STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1238

State of Minnesota,
Respondent,

vs.

Daniel Santacruz Espinoza,
Appellant.

Filed August 9, 2021
Affirmed
Jesson, Judge

Clay County District Court
File No. 14-CR-18-5024

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

Brian J. Melton, Clay County Attorney, Pamela L. Foss, Chief Assistant County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Jesson, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Daniel Espinoza sent a video to a child of himself masturbating and—after law enforcement learned of this exchange—pleaded guilty to electronic solicitation of a child. But before sentencing, Espinoza moved to withdraw his plea. The district court

denied his motion, finding that withdrawal was neither necessary to correct a manifest injustice nor fair and just. Espinoza appeals. Because the facts admitted in Espinoza's plea colloquy support the inference that he sent the video of himself masturbating to the victim with the intent to arouse a person's sexual desires, we affirm.

FACTS

After receiving a report that a 14 year old (the victim) sent pictures of herself to an adult—later identified as appellant Daniel Espinoza—for money, police started an investigation. In interviewing the victim, officers learned that Espinoza offered to be her "sugar daddy," asked her to send pictures of herself in exchange for money, and sent her a video of himself masturbating. Based on this information, the state charged Espinoza with engaging in electronic communications with a child relating to or describing sexual conduct (count I) and distributing material relating to or describing sexual conduct to a child (count II).[1]

Prior to trial, the state offered Espinoza a plea agreement. In exchange for Espinoza's plea of guilty to either count, the state would agree to a reduced sentence. Espinoza accepted the deal and entered a guilty plea to count I. At the plea hearing, Espinoza described the facts establishing his guilt for the offense:

> I had told her that if she was old enough, if she was 18, I would send her more money and I could be her sugar daddy if she was 18. And then that's when she got into that conversation of asking for other stuff and—other requirements and I told her no. . . . And she started—we started—she started discussing pictures for money and that's how everything turned out.

[1] Minn. Stat. § 609.352, subd. 2a(2)-(3) (2018).

But when the prosecutor asked Espinoza about the types of pictures the victim had sent, he replied: "I can't really say because none of the pictures were really confirmed on what she talked. I never said nude pictures. I just said pictures." After conferring with his attorney, Espinoza instead entered a plea to count II.

After the court reaffirmed that Espinoza understood the crime to which he was pleading guilty and the rights he was waiving in entering his plea, the state continued its questioning:

STATE:	Mr. Espinoza, talking about that same time period as before, September 25, 2018 to October 15th of 2018, you were talking with a minor who was between the ages of 13 and 14 during that period; is that right?
DEFENDANT:	Yes.
STATE:	Via Snapchat?
DEFENDANT:	Yes.
STATE:	And at some point did you send her a video?
DEFENDANT:	Yes.
STATE:	And what was that video of?
DEFENDANT:	It was a video of me masturbating.
STATE:	Okay. Would you agree that that video constituted sexual conduct?
DEFENDANT:	Yes.

Based on the plea petition and Espinoza's plea colloquy, the district court found a sufficient factual basis for the plea and that Espinoza entered the plea knowingly, voluntarily, and intelligently. The court deferred acceptance of the plea until sentencing and ordered a presentencing investigation report and a sex offender evaluation.

But despite pleading guilty, Espinoza told the presentence investigation report writer that he did not discuss sex or have sexual conversations with the victim or send a video of himself masturbating. He also stated that he only admitted to the crime to obtain

the plea deal and wanted to withdraw his plea. And during his sex offender evaluation, Espinoza again denied having sexual conversations with any minors via Snapchat or other social media. But Espinoza admitted to accidentally sending the masturbation video to the victim.

Espinoza then moved to withdraw his plea prior to sentencing, claiming that (1) at the plea hearing, he did not give an accurate description of the factual basis of what happened; (2) he was told by law enforcement that he would not be charged with the crimes; and (3) he was not guilty of either crime. At a hearing on the motion, the state argued that there was a sufficient factual basis for the plea because Espinoza admitted to sending the video to the victim. Additionally, the state noted that in the six months since Espinoza had entered his plea, the victim moved out of state and was now unavailable as a witness. Allowing Espinoza to withdraw his plea, the state argued, would be prejudicial to its case. Espinoza relied on his affidavit and did not present further argument.

The district court denied Espinoza's motion. Withdrawal of the plea, the court determined, was neither necessary to correct a manifest injustice nor would be fair and just. The court found that although Espinoza "struggled to admit to facts" in relation to count I, he admitted to sending the video to the minor victim, "agreed that the video contained sexual conduct[,] and that he knew he was sending it to a child." And despite Espinoza's request to withdraw his plea, the district court found that he "provided no explanation for pleading guilty to the charge under oath, nor raised deficiencies in his plea," and "failed to show how the plea entered . . . was inaccurate, involuntary, or unintelligently made."

Following its decision, the district court sentenced Espinoza according to the plea agreement.[2]

Espinoza appeals.

DECISION

Espinoza assigns error to the district court's denial of his motion to withdraw his guilty plea, arguing that because he did not admit to an essential statutory element of the crime—sending the video with an "intent to arouse"—there is an insufficient factual basis to support his plea. As such, Espinoza asserts, his plea was invalid. According to Espinoza, not only was the district court's acceptance of his plea a manifest injustice, but allowing him to withdraw his plea would be fair and just.

Although a defendant does not have an absolute right to withdraw a guilty plea, the district court must allow the defendant to withdraw their plea to correct a "manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. And even where withdrawal is not necessary to correct a manifest injustice, a district court *may* allow a defendant to withdraw their plea before sentencing if doing so would be fair and just. *Id.*, subd. 2. We address Espinoza's arguments under each standard in turn.

[2] The district court sentenced Espinoza to 15 months' imprisonment, stayed for five years of supervised probation. Espinoza was also required to serve 120 days in jail (with credit given for four days already served), pay fines, and follow the conditions established by the court and as recommended by the sex offender evaluator, which included restricting Espinoza's use of social media and barring any unsupervised contact with minors.

Manifest Injustice

A manifest injustice arises when a guilty plea is invalid—that is, when the plea is not accurate, voluntary, and intelligent. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The appellant bears the burden of proving that the plea was invalid. *Id.* Here, Espinoza only disputes the accuracy of his plea. A plea is considered accurate if it is supported by a "proper factual basis." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). In turn, a plea is supported by a proper factual basis if 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." *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (quotation omitted). But "when the defendant makes statements that negate an essential element of the charged crime," the factual basis for a plea is insufficient. *Id.* at 350. Whether a defendant's plea was valid is a question of law which we review de novo. *Raleigh*, 778 N.W.2d at 94.

We begin our analysis by identifying the elements of the crime to which Espinoza pleaded guilty. To convict a person of electronic solicitation of a child by distributing material that relates to or describes sexual conduct, the state must show that the defendant: (1) used the internet, a computer, or other electronic device; (2) to distribute "any material, language, or communication, including a photographic or video message" relating to or describing sexual conduct to a child; (3) with the intent to arouse the sexual desire of any person. Minn. Stat. § 609.352, subd. 2a(3). Espinoza admitted in his plea colloquy to the first and second elements of the offense and does not dispute them on appeal. Only the third element—the "intent to arouse"—remains for consideration.

The parties agree that Espinoza did not specifically admit to sending the victim the video with the intent to arouse a person's sexual desires. But even when a defendant does not directly admit to an element of the offense, "a district court may nevertheless draw inferences from the facts admitted to by the defendant." *Rosendahl v. State*, 955 N.W.2d 294, 299 (Minn. App. 2021) (citing *Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016)).

A review of the plea hearing transcript supports the inference that Espinoza intended to arouse a person's sexual desires when sending the video to the victim. When Espinoza entered his plea to count I, he admitted to telling the victim that he could be her "sugar daddy if she was 18," and discussing pictures for money. Then, when entering his plea to count II, Espinoza admitted that he sent the video of himself masturbating to the victim and conceded that the video constituted sexual conduct.[3] Given the context of Espinoza's earlier admissions, it is difficult to imagine what purpose such a video could have, other than to arouse a person's sexual desires.

Despite this, Espinoza asserts that the district court could infer that he sent the video by mistake or with the intent to "disturb or harass the child." But the facts admitted in the plea colloquy do not support these conclusions.[4] And even if Espinoza intended to send

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[3] Although Espinoza contends that he never admitted that the contents of his communications with the victim were sexual in nature, the transcript directly contradicts that assertion. When the state asked whether the video constituted sexual conduct, Espinoza replied in the affirmative.

[4] Furthermore, because Espinoza did not admit to the contents of the complaint (where he allegedly claimed to have sent the video to the victim accidentally), the district court could not consider those assertions when determining whether the plea was valid. *Rosendahl*, 955 N.W.2d at 300.

the video to another adult, "the intent to arouse requirement applies to any person, not just the adult and child engaging in the communication." *State v. Muccio*, 890 N.W.2d 914, 922 (Minn. 2017).[5]

Because the facts admitted at the plea hearing support the inference that Espinoza sent the video with the intent to arouse a person's sexual desires, the district court did not err by concluding that Espinoza's plea was accurate and that plea withdrawal was not necessary to correct a manifest injustice.

Fair and Just

When determining whether withdrawal of a plea would be fair and just, the district court must consider the reasons the defendant provides to support withdrawal and whether withdrawal would prejudice the state. *Raleigh*, 778 N.W.2d at 97. We review a district court's determination under the fair-and-just standard for an abuse of discretion, and reverse "only in the rare case." *Id.* (quotation omitted). A court abuses its discretion when its decision is based on an erroneous view of the law or is not supported by the facts in the record. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). Under the fair-and-just standard, the appellant bears the burden of producing reasons to support withdrawal, while

[5] Espinoza also cites to *State v. Muccio* to support his argument that because he did not explicitly admit his intent in sending the video, the district court's application of the statute was overbroad and facially invalid. 890 N.W.2d at 928-29 (concluding that the statute is not overly broad, in part, because the specific-intent requirement ensures that protected speech is not regulated). But the court may, and did in this instance, establish Espinoza's intent by *inference* from the facts admitted at the plea hearing. *Rosendahl*, 955 N.W.2d at 299.

the state bears the burden of showing that prejudice would be caused by withdrawal. *Raleigh*, 778 N.W.2d at 97.

Espinoza identified two reasons to support the withdrawal of his plea: (1) he did not give an accurate description of the factual basis of his plea; and (2) he was not guilty of the offense. But as explained above, the record does not indicate that Espinoza's plea was inaccurate or that he is innocent. The facts admitted in Espinoza's plea colloquy are sufficient for the district court to infer that Espinoza sent the video of himself masturbating with the intent to arouse a person's sexual desires. As such, the district court did not abuse its discretion by concluding that Espinoza did not provide adequate support for withdrawal of his plea under the fair-and-just standard.[6]

In sum, the facts admitted in Espinoza's plea colloquy support the inference that he sent the video of himself masturbating to the victim with the intent to arouse a person's sexual desires. Because allowing Espinoza to withdraw his plea is neither necessary to correct a manifest injustice nor would be fair and just, the district court did not err by denying Espinoza's motion to withdraw his plea.

Affirmed.

[6] Because we conclude that Espinoza failed to demonstrate fair and just reasons to support withdrawal of his plea, we do not address whether the state showed that a plea withdrawal would result in prejudice. *Raleigh*, 778 N.W.2d at 98.