STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1475

State of Minnesota,
Respondent,

vs.

Tracy Allen Mitchell,
Appellant.

Filed June 26, 2023
Affirmed
Connolly, Judge

Otter Tail County District Court
File No. 56-CR-21-2050

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

Michelle Eldien, Otter Tail County Attorney, Kathleen J. Schur, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Hooten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the denial of his motion to withdraw his guilty plea to being an ineligible person in possession of a firearm, arguing that he did not admit at the plea hearing that he knew that his 1995 conviction of a crime in Colorado would be a crime of violence in Minnesota that rendered him ineligible to possess a firearm. We affirm.

FACTS

In 1995, appellant Tracy Mitchell was convicted of second-degree burglary for theft from a dwelling in Colorado. In 2021, he was found to be in possession of a firearm at his Minnesota residence. He was charged with one count of possession of a firearm by an ineligible person and one count of receiving stolen property.

At his plea hearing, appellant testified that he had been convicted of second-degree burglary in Colorado in 1995; that he agreed that, in Minnesota, this would be a crime of violence; and that he was ineligible to possess a firearm when a firearm was found in his residence in 2021. He did not testify whether he knew when he possessed the firearm that the Colorado conviction rendered him ineligible to possess a firearm in Minnesota. The state dismissed the count of receiving stolen property, and appellant noted his intent to move for a sentencing departure. At the sentencing hearing, appellant's motion for a sentencing departure was denied, and he received the guideline sentence of 60 months in prison.

He challenges the denial of his request to withdraw his guilty plea, arguing that his plea was not accurate.

DECISION

> [A] court must allow withdrawal of a guilty plea if withdrawal is necessary to correct a manifest injustice. . . . A manifest injustice exists if a guilty plea is not valid. To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent. A defendant bears the burden of showing his plea was invalid. Assessing the validity of a plea presents a question of law that we review de novo.

State v. Raleigh, 778 N.W.2d 90, 93-94 (Minn. 2010) (quotations and citations omitted).

> The district court judge must ensure that 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. We do not require that a defendant expressly admit each essential element of the crime; all that is required is that the defendant admit facts that are adequate to allow the district court to reasonably infer an essential element of the crime from the record.

Bonnell v. State, 984 N.W.2d 224, 227 (Minn. 2022) (quotation and citations omitted).

Appellant argues that he is entitled to withdraw his guilty plea because he did not admit and the state did not prove that appellant knew his 1995 Colorado conviction made him ineligible to possess a firearm at the time he was found to be in possession of the firearm. For this argument, he relies on *Rehaif v. United States*, 139 S. Ct. 2191, 2200 (2019) (concluding that, under 18 U.S.C. § 922(g) (2018) (providing that it is unlawful for certain individuals to possess firearms), and 18 U.S.C. § 924(a)(2) (2018) (providing that anyone who knowingly violates § 922(g) shall be fined or imprisoned for up to ten years), the government "must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm"). Here, appellant asserts that, because the state did not prove and appellant did

not admit that he knew he belonged to the category of those barred from possessing a firearm at the time he was found in possession of a firearm, his plea was inaccurate and therefore invalid.

But *Rehaif* is distinguishable because there is no mens rea element in the relevant Minnesota statutes: Minn. Stat. § 624.713, subd. 1(2) (2020), provides that those not entitled to possess firearms include "a person who has been convicted of . . . in this state or elsewhere, a crime of violence . . . [which] includes crimes in other states . . . which would have been crimes of violence as herein defined if they had been committed in this state," and Minn. Stat. § 624.713, subd. 2(b) (2020), provides that such persons who possess firearms are "guilty of a felony and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than $30,000, or both." Appellant argues that this court should read a mens rea requirement into the statute, but that is beyond the scope of this court's authority. *See State v. Wenthe*, 865 N.W.2d 293, 304-05 (Minn. 2015) (holding that, when the statute does not include a mens rea requirement, the court will not supply one because courts cannot supply what the legislature either purposely omits or inadvertently overlooks).

Moreover, Minn. Stat. § 624.713, subd. 3(a) (2020), provides that, although the court shall inform defendants convicted of violent crimes that they are prohibited from possessing firearms and that doing so is a felony, the court's failure to inform them of this "does not affect the applicability of the . . . possession prohibition or the felony penalty." Thus, the legislature did not intend to require the state to prove that a defendant knew of his ineligibility.

In any event, the Supreme Court has limited *Rehaif* in *Greer v. United States*, 141 S. Ct. 2090 (2021), a consolidated case involving two defendants, Gregory Greer and Michael Gary.

> In felon-in-possession cases after *Rehaif*, the Government must prove not only that the defendant knew he possessed a firearm, but also that *he knew he was a felon* when he possessed the firearm.
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> As many courts have recognized and as common sense suggests, individuals who are convicted felons ordinarily know that they are convicted felons. That simple point turns out to be important in the two cases before us.
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> . . . Felony status is simply not the kind of thing that one forgets. . . .
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> . . . Neither defendant has ever disputed the fact of their prior convictions. At trial, Greer stipulated to the fact that he was a felon. And Gary admitted that he was a felon when he pled guilty. Importantly, on appeal neither Greer nor Gary has argued or made a representation that they would have presented evidence at trial that they did not in fact know they were felons when they possessed firearms. . . .
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> . . . [D]emonstrating prejudice under *Rehaif* will be difficult for most convicted felons for one simple reason: Convicted felons typically know they're convicted felons.

Greer, 141 S. Ct. 2095, 2097-98 (quotations and citations omitted). Appellant, like Greer and Gary, has not argued that he did not know he was a felon, only that he did not admit to the district court that he knew he was a felon.

In his reply brief, appellant attempts to distinguish *Greer* on the ground that the Minnesota statute prohibits only those convicted of a crime of violence from possessing firearms, while the federal statute prohibits any felon from possessing a firearm, and that appellant "may never have known—and at the very least did not admit that he knew—that that [Colorado 1995] felony prohibited him from possessing a firearm in Minnesota in 2021." But the Minnesota statute does not require that appellant knew or admit that he knew his prior felony prohibited him from possessing a firearm: Minn. Stat. § 624.713, subd. 3(a), provides that the court's failure to inform a defendant of this does not make the statute or the penalty inapplicable.

Appellant has not shown that his guilty plea was inaccurate.

Affirmed.