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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2242**

State of Minnesota,
Respondent,

vs.

Gregory Steven Young,
Appellant.

**Filed November 30, 2010
Affirmed
Bjorkman, Judge**

Polk County District Court
File No. 60-CR-08-2888

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

Gregory Widseth, Polk County Attorney, Crookston, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sean M. McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his conviction of failure to register as a predatory offender, arguing that his guilty plea is not supported by a sufficient factual basis. We affirm.

FACTS

On October 19, 1998, appellant Gregory Steven Young was convicted of third-degree sodomy in the State of Oregon, an offense requiring appellant to register as a predatory offender. On July 22, 2008, Young registered a new address in Polk County—the Sand Hill Motel in Fertile. Young began living at the motel after leaving another registered address in Polk County. Young moved out of the motel sometime after August 19 and traveled to California by bus to visit family.

While in California, Young accepted a job offer from a former employer. On September 11, two days before starting work, Young registered as a predatory offender in Ventura County, California. He did not register his California address with the appropriate authorities in Minnesota. After the Polk County sheriff's office received information that Young was no longer living in Minnesota and had not registered a new address, Young was charged with failure to register in Polk County pursuant to Minn. Stat. § 243.166, subd. 5(a), (c) (2008).¹

On August 31, 2009, Young pleaded guilty to the charged offense. He signed a plea petition, indicated his intention to plead guilty, and made no claims that he was innocent. The factual basis for the plea was established, in part, by the colloquy between Young, his attorney, and the prosecutor. The district court accepted the guilty plea based on Young's testimony and the probable-cause portion of the complaint. Young did not object to the district court's reliance on the factual allegations of the complaint to

¹ This was Young's second charge of failure to register in Minnesota. In May 2004, he was convicted of failure to register in Beltrami County.

establish the factual basis for the plea. Young requested a probationary sentence. The district court found no substantial and compelling reasons to depart from the sentencing guidelines and sentenced Young to 24 months in prison. This appeal follows.

D E C I S I O N

A defendant may withdraw a guilty plea after sentencing if withdrawal is “necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists if a plea does not comply with the constitutional due-process requirements that it be accurate, voluntary, and intelligent. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). On appeal from a judgment of conviction challenging the accuracy of a plea, we review the record de novo to determine whether the plea had a sufficient factual basis. *See State v. Hoaglund*, 307 Minn. 322, 326-27, 240 N.W.2d 4, 6 (1976) (evaluating validity of plea on challenge to sufficiency of factual basis). A party may challenge the validity of a plea for the first time in a direct appeal when the grounds for the challenge do not go outside the record. *State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987).

To meet the accuracy requirement, the plea must have adequate factual support. *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.” *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). The factual basis is adequate 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). The factual

basis is inadequate when the defendant makes statements that negate an essential element of the charged crime. *Id.* at 350. The plea petition and colloquy may be supplemented by a summary of the evidence, such as is provided in the complaint, to establish the factual basis for the plea. *See Hoaglund*, 307 Minn. at 326-27, 240 N.W.2d at 6; *see also Williams v. State*, 760 N.W.2d 8, 13-14 (Minn. App. 2009) (concluding that a sworn complaint that was referred to at the plea hearing, combined with other evidence, provided a sufficient factual basis for a plea), *review denied* (Minn. Apr. 21, 2009).

Young argues that he is entitled to have his guilty plea set aside because the factual basis was insufficient to support a guilty verdict. To sustain a conviction for failing to register as a predatory offender, the state must prove (1) the defendant is required to register as a predatory offender; (2) the defendant knowingly violated a registration requirement; (3) the registration period has not lapsed; and (4) the registration failure took place in the charging county. *See* Minn. Stat. § 243.166, subs. 1b, 3, 3a, 5(a), 6 (2008). Young only challenges the factual basis with respect to the second element, whether he knowingly violated a registration requirement. He contends that the colloquy did not establish that he violated the requirements of the particular statutory provision charged or that any violation was knowing. We address each argument in turn.

I. The plea sufficiently established that Young violated the registration requirements.

Young was charged with violating the statutory registration requirements under Minn. Stat. § 243.166, subd. 3(b). The statute provides:

Except as provided in subdivision 3a, at least five days before the person starts living at a new primary address,

including living in another state, the person shall give written notice of the new primary address to the assigned corrections agent or to the law enforcement authority with which the person currently is registered. . . . A person required to register under this section shall also give written notice to the assigned corrections agent or to the law enforcement authority that has jurisdiction in the area of the person's primary address that the person is no longer living or staying at an address, immediately after the person is no longer living or staying at that address.

Minn. Stat. § 243.166, subd. 3(b).

Young argues that the factual record is insufficient to support a guilty verdict under this statutory provision because his plea did not explicitly establish that the motel in Polk County was a primary address and that he acquired a new primary address in California. He asserts that these omissions are important because the legislature enacted a separate registration requirement for registrants who lack a primary address. *See* Minn. Stat. § 243.166, subd. 3a(a), (c) (stating that a person without a new or existing primary address must register with the law-enforcement authority that has jurisdiction in the area where the person is staying within 24 hours of the time the person no longer has a primary address or enters the jurisdiction).

Our review of the record reveals ample factual support for Young's guilty plea. Young testified that he was required to register as a predatory offender in Minnesota, that he had a Polk County address prior to July 2008, and that he changed his registered address to the Sand Hill Motel and was "residing" there during portions of July and August 2008. The complaint likewise establishes that Young "moved from" a prior residence in Fertile on July 13 and began living at the Sand Hill Motel. Young

completed a predatory-offender registration change-of-information form and registered the motel as his new address. The evidence is sufficient to establish the Sand Hill Motel as Young's primary address.

The record also shows that Young left the motel and moved to California without notifying Polk County authorities as the registration statute requires. Young argues that his travels to visit family after August 19 create a "gap in primary addresses" that precludes application of subdivision 3(b). But while the colloquy does not provide extensive details regarding his move to California, we conclude that there is sufficient factual support to sustain a conviction of the charged offense. It is clear that he had a destination in California, where his family lived. Young's admission that he was "visiting with [his] family" contradicts his argument that he simply "became homeless in California." And when asked whether he was residing in California as of September 11, 2008, Young replied, "Yes." Young admitted that he registered as a predatory offender in Ventura County on September 11, and the complaint indicates that Young was "living in California" after he left Polk County in mid-August. In the colloquy with the prosecutor, Young admitted that he "failed to notify the Polk County Sheriff's Office of [his] change of address" five days prior to moving as the statute requires. In fact, the record shows that Young gave no notice whatsoever to Minnesota authorities before or after he left for California.

It is immaterial that the colloquy did not produce the street number or other more specific information about Young's new primary residence. A defendant "may not withdraw his plea simply because the court failed to elicit proper responses if the record

contains sufficient evidence to support the conviction.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). Ultimately, the accuracy requirement ensures that a defendant does not plead guilty to a crime more serious than that of which he could be convicted if he elected to go to trial. *Id.* at 95. Even if, as Young argues, subdivision 3a applied, the obligation to register pursuant to Minnesota law remained, and it is undisputed that Young failed to do so when he left Polk County in August 2008. Indeed, if subdivision 3a applied, Young was obligated to notify California authorities within 24 hours of entering the state, and the criminal penalty does not change. *See* Minn. Stat. § 243.166, subds. 3a, 5(a). On this record, we conclude that there was a sufficient factual basis to support Young’s admission that he violated the registration requirements.

II. The plea sufficiently established that Young knowingly violated the registration requirements.

A person required to register must “knowingly violate[.]” the requirements of the statute before criminal liability attaches. Minn. Stat. § 243.166, subd. 5(a). Young argues that “no information was elicited [in the colloquy] that would satisfy” the knowledge requirement. We disagree. While the colloquy contains no explicit discussion about Young’s knowledge, other information elicited during the plea hearing established that Young knowingly violated the registration requirements. Young admitted that he was required to register, described his efforts to comply with the registration requirements, and acknowledged that he previously violated the requirements in Beltrami County. It is undisputed that Young was aware of his ongoing registration obligation at the time of the charged offense.

The complaint further establishes the knowledge element of the charged offense. It details that Young completed and signed a Minnesota predatory-offender registration form in May 2006, in which he acknowledged “that he had been notified regarding his duty to register as a predatory offender” and that “he could be subject to criminal prosecution if he failed to properly register.” We conclude that the colloquy and the complaint provide a sufficient factual basis to establish that Young knowingly violated the registration requirements.

On this record, we conclude the accuracy requirement is met, and Young’s guilty plea has sufficient factual support. Young was represented by counsel, reviewed and signed a detailed plea petition, testified about his failure to comply with the registration statute, and asked the district court to accept his plea of guilty. Accordingly, we discern no “manifest injustice” occasioned by enforcing his guilty plea.

Affirmed.