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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1638**

State of Minnesota,
Respondent,

vs.

Eddie Morris Miller,
Appellant.

**Filed April 3, 2017
Reversed and remanded
Klaphake, Judge***

Hennepin County District Court
File No. 27-CR-16-6524

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Klaphake, Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Eddie Morris Miller challenges the validity of his guilty plea to a charge of violation of a domestic-abuse no-contact order, Minn. Stat. § 629.75, subd. (d)(1) (2014). Because Miller’s admissions during the plea colloquy and the district court record fail to establish a sufficient factual basis to support his plea, we reverse.

DECISION

Miller argues that he is entitled to withdraw his guilty plea to a charge of violation of a domestic-abuse no-contact order (DANCO) because his plea lacks a sufficient factual basis, and is therefore invalid. A guilty plea is invalid if it is not “accurate, voluntary, and intelligent.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The supreme court explained each of these three requirements:

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. Other possible benefits of the accuracy requirement include assisting the court in determining whether the plea is intelligently entered and facilitating the rehabilitation of the defendant. The purpose of the voluntariness requirement is to insure that the defendant is not pleading guilty because of improper pressures. The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.

State v. Trott, 338 N.W.2d 248, 251 (Minn. 1983). If a guilty plea fails to meet any of these three requirements, then the defendant is entitled to withdrawal of his plea. *State v.*

Theis, 742 N.W.2d 643, 650 (Minn. 2007). This court applies a *de novo* standard of review to the validity of a guilty plea. *Raleigh*, 778 N.W.2d at 94.

Here, Robbinsdale police conducted a traffic stop on a vehicle driven by A.B. in March 2016. Miller was a passenger in the vehicle. According to the complaint, police arrested Miller during the stop because an active DANCO prohibited Miller from having contact with A.B. until January 2018. Miller was charged with felony violation of a DANCO, Minn. Stat. § 629.75, subd. 2(d)(1) (2014). Miller pleaded guilty on April 13, 2016 in exchange for a downward dispositional departure.

Miller contends that his plea lacks sufficient factual basis because he did not admit to his knowledge of the DANCO's existence, an element of the crime to which he pleaded guilty. A guilty plea is not accurate if it is not supported by a proper factual basis. *Raleigh*, 778 N.W.2d at 94. "The factual-basis requirement is satisfied 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). A defendant's admissions usually provide the factual basis that supports his admission of guilt, but it is not the exclusive method to establish a factual basis. *Raleigh*, 778 N.W.2d at 94; *Kochevar v. State*, 281 N.W.2d 680, 686 (Minn. 1979). If the defendant's admissions are weak, the "plea petition and colloquy may be supplemented by other evidence" in the district court record, such as the complaint, potential exhibits, and a pre-sentence investigation report, "to establish the factual basis for the plea." *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012) (relying on a grand-jury transcript in district court record to establish factual basis for guilty plea); *Trott*, 338

N.W.2d at 252 (relying on complaint and photo exhibits in district court record to establish factual basis for guilty plea); *State v. Hoaglund*, 307 Minn. 322, 327 n.9, 240 N.W.2d 4, 6 n.9 (1976) (assessing adequacy of guilty plea).

Miller pleaded guilty to a violation of Minn. Stat. § 629.75, subd. 2(b). The statute provides:

(b) Except as otherwise provided in paragraphs (c) and (d), a person who knows of the existence of a domestic abuse no contact order issued against the person and violates the order is guilty of a misdemeanor.

....

(d) A person is guilty of a felony . . . if the person violates this subdivision:

(1) within ten years of the first of two or more previous domestic violence-related offense convictions

Minn. Stat. § 629.75, subd. 2(b), (d)(1). A valid factual basis to support Miller’s plea thus requires an admission or evidence to show that Miller objectively “kn[ew] of the existence of a domestic abuse no contact order” *Id.*

The factual basis provided by Miller during the plea colloquy on the issue of his knowledge of the DANCO comprises the following exchange:

DEFENSE COUNSEL: And, now we’ve gone through it, and everyone I think understanding what was going on here, but you do understand that there was an active DANCO order out prohibiting you to have contact with [A.B.]? Do you understand an order exists that you got in a prior Court hearing?

MILLER: Yes. Now, yes.

DEFENSE COUNSEL: And what—we’ve gone through it, we’ve gone through the transcripts, you understand?

MILLER: Now, yeah, I understand now, yes.

We agree with Miller that his on-the-record admissions are insufficient to show that he knew of the existence of the DANCO at the time of the alleged offense.

We turn to the district court record to supplement Miller's admissions. But after our examination of the district court record,¹ we observe that it, too, lacks sufficient evidence to show Miller's knowledge of the existence of the DANCO. The DANCO that Miller is charged with violating is not part of the district court record. Even though the complaint references the DANCO's existence, it does not speak to Miller's knowledge of it. Lastly, the PSI reflects an admission by Miller that he may have known about the DANCO that he was charged with violating, but it also shows that he was clearly confused about its existence due to a contemporaneous family court no-contact order.

Thus, based on our careful examination of the district court record as a whole, we conclude that Miller's plea of guilty to violation of a DANCO is not supported by a sufficient factual basis that "would support a jury verdict that defendant is guilty of at least as great a crime as that to which he pled guilty." *Nelson*, 880 N.W.2d at 859. Because the

¹The state provided several documents in its respondent's brief addendum, including the register-of-actions and sentencing transcript from a separate criminal file, as well as the DANCO that Miller was charged with violating and to which he pleaded guilty in this case. These documents were not part of the district court record. The record on appeal consists of "[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any." Minn. R. Civ. App. P. 110.01. Miller did not move to strike the state's addendum. See Minn. R. App. P. 110.05. But this court does not base its decision on matters that were not received into evidence by the district court and that are outside the record on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). Because the documents in the state's addendum were not judicially noticed, filed, or otherwise referenced by the district court, they are outside of the appellate record, and we must decline the state's invitation to supplement the factual basis for Miller's guilty plea with reference to such documents.

factual basis is insufficient to support Miller's guilty plea, his plea is invalid, and he is entitled to withdrawal.

Reversed and remanded.