STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0541

State of Minnesota,
Respondent,

vs.

William Joseph Garbow,
Appellant.

Filed February 12, 2024
Affirmed
Johnson, Judge

Itasca County District Court
File No. 31-CR-22-2886

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

Matti R. Adam, Itasca County Attorney, Cassidy Villeneuve, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

William Joseph Garbow pleaded guilty to two offenses. He argues that his guilty pleas are invalid on the ground that they are not supported by a proper factual basis and

were not voluntarily entered. We conclude that Garbow's guilty pleas are neither inaccurate nor involuntary. Therefore, we affirm.

FACTS

In November 2022, the state charged Garbow with multiple offenses arising from a traffic stop. According to the complaint, a police officer observed a motor vehicle associated with a person who had an outstanding arrest warrant. The officer stopped the vehicle, which was being driven by Garbow, and detected a strong odor of alcohol. The officer directed Garbow to turn off the vehicle, but Garbow drove away. The officer pursued Garbow and eventually stopped the vehicle using a "PIT maneuver." In a search incident to Garbow's arrest, the officer found an open alcoholic-beverage bottle and a syringe containing a substance that field-tested positive for methamphetamine. The officer transported Garbow to the Itasca County jail, where the officer requested that Garbow take a breath test, which he refused.

One month later, the parties entered into a plea agreement. Garbow pleaded guilty to fifth-degree controlled substance crime, in violation of Minn. Stat. § 152.025, subd. 2 (2022), and second-degree refusal to submit to a chemical test, in violation of Minn. Stat. §§ 169A.20, subd. 2(1), .25, subd. 1(b) (2022). In exchange, the state dismissed four other charges. The parties agreed that Garbow should receive stayed sentences of 15 months and 12 months, respectively, and be placed on probation. The parties also agreed that Garbow should serve 30 days in jail.

When he was charged in this case, Garbow was on probation for a crime committed in 2018 and was alleged to have violated the conditions of his probation. The state later

alleged three additional probation violations based on Garbow's conduct in the November 2022 incident that led to the charges in this case. In describing the parties' plea agreement, including the agreed-upon sentences, Garbow's attorney referred to the interrelationship between the two cases by stating, "whether or not Mr. Garbow asks the court to execute that sentence will depend on what happens in the probation file." At the conclusion of the plea hearing in this case, the district court called the 2018 case for the purpose of allowing Garbow to enter admissions to the alleged probation violations.

The district court held a hearing in February 2023 with two purposes: to order a disposition with respect to Garbow's probation violations in the 2018 case and to impose a sentence in this case. At the outset of the hearing, Garbow's attorney requested that the district court first determine the disposition of Garbow's probation violations in the 2018 case, which she described as the "controlling sentence." Garbow's attorney urged the district court to reinstate his probation; the state urged the district court to revoke probation and execute the sentence. The district court revoked Garbow's probation and executed his prison sentence. This court affirmed. *State v. Garbow*, No. A23-0540, 2023 WL 7119092, at *1 (Minn. App. Oct. 30, 2023).

Immediately after disposing of Garbow's probation violations, the district court turned to the matter of sentencing in this case. With respect to the presumptively stayed 15-month sentence on the controlled-substance offense, Garbow's attorney said, "We are asking that the court depart dispositionally upward and sentence Mr. Garbow to a 15-month executed sentence to run concurrently with the other file." When pronouncing Garbow's sentence on that offense, the district court noted that the sentencing guidelines call for a

stayed 15-month sentence and stated, "Pursuant to your request, the court does commit you to the commissioner of corrections for that period of time of 15 months." Similarly, for the test-refusal offense, the district court imposed a sentence of one year in jail, to run concurrently with the sentence on the controlled-substance offense. Garbow's attorney did not object to the district court's sentences. Garbow appeals.

DECISION

Garbow argues that his guilty pleas are invalid for two reasons. He argues that his pleas are not accurate on the ground that there is not a proper factual basis. He also argues that his guilty pleas are involuntary on the ground that the district court imposed sentences that are contrary to the parties' plea agreement.

To be constitutionally valid, a guilty plea "must be accurate, voluntary, and intelligent." *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007). If a guilty plea does not satisfy all three of these requirements, the plea is invalid. *See State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). "A defendant bears the burden of showing his plea was invalid." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). In determining the validity of a guilty plea, this court applies a *de novo* standard of review. *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017).

A. Accuracy

We first consider Garbow's argument that his guilty pleas are invalid on the ground that they are inaccurate because there is not a proper factual basis.

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) (quotation omitted). Stated 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) (quotation omitted). "The main purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial." *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983).

1. Controlled Substance Crime

"A person is guilty of controlled substance crime in the fifth degree . . . if . . . the person unlawfully possesses one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV . . . ." Minn. Stat. § 152.025, subd. 2(1). Methamphetamine is a Schedule II controlled substance. Minn. Stat. § 152.02, subd. 3(d)(2) (2022). The offense is a felony if the person has a prior conviction for a violation of Minnesota Statutes chapter 152 or a similar offense in another jurisdiction. Minn. Stat. § 152.025, subd. 4(b) (2022).

Garbow contends that a proper factual basis is lacking with respect to the controlled-substance offense for two reasons. First, he contends that the factual basis is inadequate because he did not admit that his possession of methamphetamine was unlawful. He cites *State v. Clarin*, 913 N.W.2d 717 (Minn. App. 2018), *rev. denied* (Minn. Aug. 7, 2018), in which this court rejected an argument that the state failed to prove that the appellant did

not have a lawful prescription for methamphetamine. *Id.* at 720-21. We reasoned that, although "possession of physician-prescribed methamphetamine is lawful," the jury was allowed to infer that the appellant's possession of methamphetamine was unlawful because the methamphetamine was in the form of "a white powder in an unlabeled clear plastic baggie," not "in capsule or tablet form" in "a labeled container with appellant's name on it." *Id.*

In this case, methamphetamine was found in a syringe on Garbow's person at the time of his arrest for driving while impaired. Garbow admitted to possessing it in the course of pleading guilty to the controlled-substance offense. He did not say anything about having a physician's prescription, which would have allowed him to avoid criminal liability and punishment. But it was unnecessary for him to expressly state that he did not have a prescription. In a guilty plea, "[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." *Rosendahl v. State*, 955 N.W.2d 294, 299 (Minn. App. 2021). Based on the circumstances surrounding Garbow's possession of the methamphetamine—in a syringe, mixed with alcohol—the district court was permitted to draw the reasonable inference that his possession was unlawful. Thus, the factual basis of Garbow's plea to the controlled-substance offense is not lacking on the ground that Garbow did not admit that the methamphetamine he possessed was unprescribed.

Second, Garbow contends that the factual basis of his guilty plea to the controlled-substance offense is inadequate because he did not expressly state that he has a prior conviction for a violation of chapter 152 of the Minnesota Statutes, which is necessary to

enhance the offense to a felony. During the plea hearing, Garbow was asked whether he had "a prior drug conviction from 2015," and he answered in the affirmative. He contends on appeal that his admission is insufficient because it does not exclude the possibility that his prior conviction was for a violation of a drug-related statute in a chapter other than chapter 152.

As a general matter, a guilty plea is not inaccurate if "facts exist from which the defendant's guilt of the crime charged can be reasonably inferred." *Nelson*, 880 N.W.2d at 861 (quotation omitted). More specifically, the supreme court has held that a "defendant's failure to expressly acknowledge [prior] convictions in the plea colloquy" does not render a guilty plea inaccurate if "the felony complaint alleges prior convictions, the defendant had the opportunity to review the felony complaint and discuss the plea with his lawyer, and the defendant does not contest the validity of the prior convictions." *State v. Epps*, 977 N.W.2d 798, 802 (Minn. 2022). This case is like *Epps*. The complaint alleged that Garbow was convicted in August 2015 of a fifth-degree controlled-substance crime, which is a violation of chapter 152. *See* Minn. Stat. § 152.025. Garbow admitted at the plea hearing that he was represented by counsel, had been fully informed of the facts of the case, and had discussed the case with his attorney. Garbow did not challenge the validity of his prior conviction. Thus, the factual basis of Garbow's plea to unlawfully possessing methamphetamine is not lacking on the ground that Garbow did not admit that his "prior drug conviction from 2015" was for a violation of chapter 152.

2. Test Refusal

A person who operates a motor vehicle within the state impliedly consents to a chemical test of his or her breath for the "purpose of determining the presence of alcohol, a controlled substance or its metabolite, or an intoxicating substance." Minn. Stat. § 169A.51, subd. 1(a) (2022). A law-enforcement officer may require a person to submit to a chemical test if the officer has probable cause to believe that the person violated the driving-while-impaired statute. *Id.*, subd. 1(b). When requesting a breath test of such a person, the officer must inform the person that (1) Minnesota law requires the person to take the test, (2) refusal to submit to the test is a crime, and (3) the person has a limited right to consult with an attorney. Minn. Stat. § 169A.51, subd. 2 (2022). "It is a crime for any person to refuse to submit to a chemical test . . . of the person's breath under" the implied-consent law. Minn. Stat. § 169A.20, subd. 2(1).

Garbow contends that a proper factual basis is lacking with respect to the test-refusal offense because he did not admit that the officer read him the entire breath-test advisory before his refusal. At the plea hearing, the district court asked Garbow whether the police officer "ask[ed] you to take a test." Garbow answered, "Yes." The district court also asked Garbow whether the police officer told him "what would happen if you didn't take the test." Garbow answered, "I'd be charged with a refusal." Because Garbow admitted that the offer provided him with some of the information that is required by the breath-test advisory, it reasonably may be inferred that the officer read Garbow the entire breath-test advisory. *See Rosendahl*, 955 N.W.2d at 297-98. Thus, the factual basis of Garbow's plea

to test refusal is not lacking on the ground that Garbow did not admit that the officer read him the entire breath-test advisory.

In sum, Garbow's guilty pleas are not invalid on the ground that they are inaccurate.

B. Voluntariness

We next consider Garbow's argument that his guilty pleas are invalid on the ground that he did not enter them voluntarily. Specifically, Garbow argues that his guilty pleas are invalid because the district court imposed sentences that violate the terms of the parties' plea agreement, which called for stayed sentences.

"It is well settled that an unqualified promise which is part of a plea arrangement must be honored or else the guilty plea may be withdrawn." *Kochevar v. State*, 281 N.W.2d 680, 687 (Minn. 1979). Accordingly, if a guilty 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) (quoting *Santobello v. New York*, 404 U.S. 257, 262 (1971)). If a promise in a plea agreement is not fulfilled, the defendant cannot be said to have voluntarily entered into the plea agreement. *See State v. Wukawitz*, 662 N.W.2d 517, 526 (Minn. 2003); *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000).

Garbow's argument is inconsistent with the district court record. The district court did not reject the parties' plea agreement. Rather, the district court stated that the presumptive sentence on the controlled-substance offense is a stayed 15-month sentence but granted Garbow's request to execute his stayed sentences. Under Minnesota law, "a defendant has the right to refuse probation and demand execution of sentence when the

conditions of probation make probation more onerous than prison." *State v. Rasinski*, 472 N.W.2d 645, 650 (Minn. 1991); *see also State v. Ott*, 341 N.W.2d 883, 883-84 (Minn. 1984). If a defendant exercises the right to demand execution of a stayed sentence, the imposition of an executed sentence is not an upward dispositional departure from the presumptive sentence. Minn. Sent'g Guidelines 2.D.1.f (2022).

Garbow's request to execute his sentences is evident from the procedural history of the case. At the plea hearing, Garbow's attorney informed the district court that "whether or not Mr. Garbow asks the court to execute that sentence will depend on what happens in the probation file." At the subsequent hearing to resolve Garbow's probation violations and to impose sentences in this case, Garbow's attorney asked the district court to first order a disposition on Garbow's probation violations in the 2018 case, which she described as the "controlling sentence." After the district court revoked Garbow's probation and executed his sentence in the 2018 case, Garbow's attorney requested that the district court order an executed sentence. In doing so, Garbow's attorney said that the district court should "depart dispositionally upward." But that statement is a mistaken description of what the attorney previously had described: that Garbow would request execution of his stayed 15-month sentence to run concurrently with an executed sentence in the 2018 case.

Importantly, the district court did *not* state that it was ordering an upward dispositional departure. Only Garbow's attorney used that terminology. The district court expressly stated that the sentencing guidelines called for a stayed sentence of 15 months, which is consistent with the terms of the plea agreement. When imposing the sentence, the district court referred to Garbow's expressed preference, stating, "*Pursuant to your*

request, the court does commit you to the commissioner of corrections for that period of time of 15 months." (Emphasis added.) The warrant of commitment does not indicate that the district court ordered an upward departure. The district court record must be construed to reflect that Garbow's stayed sentence was executed at his request. So understood, there is no sentencing departure and, thus, no violation of the plea agreement. *See Ott*, 341 N.W.2d at 883-84; Minn. Sent'g Guidelines 2.D.1.f.

We note that Garbow also argues that the district court violated his right to a *Blakely* trial by ordering an upward dispositional departure without empaneling a jury. Garbow cites caselaw providing that, if a district court commits such an error, the appropriate appellate remedy is reversal and remand for resentencing. *See, e.g.*, *State v. Dettman*, 719 N.W.2d 644, 655 (Minn. 2006). But Garbow does not request that form of relief; he requests that this court invalidate his guilty pleas. Garbow has not cited any caselaw providing that, if a district court violates a defendant's right to a *Blakely* trial, the defendant's guilty plea is invalid, and we are unaware of any such caselaw. In any event, this argument would fail for the same reason that is stated above: the district court ordered executed sentences because it granted Garbow's request to execute his stayed sentences.

In sum, Garbow's guilty pleas are not invalid on the ground that they were involuntarily entered.

Affirmed.