This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1441

Dinesh Mongar, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 18, 2022
Affirmed
Bjorkman, Judge

Mahnomen County District Court
File No. 44-CR-20-129

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Julie Bruggeman, Mahnomen County Attorney, Mahnomen, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the denial of his postconviction petition seeking to withdraw his guilty plea to third-degree criminal sexual conduct (mentally incapacitated

complainant) because the factual record does not establish that the victim was involuntarily intoxicated. Because a person can commit the offense in three different ways and the factual record supports one of the alternatives (physically helpless complainant), we affirm.

FACTS

On March 4, 2020, appellant Dinesh Mongar pleaded guilty to third-degree criminal sexual conduct, in violation of Minn. Stat. § 609.344, subd. 1(d) (2014). In exchange for his guilty plea, respondent State of Minnesota agreed to dismiss four pending charges of first- and second-degree criminal sexual conduct. There was no agreement as to sentencing.

During his plea colloquy, Mongar acknowledged that he read the complaint,[1] understood the charge against him, had sufficient time to talk with his lawyer, and reviewed and signed a plea petition.[2] Mongar indicated that his lawyer represented him well, that he understood the rights he was waiving by pleading guilty, and that he was voluntarily pleading guilty. In response to questions from the district court and his lawyer, Mongar stated that he sexually penetrated M.M.G. The district court then asked if counsel intended to inquire about mental incapacity or physical helplessness. Defense counsel responded that mental incapacity "went to [M.M.G.'s] drunkenness." Mongar then admitted that he

[1] The complaint alleged that on or about January 1, 2016, Mongar sexually penetrated M.M.G. knowing or having reason to know that she was "mentally impaired, mentally incapacitated, or physically helpless."

[2] The plea petition indicates Mongar was charged with "Criminal Sex Conduct-3rd Degree-Penetration (d) the actor knows or has reason to know that the complainant . . . is mentally incapacitated." It concludes with the statement that Mongar "wish[es] to enter a plea of guilty to the offense(s) of: [violating] 609.344.1(d)."

"believe[d]" that M.M.G. "was drunk," and that she "was intoxicated to the point where she lacked the judgment to give reason[ed] . . . consent [to sexual contact]." Mongar also testified that he was truthful when he told the investigating officers that M.M.G. was "so drunk that she was falling down." The district court accepted Mongar's guilty plea and sentenced him to 41 months in prison.

On May 5, 2021, Mongar filed a petition for postconviction relief, arguing that he is entitled to withdraw his guilty plea based on *State v. Khalil*, 956 N.W.2d 627 (Minn. 2021). In *Khalil*, the supreme court held that a person who is "under the influence of alcohol is not mentally incapacitated unless the alcohol was administered to the person under the influence without that person's agreement." 956 N.W.2d at 642. Because the record of Mongar's guilty plea is devoid of evidence that M.M.G. was involuntarily intoxicated, Mongar contended that his guilty plea lacks a sufficient factual basis.

The district court agreed that Mongar's "plea as it relates to mental incapacitation was inaccurate" based on *Khalil*. But the court denied his petition, concluding Mongar's plea to third-degree criminal sexual conduct was valid because the facts adduced in support of the plea establish that M.M.G. was physically helpless when Mongar sexually penetrated her. The district court noted that the statute provides three prosecutorial theories, "the only touchstone is whether the victim was able to give consent." And the court stated: "The law does not require this [c]ourt to vacate [Mongar]'s plea and conviction simply because the initial prosecutorial theory may have changed [from mentally incapacitated to physically helpless]—the facts did not change, nor did the alignment of the facts to that different prosecutorial theory." Mongar appeals.

DECISION

When a defendant seeks to withdraw a guilty plea after sentencing, he must do so in a petition for postconviction relief. *James v. State*, 699 N.W.2d 723, 727 (Minn. 2005); *see* Minn. R. Crim. P. 15.05, subd. 1. We review the denial of a postconviction petition for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). A district court abuses its discretion when it reaches a decision that "is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quotation omitted).

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017). But the district court must allow a defendant to do so if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. "[A] manifest injustice exists if a guilty plea is not valid. To be valid, a guilty plea must be accurate, voluntary, and intelligent." *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016) (quotation and citation omitted). We review the validity of a guilty plea de novo. *Barrow v. State*, 862 N.W.2d 686, 689 (Minn. 2015). The defendant has the burden of showing the plea is invalid. *State v. McReynolds*, 973 N.W.2d 314, 318 (Minn. 2022).

I. Mongar's guilty plea is accurate.

Mongar first argues that his guilty plea is invalid because it is inaccurate. A guilty plea is accurate if there are "sufficient facts on the record to support a conclusion that a defendant's conduct falls withing the charge to which he desires to plead guilty." *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (quotation omitted). The accuracy requirement is designed to "protect[] 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." *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012) (alteration in original) (quotation omitted). Typically, the factual basis for the plea is established when the defendant describes the offense in his own words. *Id.* at 589. The district court must ensure that "facts exist from which the defendant's guilt of the crime charged can be reasonably inferred." *Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016) (quotation omitted).

A person commits criminal sexual conduct in the third degree if they sexually penetrate a complainant they know or have reason to know "is mentally impaired, mentally incapacitated, or physically helpless." Minn. Stat. § 609.344, subd. 1(d). Mongar argues that his guilty plea is inaccurate because (1) it lacks a factual basis to establish that M.M.G. was mentally incapacitated as a result of involuntary intoxication and (2) the record does not support a factual basis to establish M.M.G. was physically helpless. We address each argument in turn.

In *Khalil*, the supreme court held that an intoxicated person is not "mentally incapacitated" as defined in Minn. Stat. § 609.341, subd. 7 (2020), "unless the alcohol was administered to the person . . . without that person's agreement." 956 N.W.2d at 642. Here, no evidence was submitted to the district court concerning the circumstances under which M.M.G. became intoxicated. Accordingly, Mongar's guilty plea is not supported by facts showing M.M.G. was mentally incapacitated.

Mongar next asserts that the district court erred by concluding the requisite factual basis exists because the evidence supports a finding that M.M.G. was physically helpless. Mongar argues this basis is lacking because there is no evidence that M.M.G. was

unconscious when he penetrated her. He acknowledges that the plea record includes the fact she was "falling down" drunk. But he contends the record must also establish that she was "passing out" drunk. We disagree for three reasons.

First, the statutory language defeats Mongar's argument. "Physically helpless" is defined to mean that "a person is (a) asleep or not conscious, (b) unable to withhold consent or to withdraw consent because of a physical condition, *or* (c) unable to communicate nonconsent and the condition is known or reasonably should have been known to the actor." Minn. Stat. § 609.341, subd. 9 (2014) (emphasis added). Only one of these alternative definitions requires proof that M.M.G. was unconscious.

Second, caselaw does not support Mongar's contention that the factual basis is insufficient to support his guilty plea. In *State v. Watson*, the defendant was convicted of third-degree criminal sexual conduct based on the victim's physical helplessness. No. A11-1792, 2012 WL 3640992, at *2 (Minn. App. Aug. 27, 2012), *rev. denied* (Minn. Nov. 20, 2012). The evidence showed the victim had trouble walking and talking. *Id.* at *1. Watson admitted to police that saying the victim was "drunk would be an understatement" and that he did not think the victim "knew I was even there at the time." *Id.* This court concluded that the evidence was sufficient to support the guilty verdict and stated that the statute "does not require unconsciousness to establish helplessness." *Id.* at *2.[3]

[3] *Watson* is not binding authority, but we consider its analysis persuasive. Minn. R. Civ. App. P. 136.01, subd. 1(c).

Although the facts supporting a finding of physical helplessness related to intoxication vary from case to case, a determinative factor is whether the victim was able to withhold or withdraw consent to a sexual encounter. In *State v. Blevins*, 757 N.W.2d 698, 700-01 (Minn. App. 2008), we held that evidence of the victim's intoxication was insufficient to establish physical helplessness where she did not fall asleep or lose consciousness, was able to walk, and expressly told the defendant she did not want him to perform oral sex on her. In contrast, we rejected a sufficiency-of-the-evidence challenge in *State v. Berrios*, where the victim "was 'falling down drunk,' vomited several times, lost consciousness more than once, and could not walk without assistance." 788 N.W.2d 135, 143 (Minn. App. 2010), *rev. denied* (Minn. Nov. 16, 2010). We noted the testimony of a witness that Berrios carried the victim into the house and, after she vomited, helped carry her to the bedroom, stating "[f]rom this testimony alone, there was ample evidence for the jury to conclude that Berrios knew or had reason to know that [the victim] had been rendered physically helpless by her alcohol consumption." *Id.* We have no trouble concluding that the admitted facts here—that M.M.G. was "so drunk she was falling down" and lacked the judgment to give reasoned consent—meet the definition of physical helplessness.

Third, we are mindful of the different lenses through which we view sufficiency-of-the-evidence challenges to verdicts and accuracy challenges to guilty pleas. Mongar likens his situation to *Khalil*, where a jury was asked to decide whether the victim was mentally incapacitated or physically helpless due to alcohol consumption. *Khalil*, 956 N.W.2d at 643. This comparison is unavailing. Our supreme court concluded in *Khalil* that a new

trial was necessary because the district court erroneously failed to instruct the jury that mental incapacity requires a showing that M.M.G. was involuntarily intoxicated and there was no way to determine on which alternative ground—mental incapacity or physical helplessness—the jury based its guilty verdict. *Id.* No such uncertainty exists here.

Mongar asked the district court to accept his guilty plea and acknowledged facts supporting his plea. He did not plead guilty to a more serious offense than that for which he could have been convicted. *See Lussier*, 821 N.W.2d at 588. The fact Mongar did not use the words "physically helpless" to describe M.M.G. is not determinative. *See* Minn. Stat. § 609.341, subd. 9; *see also Rosendahl v. State*, 955 N.W.2d 294, 299 (Minn. App. 2021) (stating that "[e]ven if an element to an offense is not verbalized by the defendant, a district court may nevertheless draw inferences *from the facts admitted to by the defendant*"). Based on the facts Mongar admitted, the district court could reasonably infer that Mongar sexually penetrated M.M.G. when he knew that she was physically helpless because she was unable to withhold consent or unable to communicate nonconsent due to her intoxication.

II. Mongar validly waived his right to a jury trial on the charge of third-degree criminal sexual conduct.

In addition to his accuracy argument, Mongar argues that he is entitled to withdraw his guilty plea because failure to do so (1) violates the plea agreement, (2) results in conviction of a crime to which he did not plead guilty, and (3) renders his plea unintelligent. We are not persuaded.

Minnesota courts apply principles of contract law to plea agreements. *In re Ashman*, 608 N.W.2d 853, 858 (Minn. 2000). "The essence of plea agreements . . . is that they represent a bargained-for understanding between the government and criminal defendants in which each side foregoes certain rights and assumes certain risks in exchange for a degree of certainty as to the outcome of criminal matters." *State v. Meredyk*, 754 N.W.2d 596, 603 (Minn. App. 2008) (alteration in original) (quotation omitted). "[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (alteration in original) (quotation omitted). To determine whether a plea agreement has been honored, courts look to what the parties reasonably understood to be the terms of the agreement. *Id.*

Mongar contends that the plea agreement was premised on M.M.G. being mentally incapacitated. We disagree. Mongar stated at the plea hearing that he was pleading guilty to the offense charged in the complaint, "Criminal Sexual Conduct in the Third Degree, in violation of Minnesota Statute 609.334, subdivision 1(d)." The complaint charged him with sexually penetrating M.M.G. knowing or having reason to know that she was "mentally impaired, mentally incapacitated, or physically helpless." In exchange for Mongar's plea to the charged offense, the state agreed to dismiss a separate complaint that charged Mongar with four higher counts of criminal sexual conduct. That was the bargained-for agreement. By denying Mongar's postconviction petition, the district court did not alter the charge to which Mongar pleaded or any other aspect of the plea agreement.

Citing *State v. Dettman*, 719 N.W.2d 644 (Minn. 2006), Mongar next argues that the district court improperly relied on the facts admitted during the plea hearing to cover a different offense. In *Dettman*, the defendant pleaded guilty to first-degree criminal sexual conduct, admitting facts the district court later relied on to impose an enhanced sentence. 719 N.W.2d at 647. Dettman did not waive his right to have a jury determine the facts supporting an upward sentencing departure. *Id.* The supreme court affirmed this court's decision reversing Dettman's sentence, holding that "a defendant must expressly, knowingly, voluntarily, and intelligently waive his right to a jury determination of facts supporting an upward sentencing departure before his statements at his guilty-plea hearing may be used to enhance his sentence." *Id.* at 650-51.

This case does not present a similar situation. Mongar received a guidelines sentence based on his express, knowing, voluntary, and intelligent plea of guilty to third-degree criminal sexual conduct. Contrary to Mongar's assertion, third-degree criminal sexual conduct based on the victim's physical helplessness and third-degree criminal sexual conduct based on the victim's mental incapacity are not different offenses. They are alternative ways in which a person may commit the same offense. *See State v. Ruel*, No. A15-0152, 2016 WL 363407, at *3 (Minn. App. Feb. 1, 2016) (rejecting argument that the district court "constructively amend[ed] the complaint to allege a different offense when it instructed the jury using the 'physically helpless' portion of the statute rather than 'mentally incapacitated' portion, which was originally charged"), *rev. denied* (Minn. Apr. 19, 2016). Accordingly, the district court did not implicate *Dettman* by imposing a sentence for which Mongar did not validly waive his jury-trial right.

Finally, Mongar argues that his guilty plea was not intelligent because the complaint was in essence a "moving target" so he did not understand to what charge he was pleading guilty. *See State v. Bertsch*, 707 N.W.2d 660, 665 (Minn. 2006) (stating that the defendant's plea is not intelligent "when the count to which he has pled is a moving target subject to later amendment by the state"). We disagree. "The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea." *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). Mongar acknowledged in his plea petition and during the plea hearing that he understood the charges, the rights he waived by pleading guilty, and the consequences of his plea. The complaint charged Mongar with third-degree criminal sexual conduct and alleged that he penetrated M.M.G. while knowing or having reason to know she was "mentally impaired, mentally incapacitated, or physically helpless." Minn. Stat. § 609.344, subd. 1(d). The charge did not change, and Mongar pleaded guilty to it.

In sum, because Mongar's guilty plea is valid, we discern no abuse of discretion by the district court in denying postconviction relief.

Affirmed.