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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-111

State of Minnesota,
Respondent,

vs.

Andrew John Maxa,
Appellant.

Filed October 17, 2011
Reversed and remanded; motion denied
Schellhas, Judge

Scott County District Court
File No. 70-CR-09-16900

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Melissa Sheridan, Assistant Appellate Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Klaphake, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges the district court's denial of his motion to withdraw his guilty pleas. Because the district court erred by not allowing appellant to withdraw his guilty pleas, we reverse and remand.

FACTS

On July 23, 2009, respondent State of Minnesota charged appellant Andrew Maxa with one count of third-degree assault and two counts of fifth-degree assault. The state alleged that Maxa and his brother assaulted their mother's ex-boyfriend, T.L.

On May 19, 2010, Maxa and the state entered into a plea agreement. Maxa agreed to plead guilty to third-degree assault and to an added charge of disorderly conduct,[1] and the state agreed to a stay of adjudication on the assault charge and zero to three years' probation on the disorderly conduct conviction with a 45-day cap on alternative sentencing, such as, electronic home monitoring, community work service, or sentence-to-serve. Maxa also agreed to pay restitution to the victim, jointly and severally with his brother, in the approximate amount of $17,575.

Maxa appeared at the plea hearing with defense counsel, who along with the prosecutor described the terms of the parties' plea agreement. The district court then asked Maxa if he was aware that he was "going to be giving up all of [his] rights in connection with a trial and the contested process," and Maxa answered yes. And the court further asked, "[I]s it still something you want to go forward with?" Maxa again answered yes. After additional discussion about the terms of the plea agreement, Maxa was sworn, and his attorney questioned him about his rights.

Defense counsel offered the petition to the district court, and the court received it and arraigned Maxa. Maxa entered pleas of guilty to third-degree assault and disorderly

[1] In the amended charge of disorderly conduct, the state alleged that Maxa engaged in brawling or fighting under Minn. Stat. § 609.72, subd. 1(1) (2008).

conduct. After Maxa's attorney questioned him about the facts, the district court addressed Maxa, stating: "I'm satisfied you know what your rights are and you're giving those up. And I'm also satisfied that there is a factual basis for me to consider the pleas that you've submitted." Because of the agreed-upon stay of adjudication, the court did not accept Maxa's guilty plea to the assault charge, but the court did accept his guilty plea to disorderly conduct.

At the scheduled sentencing hearing on August 6, Maxa's counsel informed the district court that Maxa wished to withdraw his guilty plea and proceed to trial. Maxa's counsel was unaware of Maxa's wishes prior to the sentencing hearing, so the court granted his attorney time to submit a legal basis for the motion and granted the state time to respond. Subsequent to the hearing, the state filed a brief, but Maxa's attorney filed nothing.[2] Maxa submitted a one-page, handwritten document entitled, "Motion to Withdraw Plea." In the document, Maxa wrote that the stay of adjudication was not explained to him before the plea and that he was innocent. He also stated that he "was protecting [his] mother from physical harm in our home" and described his version of what occurred during the incident in question, including his claim that "[T.L.] broke into our house after being asked to leave several times." Maxa's submission to the court states that he enclosed "proof of breaking and entering, medical records, medical expenses, and a restraining order against [T.L.]."

[2] The record is unclear on why Maxa's counsel told the district court on August 6 that he would file papers in connection with Maxa's motion but filed nothing.

The district court denied Maxa's motion in an order filed September 14, 2010.[3] This appeal follows.

D E C I S I O N

A guilty plea may be withdrawn in two instances:

> First a plea may be withdrawn if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A defendant can establish manifest injustice by showing that the plea was not accurate, voluntary, and intelligent. If a defendant establishes manifest injustice, a timely motion to withdraw must be granted. Second, before a defendant is sentenced, a plea can be withdrawn "if it is fair and just to do so." Minn. R. Crim. P. 15.05, subd. 2. The fair-and-just standard is less demanding than the manifest-injustice standard.

State v. Lopez, 794 N.W.2d 379, 382 (Minn. App. 2011) (quotation and other citations omitted).

"A valid guilty plea must be accurate, voluntary, and intelligent." *Munger v. State*, 749 N.W.2d 335, 337 (Minn. 2008) (citing *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007)). "The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he could properly be convicted of at trial." *Id.* (citing *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983)). "Accuracy requires an adequate factual basis to support the charge." *Id*. at 337−38 (citing *Theis*, 742 N.W.2d at 647). "The 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." *Id*. at 338 (quotations omitted). The defendant must present a factual basis sufficient to establish that the

[3] The district court judge who denied Maxa's plea-withdrawal motion was a different judge than the judge who presided over Maxa's plea hearing.

elements of the offense to which he is pleading have been met. Minn. R. Crim. P. 15.01, subd. 1; Minn. R. Crim. P.15.02.

"[A]n adequate factual basis is usually established by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). "Although there are various ways to present the factual basis for a guilty plea, all of them contemplate the disclosure on the record of the specific facts that would establish the elements of the crime to which the defendant is pleading guilty." *State v. Misquadace*, 629 N.W.2d 487, 491–92 (Minn. App. 2001), *aff'd* 644 N.W.2d 65 (Minn. 2002). The validity of a guilty plea is a question of law that we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

Because Maxa sought to withdraw his guilty pleas before sentencing, he could argue for withdrawal under the less-demanding fair-and-just standard. *See Theis*, 742 N.W.2d at 646 (stating that the fair-and-just standard is less demanding than the manifest-injustice standard). But Maxa argues only that withdrawal of his pleas is necessary to correct a manifest injustice, claiming that his pleas were neither accurate nor intelligent. We therefore apply the manifest-injustice standard to this case.

Accuracy of Plea

Maxa argues that he should be allowed to withdraw his pleas because they were inaccurate. Maxa argues that his pleas lacked sufficient factual bases. The state argues that we should not consider this argument because Maxa did not raise it before the district court. As previously noted, Maxa submitted a handwritten motion to the district court in

which he argued that he was defending his mother against harm in their home and he claimed that he was innocent, offering the court his version of the facts. In its order, the court addressed the sufficiency of the factual basis, concluding that "the factual basis was established." Because the district court addressed the accuracy of Maxa's pleas, we reject the state's argument that we should not consider Maxa's argument that his pleas lacked sufficient factual bases.

Maxa argues that the facts offered in connection with his guilty plea to third-degree assault are insufficient to support the plea. We agree. To be sufficient to support a plea to third-degree assault, the facts must show that a defendant assaulted another and inflicted "substantial bodily harm." Minn. Stat. § 609.223, subd. 1 (2008). Assault is "the intentional infliction of . . . bodily harm upon another." Minn. Stat. § 609.02, subd. 10(2) (2008). To establish an adequate basis for a guilty plea, a court can reasonably infer intent from sufficient facts. *See, e.g.*, *State v. Neumann*, 262 N.W.2d 426, 430–31 (Minn. 1978) (noting that premeditation could be inferred from the facts), *overruled on other grounds by State v. Moore*, 481 N.W.2d 355 (Minn. 1992).

Here, the colloquy regarding the facts is as follows:

> DEFENSE COUNSEL: And at that date and approximately 9:00 in the evening, did you have an altercation with one [T.L.]?
> THE DEFENDANT: Yeah.
> DEFENSE COUNSEL: And you had that altercation with [T.L.] along with your brother, Nicholas May?
> THE DEFENDANT: Yes.
> DEFENSE COUNSEL: And a fight ensued, did there not?
> THE DEFENDANT: Yeah.
> DEFENSE COUNSEL: And [T.L.]—
> THE DEFENDANT: Kind of.

DEFENSE COUNSEL: Kind of fight?
THE DEFENDANT: It was more of a protection than anything.
DEFENSE COUNSEL: Well, okay. I'm going to get into the self-defense aspect of that. There was an altercation that took place and blows were struck between the participants, correct?
THE DEFENDANT: Correct.
DEFENSE COUNSEL: Between you, your brother and [T.L.], correct?
THE DEFENDANT: Correct.
DEFENSE COUNSEL: And [T.L.]—
THE DEFENDANT: He struck first, but—
DEFENSE COUNSEL: Okay. I'm going to get to that. Just hang on.
THE DEFENDANT: Okay.
DEFENSE COUNSEL: And blows were struck and [T.L.] sustained some injuries?
THE DEFENDANT: Correct.
DEFENSE COUNSEL: He sustained an injury to his jaw in the nature of a fracture—
THE DEFENDANT: Correct.
DEFENSE COUNSEL: —correct? And I've explained to you that when a fracture is involved during an altercation or a fight or a barroom brawl or whatever you want to call it, that elevates a simple assault to a more serious charge of felony assault. You understand that?
THE DEFENDANT: Yes.
. . . .
DEFENSE COUNSEL: But now that we've reached a plea agreement in this case, you're willing to waive or give up your right to proceed with your self-defense argument, which is a defense. You understand that?
THE DEFENDANT: Yeah.
DEFENSE COUNSEL: That you freely and voluntarily with my advice entered into this negotiation so as not to proceed to a jury trial, that you're willing now to waive your right to self-defense at this time?
THE DEFENDANT: Yeah.

We conclude that the facts elicited during the colloquy are insufficient to support Maxa's guilty plea to third-degree assault. Maxa did not admit that he struck T.L. or that he intentionally inflicted bodily harm on him.

We reject the state's argument that the criminal complaint, in conjunction with the colloquy, sets forth a sufficient factual basis. *See State v. Hoaglund*, 307 Minn. 322, 326–27, 240 N.W.2d 4, 6 (1976) (holding that a factual basis consisting of little more than the complaint was inadequate); *Bolinger v. State*, 647 N.W.2d 16, 21 (Minn. App. 2002) (noting state cannot rely exclusively on sworn criminal complaint to establish a factual basis in withdrawal-of-guilty-plea circumstances); *but see Trott*, 338 N.W.2d at 252 (concluding sufficient factual basis existed when record contained copy of criminal complaint and district court "carefully interrogated" the defendant about the details of the crime at the plea hearing). Nothing in the record before us suggests that Maxa agreed that the facts set forth in the complaint would serve to support his guilty plea, that the complaint would be considered by the district court for that purpose, or that the court actually relied upon the information contained in the complaint.

We also reject the state's argument that Maxa is merely reasserting the self-defense claim he raised in the district court. Maxa is entitled to raise challenges to the validity of his guilty plea in this direct appeal. *See Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) ("A defendant is free to simply appeal directly from a judgment of conviction and contend that the record made at the time the plea was entered is inadequate in one or more of these respects.").

The following colloquy ensued at the plea hearing regarding Maxa's guilty plea to disorderly conduct:

> DEFENSE COUNSEL: Okay. And also you're pleading guilty to disorderly conduct on that same date and time, correct?
> THE DEFENDANT: Yes.
> DEFENSE COUNSEL: Is it fair to say that because of the conduct that ensued between the participants here and created a commotion in the neighborhood and somebody had to call 911, that would be considered disorderly conduct?
> THE DEFENDANT: Yes.
> DEFENSE COUNSEL: And that's why you're pleading guilty to that charge?
> THE DEFENDANT: Yes.

In this case, facts sufficient to support a guilty plea to disorderly conduct must show that Maxa engaged "in brawling or fighting" while "knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others." Minn. Stat. § 609.72, subd. 1 (2008). The facts elicited during the above colloquy are insufficient to support Maxa's guilty plea to disorderly conduct. The state did not charge Maxa with causing a commotion; it charged him with engaging in brawling or fighting and that he knew or had reasonable grounds to know that his conduct did, or would tend to, alarm, anger or disturb others. In connection with his plea to disorderly conduct, as charged, Maxa neither admitted that he engaged in brawling or fighting or that he knew or had reason to know that his conduct did, or would tend to, alarm, anger or disturb others.

Intelligence of Plea

Maxa asserts that his plea was not intelligent because he did not fully understand his rights at the plea hearing.

"To be intelligently made, a guilty plea must be entered after a defendant has been informed of and understands the charges and direct consequences of a plea." *State v. Batchelor*, 786 N.W.2d 319, 324 (Minn. App. 2010) (quotation omitted), *review denied* (Minn. Oct. 19, 2010). The rules of criminal procedure require a court to assess a defendant's understanding of the charges and the rights surrendered by pleading guilty. Minn. R. Crim. P. 15.01, subd. 1. A list of questions that serve this purpose is included in Minn. R. Crim. P. 15.01, subd. 1, but a court need not follow the list exactly. *State v. Doughman*, 340 N.W.2d 348, 351 (Minn. App. 1983), *review denied* (Minn. Mar. 15, 1984).

During the plea colloquy, Maxa acknowledged that he was familiar with and had read the plea petition "in its entirety," that the petition "embodies what rights" he was waiving or giving up, that he was "giving up" his "right to proceed to a jury trial" at which "we would pick a jury of 12 persons," that the state would have to prove guilt beyond a reasonable doubt, that he understood "[t]he jury would have to be unanimous in their guilty verdict," and that he "under[stood] that by waiving or giving up those rights, [he would] not be proceeding to a jury trial in this matter." Maxa testified that he signed the petition "freely and voluntarily," that he was not under the influence of any chemicals or alcohol, and that he did not have any questions of his attorney, the prosecutor, or the judge.

Although Maxa did not verbally waive all of the rights listed in rule 15.01, he signed a plea petition that extensively listed his rights, and he admitted during the colloquy that he was familiar with and read the document. *See Saliterman v. State*, 443

N.W.2d 841, 844 (Minn. App. 1989) (concluding criminal defendant pleaded intelligently when, inter alia, he signed petitions during the plea hearing and stated he understood them), *review denied* (Minn. Oct. 13, 1989).

The state argues that it will be prejudiced if Maxa is allowed to withdraw his pleas. But a showing of prejudice is only applicable under the fair-and-just standard of Minn. R. Crim. P. 15.05, subd. 2. We need not consider prejudice in this case because we are applying the manifest-injustice standard.

We conclude that, although Maxa's plea was intelligent, it was not accurate because the factual bases offered to support his guilty pleas to third-degree assault and disorderly conduct are insufficient.

Ineffective Assistance of Counsel

Maxa filed a pro se supplemental brief in which he claims ineffective assistance of counsel because his attorney failed to return phone calls, never brought a motion to dismiss as Maxa requested, and made Maxa feel that he had no choice but to accept a plea. The state moves to strike the brief. Because we are reversing Maxa's convictions and remanding to the district court for further proceedings, we do not reach Maxa's ineffective-assistance-of-counsel claim, and we deny the state's motion to strike as moot.

Reversed and remanded; motion denied.