in this case, the Minnesota Supreme Court's decision in *Rewitzer* to deny a motion to strike these materials when analyzing the constitutionality of a sentence does not compel abdication of *Jones* and *Rosendahl*. The issues in *Robinson* and *Huber* are likewise unrelated to the question before us. In *Robinson*, the Minnesota Supreme Court concluded that improper admission of extrajudicial statements at a trial pursuant to the medical diagnosis and treatment exception to the hearsay rule constituted harmless error because those statements could have been admitted under the residual hearsay exception. 718 N.W.2d at 409-10. In *Huber*, this court addressed a motion to strike extrajudicial statements in the context of a sentencing appeal. 2019 WL 509944, at *5. None of these cases addresses what information a court can rely on when considering the factual basis offered to support a guilty plea. Instead, they relate to application of hearsay exceptions and information relied on to justify a particular sentence.

We continue to apply *Jones* and require admissions to each essential element of an offense. Because the admissions in this case made no reference to or acknowledgement of any prior qualified domestic-violence-related offense convictions, the factual basis failed to address that essential element.

Reversed and remanded.