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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A16-1248**

Milton Joseph Budreau, III, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed April 10, 2017  
Affirmed  
Smith, John, Judge\***

Cass County District Court  
File No. 11-K1-03-001177

Frederick J. Goetz, Goetz & Eckland P.A., Minneapolis, Minnesota (for appellant)

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

Christopher J. Strandlie, Cass County Attorney, Walker, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Smith, John,  
Judge.

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

## **UNPUBLISHED OPINION**

**SMITH, JOHN**, Judge

We affirm the postconviction court's summary denial of appellant's petition for postconviction relief because he is not entitled to withdraw his guilty plea to avoid a manifest injustice, and the district court did not abuse its discretion in denying the appellant an evidentiary hearing.

### **FACTS**

On October 12, 2003, several law enforcement officers responded to a shooting at a residence in Cass Lake, Minnesota. Upon arrival, they observed an individual, J.B., with a gunshot wound to his stomach. The officers took statements from several other individuals at the residence. One individual, B.P., recounted that appellant Milton Joseph Budreau III arrived at the home and threatened to shoot him. B.P. also stated that he later heard gunshots in the home and, upon hastily driving away from the residence with five others, observed Budreau shoot at the vehicle. Another individual, A.L., told the police that he heard about the incident and went to check on J.B. at the residence. When A.L. arrived at the home, Budreau attempted to shoot him. A.L. was able to separate the gun from Budreau. Budreau then fled the scene but was later apprehended.

Law enforcement interviewed J.B. for his account of the incident a few days later. Both Budreau and J.B. had been drinking at the residence, and J.B. brought a gun into the home. While at the home, Budreau took possession of the gun. Budreau and J.B. then got into an argument in one of the bedrooms, away from the other occupants. J.B. asked Budreau repeatedly to give him the gun. Standing about six feet away with a bottle in one

hand and the gun in the other, Budreau challenged J.B., asking him if he was going to take back the gun. Budreau then shot J.B. in the abdomen.

The state charged Budreau with two counts of attempted second-degree murder, Minn. Stat. § 609.19, subd. 1(1) (2002); one count of first-degree assault, Minn. Stat. § 609.22, subd. 1 (2002); two counts of second-degree assault, Minn. Stat. § 609.222, subd. 1 (2002); and one count of being an ineligible person in possession of a firearm, Minn. Stat. § 624.713, subd. 1(b) (2002).

On March 8, 2004, Budreau pleaded guilty to one count of attempted second-degree murder as it related to his actions towards J.B. At the plea hearing, Budreau did not make any claim that he was innocent of the charge and stated that he shot J.B., who was unarmed, in the stomach at close range. He agreed with the prosecutor that a jury could infer from the circumstances that he intended to kill J.B. The district court accepted the guilty plea and dismissed the remaining counts in the criminal complaint. The district court sentenced Budreau to 216 months in prison. Budreau did not file a direct appeal.

On April 4, 2016, J.B. submitted an affidavit, alleging that while most of his prior statement to police was accurate, he omitted some allegedly important facts. He reiterated that both he and Budreau were intoxicated and that he wanted to get his gun back from Budreau. But J.B. also elaborated that he had stumbled towards Budreau, falling into him, and that a “scuffle” ensued. J.B. alleged that the gun “went off” as Budreau pushed him away and explained that he could not say whether or not Budreau intended to shoot him or even fire the weapon. He also alleged that he was under a “lot of family pressure” to tailor

his police statement against Budreau because family members believed that Budreau was dangerous.

As a result of J.B.'s affidavit, Budreau filed a petition for postconviction relief, seeking an evidentiary hearing and withdrawal of his guilty plea. Budreau claimed that J.B.'s affidavit shows that he did not have the requisite intent to commit the offense of attempted second-degree murder. While conceding that he did not file his petition within the general two-year statute of limitations, Budreau asserted that the newly-discovered-evidence exception to the two-year period made his petition timely.

In June 2016, the postconviction court denied Budreau's petition without an evidentiary hearing. It reasoned that Budreau was not entitled to relief because J.B.'s affidavit did not constitute newly-discovered evidence, and even if it did, a jury could reasonably conclude that Budreau intended to kill J.B. This appeal follows.

## **D E C I S I O N**

Budreau contends that he should be able to withdraw his guilty plea and have an evidentiary hearing in order to avoid a manifest injustice. "[T]he court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. The postconviction court determined that the factual basis provided by Budreau's testimony at the plea hearing, along with the information provided in the criminal complaint, could lead a jury to conclude that Budreau had the requisite intent to kill J.B.

## I.

A “manifest injustice exists where a guilty plea is invalid.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Budreau bears the burden of showing that his plea is invalid. See *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). We review the postconviction court’s application of the manifest-injustice standard for an abuse of discretion. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). But “[a]ssessing the validity of a plea presents a question of law that we review de novo.” *Raleigh*, 778 N.W.2d at 94. “To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Id.* Budreau claims that his guilty plea is inaccurate because the transcript from the plea hearing does not establish that he had the requisite mental state to kill J.B.

The purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of if he were to exercise his right to a trial. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). For a plea to be accurate, it must establish a proper factual basis. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). A proper factual basis develops sufficient facts to show that the defendant’s conduct fulfills all of the required elements of the charged offense. *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008). “The district court typically satisfies the factual basis requirement by asking the defendant to express in his own words what happened.” *Raleigh*, 778 N.W.2d at 94. But even if the district court fails to elicit proper responses, a defendant may not withdraw his plea if the record contains sufficient evidence to support the conviction. *Id.*

A person is guilty of second-degree intentional murder if he “causes the death of a human being with intent to effect the death of that person or another, but without

premeditation.” Minn. Stat. § 609.19, subd. 1(1) (2002). The phrase “with intent to” means “that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result.” Minn. Stat. § 609.02, subd. 9(4) (2002). Intent may be proved by inferences drawn from a person’s words or actions in light of the totality of the circumstances. *State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996). For instance, intent to cause a person’s death may be inferred from the nature and extent of the person’s wounds. *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989). A person is liable for an attempt crime if the person commits an act which constitutes a “substantial step toward” the commission of the crime while he has the intent to commit the crime. Minn. Stat. § 609.17, subd. 1 (2002).

During the prosecution’s examination at the plea hearing, Budreau provided the following factual basis for his guilty plea:

PROSECUTOR: At some point while you were there, apparently you got into a discussion or argument with [J.B.] and shot him, would that be correct?

BUDREAU: Yes.

....

PROSECUTOR: In fact, [J.B.] got one gunshot wound close range in the stomach, would that be correct?

BUDREAU: Yes

PROSECUTOR: And he was unarmed at that time?

BUDREAU: Yes.

....

PROSECUTOR: And you are not making any claim that you are innocent of the charge, correct?

BUDREAU: No.

PROSECUTOR: And at the scene there, I guess while you were there nobody else had any firearms on them, is that correct?

BUDREAU: No.

....

PROSECUTOR: Mr. Budreau, do you agree as to the facts set forth on the Complaint that a jury could look at that and assume that you intended -- because it was close range intended to kill [J.B.], that was what a jury could find?

BUDREAU: Yeah.

After the prosecution's examination, Budreau's attorney stated his belief that the intent element had been satisfied by Budreau's testimony. The prosecutor also offered the criminal complaint for the district court's consideration.

Contrary to Budreau's assertions, the combination of Budreau's testimony and the facts alleged in the criminal complaint provide a sufficient factual basis to accurately establish that Budreau had the requisite mental state to commit the offense of attempted second-degree murder. The record also shows that Budreau reasonably understood both the terms of the plea agreement and the consequences of accepting the plea agreement. *See Raleigh*, 778 N.W.2d at 96 (determining that a guilty plea is voluntary if the parties reasonably understood the plea agreement and that a guilty plea is intelligent if the defendant understands the consequences of the plea). We conclude that the postconviction court did not abuse its discretion in denying Budreau's petition for postconviction relief on the basis that the plea was invalid.

## II.

Budreau also argues that the postconviction court created a manifest injustice when it denied his postconviction petition without giving him an evidentiary hearing. "The postconviction court may summarily deny a petition without holding a hearing if the petition, files, and records conclusively show that the petitioner is not entitled to relief." *Hooper v. State*, 888 N.W.2d 138, 141 (Minn. 2016). We review a denial of a

postconviction petition and the denial of evidentiary hearing for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). We review the postconviction court’s factual findings for clear error and will not reverse unless the findings do not have support in the record. *Id.* “But we review a postconviction court’s legal conclusions de novo.” *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013).

Whether a petitioner is entitled to an evidentiary hearing depends on the legal standard that is applied to the particular type of claim he alleges in his petition. *Caldwell v. State*, 853 N.W.2d 766, 771 (Minn. 2014). Budreau argues that he is at the very least entitled to an evidentiary hearing on the basis that J.B.’s affidavit demonstrates that J.B. recanted the statement he gave to the police. His argument relies significantly on witness-recantation caselaw in which Minnesota courts apply the *Larrison* test. *See State v. Caldwell*, 322 N.W.2d 574, 584-85 (Minn. 1982) (adopting test set forth in *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928), for granting a new trial due to false testimony). The *Larrison* test governs our analysis in cases in which there are allegations that “false testimony was given *at trial*.” *Pippitt v. State*, 737 N.W.2d 221, 227 (Minn. 2007) (emphasis added). But because Budreau pleaded guilty at a plea hearing and therefore did not have a trial at which J.B. would have testified, the *Larrison* test does not apply to this case.

We instead consider the newly-discovered-evidence standard in reviewing whether the postconviction court’s summary denial of Budreau’s petition amounted to a manifest injustice. A person convicted of a crime may claim that his conviction or sentence violates his constitutional rights by filing a petition for postconviction relief. Minn. Stat. § 590.01,

subd. 1 (2016). Generally, if the person does not directly appeal his conviction or sentence, he must file the postconviction petition within two years of the entry of judgment of the conviction or sentence. *Id.*, subd. 4(a). Budreau acknowledges that he did not directly appeal his sentence and he did not file his petition within the two-year time limit.

“A postconviction petitioner is not entitled to relief or an evidentiary hearing on an untimely petition unless he can demonstrate that he satisfies one of the [statutory] exceptions.” *Roberts v. State*, 856 N.W.2d 287, 290 (Minn. App. 2014) (alteration in original) (quotation omitted), *review denied* (Minn. Jan. 28, 2015). Budreau asserts that he satisfies the newly-discovered-evidence exception to the two-year statute of limitations. Under this exception, a postconviction petition that is filed after the two-year time limit may be considered if five requirements are fulfilled: (1) the petitioner alleges the existence of newly-discovered evidence, (2) the evidence “could not have been ascertained by the exercise of due diligence by the petitioner or the petitioner’s attorney” within the two-year time period, (3) the evidence is not cumulative, (4) the evidence “is not for impeachment purposes,” and (5) the evidence establishes by clear and convincing evidence that the petitioner is innocent. *Riley*, 819 N.W.2d at 168.

The postconviction court determined that the exception does not apply because Budreau failed to satisfy the second and fifth requirements. Budreau asserts that he could not have ascertained the information through due diligence because J.B. “deliberately suppressed” the information due to family pressures. But because Budreau himself was also present during the incident, he would have witnessed everything in J.B.’s affidavit.

Budreau had the opportunity to produce this information during the plea hearing. Budreau therefore fails to meet this second requirement of the newly-discovered-evidence test.

The parties also dispute whether J.B.’s affidavit proves Budreau’s actual innocence. “[T]o prove a claim by clear and convincing evidence, a party’s evidence should be unequivocal, intrinsically probable and credible, and free from frailties.” *Id.* at 170 (alteration in original). “Actual innocence is more than an uncertainty about guilt. Instead, establishing actual innocence requires evidence that renders it more likely than not that no reasonable jury would convict.” *Id.* Despite Budreau’s assertions to the contrary, the allegations in J.B.’s affidavit are not clear and convincing evidence proving his actual innocence. The alleged fact that Budreau and J.B. “scuffled” prior to Budreau pushing J.B. away and firing the gun does not make it any less probable that Budreau intended to kill J.B. And J.B.’s statement, “I cannot say that [Budreau] intended to shoot me or even fire the gun,” does not equate to unequivocal evidence that Budreau did not intend to kill J.B. For these reasons, J.B.’s affidavit is insufficient to prove Budreau’s actual innocence.

Because Budreau has failed to satisfy all of the requirements for the newly-discovered-evidence exception, no manifest injustice occurred in denying his postconviction petition without first having an evidentiary hearing. Therefore, we conclude that the postconviction court did not abuse its discretion in denying Budreau’s postconviction petition.

**Affirmed.**