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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0226**

State of Minnesota,
Respondent,

vs.

Zachary Steven Becker,
Appellant.

**Filed April 22, 2013
Reversed and remanded
Larkin, Judge**

Waseca County District Court
File No. 81-CR-11-470

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

Paul Dressler, Waseca County Attorney, Brenda Lee Miller, Assistant County Attorney,
Waseca, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Andrea Gabrielle Barts, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Halbrooks, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's denial of his motion for postconviction relief, arguing that withdrawal of his guilty plea is necessary to correct a manifest injustice. Because we conclude that the factual basis for appellant's guilty plea is inadequate and that his plea therefore is inaccurate, we reverse and remand.

FACTS

Respondent State of Minnesota charged appellant Zachary Steven Becker with failure to register as a predatory offender. Becker pleaded guilty to the charge on September 16, 2011. The district court sentenced Becker to 16 months in prison, stayed execution of sentence, and placed Becker on probation for five years. Becker appealed his conviction to this court. Becker also petitioned the district court for postconviction relief, asking "to have his guilty plea invalidated and withdrawn" because the factual basis for his plea was insufficient. This court stayed Becker's appeal pending completion of postconviction proceedings. The district court denied Becker's petition for postconviction relief, and this court reinstated Becker's appeal.

DECISION

Guilty pleas may be withdrawn only if one of two standards is met. *See* Minn. R. Crim. P. 15.05 (setting forth the manifest-injustice and fair-and-just standards for plea withdrawal). Becker argues that "he is entitled to an opportunity to withdraw this plea in order to correct a manifest injustice."

The district court must allow plea withdrawal at any time “upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice.” *Id.*, subd. 1. A manifest injustice exists if a guilty plea is not valid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). To be constitutionally valid, a guilty plea must be “accurate, voluntary and intelligent.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial. The voluntariness requirement insures that the guilty plea is not in response to improper pressures or inducements; and the intelligent requirement insures that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty.

Carey v. State, 765 N.W.2d 396, 400 (Minn. App. 2009) (quotation omitted), *review denied* (Minn. Aug. 11, 2009). “A defendant bears the burden of showing his plea was invalid.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The validity of a guilty plea is a question of law. *Id.* When reviewing a postconviction court’s decision to grant or deny relief, issues of law are reviewed de novo. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

Becker argues that his guilty plea is invalid “because the district court failed to meet its obligation of ensuring that an adequate factual basis existed sufficient to support a guilty verdict by a jury for the pled-to offense.” Becker’s argument is based on the accuracy requirement. “Accuracy requires an adequate factual basis to support the charge.” *Munger v. State*, 749 N.W.2d 335, 337-38 (Minn. 2008). “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 proffered factual basis must be sufficient to establish the elements of the offense to which the defendant pleaded guilty. *See* Minn. R. Crim. P. 15.01, subd. 1(8) (2010) (stating that in felony and gross misdemeanor cases, "[t]he defendant must state the factual basis for the plea"); Minn. R. Crim. P. 15.02, subd. 2 (2010) (stating that in misdemeanor cases, "the judge, with the assistance of counsel, must question the defendant to determine a factual basis for all elements of the offense to which the defendant is pleading guilty").

"[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." *Ecker*, 524 N.W.2d at 716. "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 district court should not accept a guilty plea unless the record supports the conclusion that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty. *State v. Goulette*, 258 N.W.2d 758, 762 (Minn. 1977); *State v. Hoaglund*, 307 Minn. 322, 325, 240 N.W.2d 4, 5 (1976). "An appellate court, on appeal, will reject a guilty plea if it concludes the [district court] could not fairly have concluded that the defendant's plea was accurate." *State v. Warren*, 419 N.W.2d

795, 798 (Minn. 1988). “Likewise, a guilty plea will be set aside in a petition for post-conviction relief if a factual basis is lacking.” *Id.*

In this case, Becker pleaded guilty to failure to register as a predatory offender under Minn. Stat. § 243.166 (2010). Section 243.166 provides, in relevant part, that a person who is required to register under the statute “shall provide to the corrections agent or law enforcement authority . . . the person’s primary address” and “all of the person’s secondary addresses.” Minn. Stat. § 243.166, subd. 4a(a)(1), (2). Thus, under the plain language of the statute, the factual basis for Becker’s plea must establish that he failed to provide the required information to his “corrections agent *or* law enforcement authority.” *See id.* (emphasis added). “‘Law enforcement authority’ . . . means, with respect to a home rule charter or statutory city, the chief of police, and with respect to an unincorporated area, the county sheriff.” *Id.*, subd. 1a(e). “Corrections agent” is not defined in section 243.166, but it is not included in the definition of “law enforcement authority.”

The factual basis in this case consists of Becker’s responses to a series of leading questions by his lawyer. Becker admitted that at the time of the offense, he was on probation for a criminal-sexual-conduct offense and that he was ordered to register under section 243.166. He admitted that he listed 1800 Vista Villa in Waseca as his address. He also admitted that on March 23, 2011, he started leaving 1800 Vista Villa and was “gone for periods of time,” that there were “occasions when [he was] gone for up to a week,” and that he was “living in a variety of places.” Finally, he agreed that “during

that entire time after March 23, 2011,” he “did not notify the police, any law enforcement agency” where he was residing.

The crux of Becker’s argument is that the factual basis is inadequate because he “never admitted that he knowingly failed to notify his corrections agent of information required to be provided to his corrections agent under subd. 4a.” He argues that he never admitted “failing to report any of the required information to his corrections agent.” Becker is correct. The factual basis does not establish that Becker failed to provide the required information to his corrections agent: it establishes that he failed to provide the information to “the police, any law enforcement agency.” The factual basis is silent regarding whether Becker provided the necessary information to his corrections agent. Thus, the factual basis does not establish an element of the offense, as defined under the clear statutory language: failure to provide the required information “to the corrections agent or law enforcement authority.” *Id.*, subd. 4a(a). Because the factual basis is inadequate, the plea is inaccurate and invalid, and a manifest injustice exists. Becker therefore is entitled to withdraw his guilty plea. *See Theis*, 742 N.W.2d at 651 (holding that because a guilty plea “was not accurate, and was therefore invalid, . . . withdrawal of that plea must be allowed under Minn. R. Crim. P. 15.05, subd. 1”).

Reversed and remanded.