STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0668

Nicholas Patrick Pankuch, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed April 4, 2022
Affirmed
Johnson, Judge

Dakota County District Court
File No. 19AV-VB-17-5899

Andrew C. Wilson, Wilson & Clas, Minneapolis, Minnesota (for appellant)

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

Christine J. Cassellius, Ryan J. Bies, Greyson M. St. Martin, Dougherty, Molenda, Solfest, Hills & Bauer, P.A., Apple Valley, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In 2017, Nicholas Patrick Pankuch was cited for three offenses: the misdemeanor offense of driving a motor vehicle after suspension of a driver's license and two petty-misdemeanor offenses. He did not appear in court or otherwise respond to the citation.

More than 60 days later, the district court entered guilty pleas on all three offenses and imposed a fine for each offense that is less than the maximum fine for a petty-misdemeanor offense. Four years later, Pankuch moved to withdraw his guilty pleas. The post-conviction court denied the motion. We conclude that the post-conviction court did not err by concluding that Pankuch did not establish that withdrawal of his guilty plea is necessary to correct a manifest injustice. Therefore, we affirm.

FACTS

Shortly after 10:00 p.m. on March 20, 2017, an Apple Valley police officer saw a parked vehicle in a city park that had closed at 10:00 p.m. The officer approached the vehicle to speak with its occupants, which allowed him to smell the odor of marijuana. The officer searched the vehicle and found approximately 15 grams of marijuana, a marijuana pipe, and a marijuana grinder. The officer learned that Pankuch's driver's license had been suspended. Both Pankuch and his companion told the officer that Pankuch had driven the vehicle before it was parked.

The officer gave Pankuch a citation alleging three offenses: (1) driving a motor vehicle after suspension of a driver's license, a misdemeanor, in violation of Minn. Stat. § 171.24, subd. 1 (2016); (2) possession of a small amount of marijuana, a petty misdemeanor, in violation of Minn. Stat. § 152.027, subd. 4(a) (2016); and (3) possession of drug paraphernalia, a petty misdemeanor, in violation of Minn. Stat. § 152.092(a) (2016).

The citation informed Pankuch that he was required to pay fines or schedule a court appearance within 30 days and provided a telephone number that could be called for more

information or to ask questions. The citation also informed Pankuch that if he paid a fine, he would be entering a plea of guilty. The citation further informed Pankuch that, if he failed to appear in court or otherwise respond to the citation, a warrant could be issued for his arrest. In addition, the citation stated, "For petty misdemeanors and misdemeanors certified as petty misdemeanors, failure to appear or respond as required is considered a waiver of the right to trial, and a guilty plea and conviction will be entered on the charge(s), unless the failure to appear is due to circumstances beyond your control."

Pankuch did not appear in court or otherwise respond to the citation. The district court's register of actions indicates that, on May 30, 2017, a plea of guilty was entered for each of the three offenses, and each was entered as a petty misdemeanor. The register of actions also indicates that fines of $200, $50, and $50, as well as a fee of $80, were imposed. The fines and fee were referred to "collections" on August 20, 2017, and were paid in full by a collection agency on December 5, 2018.

In March 2021, Pankuch filed a motion to withdraw his guilty pleas on the ground that withdrawal is necessary to correct a manifest injustice. *See* Minn. R. Crim. P. 15.05, subd. 1. He filed an accompanying affidavit in which he stated that, after he received the citation, he expected to receive notice of a court hearing but did not receive any such notice. He further stated that he later received a letter stating that he had unpaid fines and that he paid the amount due.

The post-conviction court conducted a hearing on the motion in May 2021. Pankuch argued that withdrawal is necessary on the ground that there was "no valid factual basis" for the plea, no waiver of his right to a trial, no finding of guilt, and "no discussion of the

future potential enhanceability of drug-related convictions." The state opposed the motion. The post-conviction court denied the motion on the record for the following reasons:

> I'm looking at the actual citation. It does indicate the timeframe in which to respond. It also indicates very clearly in a box that's entitled Penalties for Failure to Appear or Respond.
>
> I am looking at MNCIS. I am showing that notices were sent to Mr. Pankuch to address these issues and to appear to address this matter. I'm also noticing the notices that were sent to Mr. Pankuch were not sent back, so it is deemed that he received them.
>
> As such, I'm going to deny the motion. I don't see anything to support or correct a manifestation of injustice, counsel. I do not.

Later that same day, Pankuch filed a written motion for reconsideration, which was denied.

Pankuch filed a notice of appeal. This court questioned whether Pankuch had timely appealed from an appealable order and asked the parties to submit informal memoranda concerning the legal and factual bases of the appeal. After the parties filed memoranda, a special-term panel ruled that this court does *not* have appellate jurisdiction with respect to the second and third offenses, which are petty-misdemeanor offenses and, thus, may not be challenged in a post-conviction action. *See Freeman v. State*, 804 N.W.2d 144, 145-48 (Minn. App. 2011). But the special-term panel ruled that this court *does* have appellate jurisdiction with respect to Pankuch's first offense, driving after suspension of a driver's license, which is classified by statute as a misdemeanor offense and, thus, may be challenged in a post-conviction action, even though Pankuch's offense was certified as a petty misdemeanor because of the sentence imposed.

DECISION

Pankuch argues that the post-conviction court erred by denying his motion to withdraw his guilty plea to the charge of driving a motor vehicle after suspension of a driver's license.

A.

Pankuch's guilty plea was entered pursuant to a statute and a rule of court. The applicable statute provides, "If a person fails to appear in court on a charge that is a petty misdemeanor, the failure to appear is considered a plea of guilty and waiver of the right to trial, unless the person appears in court within ten days and shows that the person's failure to appear was due to circumstances beyond the person's control." Minn. Stat. § 609.491, subd. 1 (2016).

Similarly, a rule of criminal procedure provides,

> If a defendant charged with a petty misdemeanor, or a misdemeanor on the Statewide Payables List that is certified as a petty misdemeanor, fails to appear or respond as directed on the citation, complaint, or by the court, a guilty plea and conviction may be entered, the payable fine amount no greater than the maximum fine for a petty misdemeanor, and any applicable fees and surcharges, may be imposed, and the matter referred to collections.

Minn. R. Crim. P. 23.05, subd. 4.

The statute and the rule apply to the circumstances of this case. Pankuch did not appear in court within 30 days and did not appear within ten days thereafter to explain his earlier failure to appear. The offense of driving a motor vehicle after suspension of a driver's license, which is classified by statute as a misdemeanor, was included in the 2017

Statewide Payables List. Minn. Judicial Branch, *2017 State Payables List, Traffic & Criminal* 20, https://www.mncourts.gov/mncourtsgov/media/scao_library/Statewide %20 Payables/2017-Traffic-Criminal-Payables-Lists.pdf (last visited Mar. 18, 2022). Pankuch's offense was certified as a petty misdemeanor because of the sentence imposed, a fine of $200. A conviction of an offense that ordinarily is a misdemeanor may be certified as a petty misdemeanor at the time of sentencing "if the sentence imposed is within petty misdemeanor limits." Minn. R. Crim. P. 23.02; *see also* Minn. R. Crim. P. 23 cmt. 7; *cf.* Minn. Stat. § 609.131, subd. 2 (2016). The maximum punishment for a petty misdemeanor is a fine of $300. Minn. Stat. § 609.02, subd. 4a (2016); Minn. R. Crim. P. 23.01.

Thus, the district court complied with the applicable statute and rule when it entered a petty-misdemeanor guilty plea and imposed a $200 fine for Pankuch's offense of driving a motor vehicle after suspension of a driver's license after Pankuch failed to appear in court or otherwise respond to the citation.

B.

Despite his failure to appear, Pankuch is not foreclosed from challenging his guilty plea. A person who has pleaded guilty to a petty misdemeanor by failing to appear or otherwise respond "may move under Rule 15.05 to withdraw the guilty plea and vacate the conviction." Minn. R. Crim. P. 23.05, subd. 5. Under rule 15.05, a person must be permitted to withdraw a guilty plea after sentencing if the person has submitted "proof to

the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1.[1]

One type of manifest injustice under rule 15.05 is the situation in which a guilty plea is invalid because it is not accurate, not voluntary, or not intelligent. *See, e.g.*, *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). This three-part standard has been the law in Minnesota since no later than 1983. *See State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). To satisfy the accuracy requirement, a guilty plea "must be established on a proper factual basis." *Raleigh*, 778 N.W.2d at 94. A proper factual basis exists 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) (quoting *Kelsey v. State*, 214 N.W.2d 236, 237 (Minn. 1974)). Stated somewhat differently, a proper factual basis exists if "'the record contains a showing that there is credible evidence available which would support a jury verdict that defendant is guilty of at least as great a crime as that to which he pled guilty.'" *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (quoting *State v. Genereux*, 272 N.W.2d 33, 34 (Minn. 1978)). "The factual basis of a plea is inadequate when the defendant makes statements that negate an essential element of the charged crime because such statements are inconsistent with a plea of guilty." *Iverson*, 664 N.W.2d at 350.

[1] A motion to withdraw pursuant to rule 15.05, subdivision 1, must be asserted in a post-conviction action. *James v. State*, 699 N.W.2d 723, 727 (Minn. 2005). A post-conviction petition generally must be filed within two years after the entry of judgment. Minn. Stat. § 590.01, subd. 4 (2016). In this case, the state does not argue that Pankuch's post-conviction action is untimely.

Pankuch asserts that his guilty plea is invalid under this body of caselaw. He contends that his guilty plea is inaccurate because no factual basis for the plea was presented to the district court. Pankuch elaborates by asserting that the guilty plea "never occurred" and that his failure to appear in court "is not enough to establish that he is guilty . . . because a failure to appear has nothing to do with the essential elements" of the charged offense. Pankuch insists that he is not challenging the validity of either section 609.491, subdivision 1, or rule 23.05, subdivision 4. Nonetheless, he contends that he must be allowed to withdraw his guilty plea because there was no plea proceeding in which a record was made of the facts on which his guilty plea is based. In effect, Pankuch contends that a guilty plea to a petty misdemeanor entered after a failure to appear may be withdrawn as a matter of right.

Pankuch has not cited any authority for the proposition that the three-part *Trott* test applies to a guilty plea to a petty misdemeanor that was entered after a defendant's failure to appear, and we are unaware of any such authority. As far as our research reveals, the three-part *Trott* test applies only to a guilty plea that was entered during a plea hearing in which a defendant makes a personal appearance, orally states his or her intention to plead guilty, and orally admits to facts that constitute an offense. A defendant is required to make a personal appearance when pleading guilty to a felony offense. Minn. R. Crim. P. 15.01, subd. 1. A defendant also is required to make a personal appearance when pleading guilty to a gross misdemeanor or misdemeanor offense, unless a defendant files a written plea petition. Minn. R. Crim. P. 15.02, subd. 1, 15.03, subd. 2. In that event, the plea petition must reflect "the understanding and knowledge required of defendants personally entering

a guilty plea [to a gross misdemeanor or misdemeanor] under Rule 15.02." *Id.* If a defendant pleads guilty by way of a plea petition, the three-part *Trott* test may apply. *See, e.g.*, *State v. Lyle*, 409 N.W.2d 549, 552-53 (Minn. App. 1987). But there is no requirement in the applicable statute or rule that an oral or written factual record must be made if a defendant fails to appear on a petty-misdemeanor charge. *See* Minn. Stat. § 609.491, subd. 1; Minn. R. Crim. P. 23.05, subd. 4. Because there is no factual record upon a defendant's failure to appear, there is nothing to which the three-part *Trott* test may be applied.

Thus, Pankuch is not entitled to withdraw his guilty plea on the ground that there is no factual basis for the plea.

C.

Rule 15.05, subdivision 1, is not necessarily limited to the three-part *Trott* test. The supreme court has held that a manifest injustice may exist in a variety of circumstances. For example, a manifest injustice may exist if a district court "lacked jurisdiction over the subject matter" or if a defendant "was not adequately afforded the advice of competent counsel." *Chapman v. State*, 162 N.W.2d 698, 702 (Minn. 1968) (citing *State v. Minton*, 149 N.W.2d 384, 387 (Minn. 1967) and *State v. Waldron*, 139 N.W.2d 785, 792 (Minn. 1966)).

In this case, the post-conviction court denied Pankuch's motion to withdraw his guilty plea on the record at the hearing on his motion. After receiving oral arguments by counsel, the post-conviction court noted that Pankuch's citation "indicate[d] the timeframe in which to respond" and informed him of the penalties that would be imposed if he failed

to appear. There is no dispute that Pankuch failed to appear, as required by the citation. Pankuch admitted as much in the affidavit that he filed with his motion. The post-conviction court also noted that Pankuch received a notice from the court after he had failed to appear within the required 30-day period but did not take any action at that time. The district court waited more than 30 additional days before entering Pankuch's guilty plea. Based on the record before it, as well as the applicable law concerning a defendant's failure to appear for a petty misdemeanor, the post-conviction court appropriately concluded that Pankuch did not establish the existence of a manifest injustice. *See* Minn. Stat. § 609.491, subd. 1; Minn. R. Crim. P. 23.05, subd. 4.

D.

Before concluding, we note that the state has made an alternative argument: that Pankuch pleaded guilty by paying the $200 fine that was imposed. In his reply brief, Pankuch argues that he did not voluntarily pay the fine but, rather, did so involuntarily after the district court referred the matter to a collections agency. Because we have concluded that the district court properly entered a guilty plea based on Pankuch's failure to appear or otherwise respond within 30 days, we need not determine whether the guilty plea also is justified by a payment of the fine.

In sum, the post-conviction court did not err by denying Pankuch's motion to withdraw his guilty plea to the charge of driving a motor vehicle after suspension of a driver's license.

Affirmed.