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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1778**

State of Minnesota,
Respondent,

vs.

Ronald James Fairbanks,
Appellant.

**Filed May 8, 2017
Reversed and remanded
Cleary, Chief Judge**

St. Louis County District Court
File No. 69DU-CR-16-1197

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

Mark S. Rubin, St. Louis County Attorney, Jessica J. Fralich, Assistant County Attorney,
Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Worke, Judge; and Jesson, Judge.

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

CLEARY, Chief Judge

On appeal from his conviction, appellant Ronald James Fairbanks argues that his
guilty plea is invalid because the factual basis fails to establish that he knowingly violated

the predatory offender registration requirements as a homeless offender. This matter was assigned to the special term panel, after the state conceded that appellant was entitled to relief and appellant requested expedited processing of the appeal. We reverse and remand.

FACTS

A complaint was filed on March 30, 2016, charging appellant with failing to register as a predatory offender. The complaint alleged that appellant was required to register based on a 1994 conviction of fourth-degree criminal sexual conduct; that he has at least two convictions for violating the registration requirements in 2002 and again in 2006; and that he last registered on January 19, 2016, when he was released from the St. Louis County Jail. At that time, appellant identified himself as homeless and was provided information regarding his weekly registration requirements. The complaint alleged that as of March 9, 2016, appellant had not “completed a single homeless check-in” with law enforcement.

On April 5, 2016, the district court ordered a rule 20 evaluation. The rule 20 report found appellant “both mentally ill and mentally deficient to some degree.” The psychologist concluded that appellant’s “short-term memory was impaired.” Although the psychologist found appellant to be competent, he concluded that appellant “would require repetition for information expected to be used in short-term memory or at the moment in the courtroom for purposes of comprehension or trial.”

At a hearing on June 22, 2016, appellant’s counsel informed the district court that appellant wished to enter a straight guilty plea, without any agreement from the state, and that he planned to seek a dispositional departure at sentencing. Appellant was asked by his

counsel if he was thinking clearly, to which he responded: “This is the first time we discussed this case, so, it’s -- it is what it is. I’m guilty.” When asked again if he was thinking clearly, appellant stated: “I don’t know what to think right now. But I feel that I’m guilty, so, yes, I’m totally aware of what you’re saying right now.” When asked by counsel if he had any questions, appellant responded:

I wouldn’t be lying to you if I said I don’t remember, and I’m guilty of the crime, but I don’t remember that I was supposed to follow through with that. And I’m worried that when I go to prison, when I get out I’m still not going to remember. So what’s - - you know what I mean? It’s just, it scares the - - it scares me a lot, Your Honor, and it bothers me to think like this. But I don’t remember the actual crime

The court then stated: “Let’s see what we can do with the plea, Mr. Fairbanks, okay? And then we’ll get to that.”

The prosecutor questioned appellant in an attempt to establish a factual basis for the plea. Appellant responded by stating “Yes,” to the question of whether he is required to register with the Minnesota Bureau of Criminal Apprehension; “Yes, sir,” to the question of whether he was having trouble remembering to register; “Yes, sir,” to the question of whether he knew he was obligated to register; and acknowledged that he has past convictions for failing to register.

Appellant admitted that the state could introduce documents showing that he was in jail in January 2016 and that the jail “filled out [the] registration forms for [him].” Appellant stated that he was homeless, and when asked if he knew that a homeless person has particular requirements regarding registration, he stated: “That’s what I didn’t

remember. . . . And that's what I'm here for today because I didn't follow through with that." Appellant answered in the affirmative that he did not remember to check in for "a good period of time."

The prosecutor stated: "And you understand that's what makes you guilty because that's what you have to do?" Appellant responded: "Correct." The prosecutor continued: "If I told you if we went to trial, I would present evidence from officers that, the officers whose job it is to keep those records, and they'd say you never checked in. Would you allow the Court to rely on that?" Appellant responded: "Yes." Appellant stated "No, sir," that he was not maintaining his innocence and agreed that he was admitting his guilt. When asked if a jury would find him guilty, appellant stated: "I don't know sir -- I can't predict that." The prosecutor followed up: "Do you think based on the evidence, the evidence would show that you're guilty?" Appellant responded: "Because I pled guilty today; yes, sir." Again the prosecutor asked: "But how about based on the evidence we've talked about?" Appellant responded: "Yes, sir."

The prosecutor concluded: "It's sort of a, I guess, *Alford* hybrid. I'm fairly satisfied that he's acknowledged that he was supposed to register and didn't." The district court accepted appellant's plea.

At sentencing, appellant's request for a dispositional departure was denied. The district court noted appellant's extensive criminal history and found him not to be particularly amenable to probation. The district court imposed the presumptive 36-month sentence. This appeal followed.

DECISION

To be valid, a guilty plea must be accurate, voluntary, and intelligent. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A plea is accurate if the defendant presents a factual basis sufficient to establish the elements of the offense to which he is pleading guilty. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994); *Barnslater v. State*, 805 N.W.2d 910, 914 (Minn. App. 2011). A defendant may challenge the lack of a factual basis to support a guilty plea for the first time on appeal. *See State v. Iverson*, 664 N.W.2d 346, 349-50 (Minn. 2003). A challenge to the accuracy of a plea is a question of law that this court reviews de novo. *See Raleigh*, 778 N.W.2d at 94.

The district court should not accept a 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. Trott*, 338 N.W.2d 248, 252 (Minn. 1983). If a defendant negates an essential element of the charged offense during the plea hearing, the factual basis is inadequate because those statements are inconsistent with a plea of guilty. *Iverson*, 664 N.W.2d at 350. And a factual basis generally should not be established by the use of leading questions. *Raleigh*, 778 N.W.2d at 95. Rather, a defendant should be asked “to express in his own words what happened.” *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012).

In order to establish an adequate factual basis, it should be clear what offense was committed or which statute was violated, to determine what elements the defendant needs to admit at the plea hearing. In this case, the state never identified the specific offense

charged. The complaint charges appellant with “Violation of Predatory Offender Registration Requirements,” and cites Minn. Stat. § 243.166, subd. 5(a). Subdivision 5, however, is titled “Criminal penalty,” and only sets the criminal penalties for registration violations. See Minn. Stat. § 243.166, subd. 5(a) (2014) (“A person required to register under this section who knowingly violates any of its provisions . . . is guilty of a felony.”). The predatory offender registration statute is complicated and includes a multitude of possible violations. During the plea hearing, however, no specific provision of the statute was mentioned and the elements of the offense to which appellant was pleading guilty were not discussed.

Even if it is assumed that appellant was charged with failing to register as a homeless person, in violation of Minn. Stat. § 243.166, subd. 3a(e) (2014), his plea is nevertheless invalid because he did not admit to a “knowing violation” of that section. Subdivision 3a(e) provides: “[I]f a person continues to lack a primary address, the person shall report in person on a weekly basis to the law enforcement authority with jurisdiction in the area where the person is staying.” Thus, assuming appellant pleaded guilty under this subdivision, he would have to admit facts sufficient to establish the following elements: (1) he was required to register as a predatory offender; (2) he lacked a primary address; (3) he failed to report in person on a weekly basis to the relevant law enforcement authority; and (4) his failure to do so was knowing. Minn. Stat. §§ 243.166, subds. 3a(e), 5(a).

Appellant acknowledges that he admitted facts to establish the first two elements: he admitted that a 1994 conviction requires him to register and he admitted that he is

homeless. With respect to the third element, he admitted that “a good period of time went by” during which he did not check in, that he could not recall checking in with the Duluth Police Department, and that he “didn’t follow through with that.” But he never specifically admitted that he was required to check in on a weekly basis, and the prosecutor never mentioned weekly check-ins. It is questionable whether a factual basis was established on this third element.

With respect to the fourth element, appellant did not admit facts to establish that he knowingly failed to register or knowingly violated the registration requirements. To satisfy this requirement, a defendant must admit not only that he knew he was required to register, but also that he knew at the time of his conduct that his action or inaction violated the registration statute. *See State v. Watkins*, 840 N.W.2d 21, 29-30 (Minn. 2013) (discussing the phrase “knowingly violates this subdivision” as it relates to violation of the DANCO statute); *State v. Gunderson*, 812 N.W.2d 156, 160-61 (Minn. App. 2012) (discussing the phrase “knowingly violates” as it relates to violation of an HRO). Appellant did not understand the nature or requirements of the homeless registration provisions. He stated several times that he did not know or remember his registration obligation. His claims of lack of knowledge or memory are corroborated by the rule 20 report that found he has serious short-term memory loss and would need repetition to remember things. Because the record fails to establish that appellant knew he had to check in on a weekly basis and that he knowingly failed to do so, his guilty plea lacks a factual basis and is not accurate.

As such, it is invalid and he is entitled to plea withdrawal. *See State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (holding that withdrawal is required when plea is invalid).

Finally, despite the prosecutor's suggestion that this was a "sort of a[n] . . . *Alford* hybrid," appellant did not maintain his innocence and he was not pleading guilty in order to obtain the benefits of any plea bargain. As such, this plea cannot be characterized as an *Alford* plea, which occurs when a defendant maintains his innocence of the charged offense, but pleads guilty in order to take advantage of a plea bargain because there is sufficient evidence for a jury to find him guilty at trial. *See State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (allowing *Alford*-type pleas to be accepted).

Because appellant's guilty plea lacks an adequate factual basis, his conviction is reversed and the matter is remanded for further proceedings consistent with this opinion.

Reversed and remanded.