STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1452

State of Minnesota,
Respondent,

vs.

Stanley Paul Wenell-Jack,
Appellant.

Filed December 20, 2021
Affirmed
Jesson, Judge

Itasca County District Court
File Nos. 31-CR-17-1624, 31-CR-17-1661, 31-CR-17-613

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

Matti R. Adam, Itasca County Attorney, Jacqueline A. Destache, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

After initially not showing up for his plea hearing, appellant Stanley Paul Wenell-Jack pleaded guilty to a felony charge of failure to appear. He now seeks to withdraw that plea (as well as two pleas to fifth-degree possession of a controlled

substance), arguing that there was an inadequate factual basis to establish that he *intentionally* failed to appear. Because the factual basis adequately establishes that Wenell-Jack pleaded guilty to felony failure to appear, we affirm.

FACTS

In March 2017, the state charged Wenell-Jack with felony fifth-degree possession of a controlled substance and a misdemeanor for providing a false name to police.[1] In June, Wenell-Jack failed to appear for his plea hearing and was charged with felony failure to appear.[2] The following week, the state further charged Wenell-Jack with fifth-degree possession of a controlled substance and misdemeanor possession of pharmaceutical medication without a prescription.[3]

Over that summer, Wenell-Jack reached a plea agreement with the state. Wenell-Jack pleaded guilty to two counts of fifth-degree possession and to felony failure to appear. The state agreed to dismiss the remaining misdemeanor charges.

The factual basis for Wenell-Jack's felony failure-to-appear plea consisted of the following:

> COURT: Okay. And were you told at some point that you had to make all of your appearances and if you didn't show up you could be charged with a failure to appear?
> WENELL-JACK: Yes, sir.
> COURT: Were you scheduled for court on June 20 of this year?
> WENELL-JACK: Yes, sir. I was not in the county. I was unable to attend.

[1] Minn. Stat. § 152.052, subd. 2 (2016); Minn. Stat. § 609.506, subd. 1 (2016).
[2] Minn. Stat. § 609.49 subd. 1(a) (2016).
[3] Minn. Stat. § 152.052, subd. 2; Minn. Stat. § 151.37, subd. 1 (2016).

COURT: Why weren't you able to attend?

WENELL-JACK: I was dealing with my son. He was in a—he's still in the same position, except I had to send him back and he's still in the same—he's not in a good place and that's—that's why I'm not sure where I'm going to be at upon—like I'm not sure what's going to happen with the—with the Wellness Court and stuff because I got to go try to get him again and so I could be in Koochiching County, I could be in Beltrami, I could be here, I could be in Hibbing, I mean—or I just—I'm not sure where I'm going to be. It's going to be based on what happens when I get my son.

COURT: Did you get any permission from the court or from your attorney or anyone like that not to be in court on June 20?

WENELL-JACK: No—that was—that was—that was on my fault, sir.

Wenell-Jack filed a pro se notice of motion and motion to withdraw his guilty pleas. Over two years later, the district court denied Wenell-Jack's motion to withdraw his guilty pleas.[4] The district court then sentenced Wenell-Jack to two concurrent 19-month prison sentences for both fifth-degree controlled-substance convictions, but stayed the execution of those sentences, and placed him on probation for two years. The court also sentenced him to 17 months in prison for his failure-to-appear conviction, stayed execution, and placed him on probation for two years.[5]

Wenell-Jack appeals.

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[4] During much of this two-year interval, Wenell-Jack was in custody on unrelated convictions.

[5] After imposing his sentences, the district court gave Wenell-Jack credit for all time served and immediately discharged Wenell-Jack from probation because his custody credit was enough to satisfy all three sentences.

DECISION

Wenell-Jack argues that his guilty plea to felony failure to appear is inaccurate, his conviction must be vacated, and he should be allowed to withdraw his plea. His plea is inaccurate, Wenell-Jack asserts, because he did not admit that he *intended* to fail to appear—an element of the crime.[6]

To evaluate this claim, we begin by acknowledging that a defendant does not have an absolute right to withdraw a guilty plea. *State v. Nicholas*, 924 N.W.2d 286, 292 (Minn. App. 2019), *rev. denied* (Minn. Apr. 24, 2019). But a district court may allow a defendant to withdraw his guilty plea prior to sentencing if "it is fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2. In order for a guilty plea to be constitutionally valid, it must be accurate, voluntary, and intelligent. *State v. Trott*, 338 N.W.2d 248, 251-52 (Minn. 1983). Here, Wenell-Jack only challenges the accuracy of his plea. An accurate plea must be "established on a proper factual basis." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A proper factual basis "must establish sufficient facts on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *Munger v. State*, 749 N.W.2d 335, 337-38 (Minn. 2008) (quotation omitted). This may include facts from which the defendant's guilt can be reasonably inferred. *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016). We review the validity of a plea de novo. *Raleigh*, 778 N.W.2d at 94.

[6] Wenell-Jack also asserts that because his two misdemeanor pleas were part of a global plea, he also should be allowed to withdraw those guilty pleas as invalid. But not only do we conclude that his guilty plea to felony failure to appear is valid, the record does not reflect that, regardless, the three guilty pleas were part of a global plea.

To assess whether the plea's factual basis addresses each element of the crime charged—as it must—we first consider the elements of felony failure to appear. The elements here are straightforward. A person is guilty of failure to appear if they "*intentionally* fail[] to appear when required after having been notified that a failure to appear for a court appearance is a criminal offense." Minn. Stat. § 609.49 subd. 1(a) (emphasis added).

We next turn to whether the factual basis establishes that these elements of felony failure to appear were met. Here, Wenell-Jack did not expressly say at the plea hearing that he intentionally failed to appear. But an admission of the requisite intent is not required if the proper factual basis of the requisite intent can be inferred from the record. The record establishes that it was. There is no dispute that Wenell-Jack failed to appear at his court appearance when he was required to do so after having been notified that failure to appear is a criminal offense. At a July 2017 hearing, the court asked him "were you told at some point that you had to make all of your court appearances and if you didn't show up you could be charged with a failure to appear?" Wenell-Jack responded, "Yes, sir." Yet he decided to attend to his son rather than to attend the hearing. Wenell-Jack does not even assert that his failure to appear was due to circumstances beyond his control. Minn. Stat. § 609.49 subd. 3 (2016) ("If proven by a preponderance of the evidence, it is an affirmative defense to a violation of subdivision 1, 1a, or 2 that the person's failure to appear in court as required was due to circumstances beyond that person's control."). Accordingly, we conclude that the factual basis adequately establishes that Wenell-Jack intentionally failed to appear at his hearing, thus making his plea valid.

Still, Wenell-Jack argues that although he admitted to missing the hearing because he was "not in the county" and was "dealing with [his] son," that he never admitted to intentionally doing so. But, as previously discussed, the factual basis needs only to establish the inference that Wenell-Jack's belief that attending to his son would result in failing to appear at his hearing. *Nelson*, 880 N.W.2d at 861. It did so here.

Wenell-Jack further argues that under *State v. Mikulak*, the factual basis of his plea is insufficient because he made statements that negated the "intentionally" element of felony failure to appear. 903 N.W.2d 600, 605 (Minn. 2017) (holding that the factual basis of defendant's plea was insufficient because defendant made statements that negated the mens rea element of their charged offense). But *Mikulak* does not discuss the "intentionally" element—it addressed when the "knowingly" element is met. *Id.* at 604-05. More fundamentally, Wenell-Jack's statements do not negate his intent. His statements simply show that he chose to attend to the obligation of his son rather than the obligation of his court hearing.

Because the factual basis adequately establishes that Wenell-Jack is guilty of felony failure to appear, his entire plea agreement is valid.

Affirmed.