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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0684**

Matthew Roy Woller, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 26, 2017
Affirmed
Halbrooks, Judge**

Anoka County District Court
File No. 02-CR-14-1165

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Anthony C. Palumbo, Anoka County Attorney, Andrew T. Jackola, Assistant County Attorney, Anoka, Minnesota (for respondent)

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his petition for postconviction relief, arguing that his guilty plea to aiding and abetting second-degree assault is inaccurate and therefore invalid and that reversal is required to correct a manifest injustice. We affirm.

FACTS

Appellant Matthew Roy Woller, T.H., S.M.H., and D.S. drank alcohol together at a bar late one winter evening. Woller had also ingested methamphetamine. Woller indicated that his former friend J.E.V. owed him money. Woller, T.H., S.M.H., and D.S. agreed to a plan in which T.H., driving in one vehicle, would pick up J.E.V., bring J.E.V. to a meeting spot, and wait for S.M.H., D.S., and Woller, following behind in a different vehicle, to confront J.E.V.

T.H. drove to J.E.V.'s location early the next morning. J.E.V. eventually got inside T.H.'s vehicle, and T.H. began driving with S.M.H., D.S., and Woller following behind, preparing for a "confrontation between [D.S.] and [J.E.V.]." Woller exchanged text messages with T.H. during the drive. After some time had passed, T.H. parked, and J.E.V. got out of T.H.'s vehicle. D.S. exited the other vehicle and approached J.E.V.

D.S. then shot J.E.V. Woller heard the gunshot. D.S. returned to the vehicle where Woller and S.M.H. were waiting so that the three could flee. But when S.M.H. tried to drive away, the vehicle got stuck in a rut. Woller and D.S. tried unsuccessfully to push the vehicle out of the rut. Woller and D.S. then ran and hid together in a ditch. Woller called

T.H., who picked up S.M.H., D.S., and Woller. But police arrested all four a few miles away.

The state charged Woller with aiding and abetting second-degree assault under Minn. Stat. § 609.222, subd. 2 (2012), with reference to Minn. Stat. § 609.05, subd. 1 (2012), which carries with it a presumptive and mandatory-minimum sentence of 36 months' imprisonment. The state and Woller reached a plea agreement whereby Woller would complete treatment, remain sober, and provide clean urinalysis samples up until sentencing. In exchange, the state agreed to seek a downward departure to a probationary term of up to ten years. Woller provided the following factual basis at his plea hearing:

PROSECUTOR: And . . . you and [J.E.V.] had, at one point, been friends or acquaintances; is that true?

WOLLER: Yes.

PROSECUTOR: And [J.E.V.] owed you money; is that correct?

WOLLER: Yes.

PROSECUTOR: And so during the evening hours of February 15, 2014, did you make arrangements with T.H. to meet [J.E.V.]?

. . . .

WOLLER: Well, I mean, [T.H.] was going to meet him and we were going to follow behind and talk to him.

. . . .

PROSECUTOR: . . . But what was the purpose in you following T.H.?

WOLLER: Confrontation between [D.S.] and [J.E.V.].

. . . .

PROSECUTOR: But it was for your behalf; is that fair to say? I understand that it's your position that you didn't know that [D.S.] was going to shoot [J.E.V.].

WOLLER: I had no idea. I didn't know he had a gun.

. . . .

PROSECUTOR: And when [D.S.] got out of the vehicle and confronted [J.E.V.] he shot him, correct?

WOLLER: I heard a gunshot. I didn't see it. Yes.

PROSECUTOR: And then he got back in the vehicle that you were in?

WOLLER: Correct.

PROSECUTOR: And then you guys started to drive away, correct?

WOLLER: Correct.

....

PROSECUTOR: Her vehicle got stuck?

WOLLER: True. Yep.

PROSECUTOR: So that you guys tried to push the vehicle out of the rut?

WOLLER: True.

PROSECUTOR: And that didn't work?

WOLLER: Right.

PROSECUTOR: So then you and [D.S.] took off on foot, right?

WOLLER: True.

PROSECUTOR: And then you actually ended up hiding in a ditch for a little bit, right?

WOLLER: True.

PROSECUTOR: And then [D.S.] ditched the gun?

WOLLER: I don't know what [D.S.] did with the gun.

PROSECUTOR: Okay.

WOLLER: I never saw it.

PROSECUTOR: And then [T.H.]—you called [T.H.] to come back and get you, correct?

WOLLER: Correct.

PROSECUTOR: And then she came back and got you?

WOLLER: Yep.

PROSECUTOR: As well as [D.S.]?

WOLLER: Yep.

Woller pleaded guilty, but the district court deferred acceptance of his guilty plea until the sentencing hearing. Woller requested two separate continuances of the sentencing hearing so that he could have more time to complete his drug program and provide clean urinalysis samples. The state expressed concerns about granting the continuances, reasoning that Woller repeatedly failed to submit to urinalysis tests and that the samples

that Woller had provided tested positive for amphetamines. The district court granted both continuances.

Woller failed to appear for his sentencing hearing. The district court rescheduled Woller's sentencing hearing a third time. Woller appeared for his sentencing hearing and requested a downward departure. The district court declined to downward depart, citing Woller's failed urinalysis samples, failure to appear for sentencing, and shortcomings regarding treatment, and sentenced Woller to 36 months' imprisonment. Woller petitioned the district court for postconviction relief, seeking to withdraw his guilty plea on the ground that his plea was invalid because it was not accurate. The district court denied Woller's petition. This appeal follows.

D E C I S I O N

Woller argues his guilty plea is not supported by an adequate factual basis. He contends that he negated the essential elements of aiding and abetting second-degree assault by stating in his plea colloquy that he did not know that D.S. intended on assaulting J.E.V. until he heard the gunshot, did not know D.S. possessed a gun, and did not intend his presence or actions to further D.S.'s second-degree assault.

Upon review of a postconviction court's decision, we examine "only whether the postconviction court's findings are supported by sufficient evidence," and will reverse only if that court abused its discretion. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012) (quotations omitted). A defendant does not have an absolute right to withdraw a guilty plea, but a court must allow a defendant to withdraw a guilty plea after sentencing if "withdrawal is necessary to correct a manifest injustice," Minn. R. Crim. P. 15.05, subd. 1,

which “exists if a guilty plea is not valid,” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). Whether a guilty plea is valid is a question of law, which we review de novo. *Id.*

A guilty plea is valid if it is accurate, voluntary, and intelligent. *Id.* “A defendant bears the burden of showing his plea was invalid.” *Id.* “The accuracy requirement protects a defendant from pleading guilty to a more serious offense than that for which he could be convicted if he insisted on his right to trial.” *Id.* A guilty plea is accurate if it is established by a proper factual basis providing “sufficient facts on the record to support a conclusion that [the] 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 of a plea is inadequate when the defendant makes statements that negate an essential element of the charged crime because such statements are inconsistent with a plea of guilty.” *Id.* at 350.

Woller pleaded guilty to aiding and abetting second-degree assault, a conviction that requires that Woller “intentionally aid[ed]” another person who “assault[ed] another with a dangerous weapon and inflict[ed] substantial bodily harm.” Minn. Stat. §§ 609.05, subd. 1, .222, subd. 2. The intentionally aiding element “embodies two important and necessary principles: (1) that the defendant knew that his alleged accomplices were going to commit a crime, and (2) that the defendant intended his presence or actions to further the commission of that crime.” *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012) (quotations omitted).

Woller contends that his plea colloquy did not satisfy the requisite knowledge element for aiding and abetting second-degree assault because he stated that he did not

know that “[D.S.] intended to assault J.E.V. before the assault happened” or that D.S. possessed a gun. We disagree. We concluded in *State v. Smith* that “[a] defendant who acquires the requisite knowledge while the accomplice is in the process of committing the offense, and makes the choice to aid in its commission either through [his] presence or [his] actions, is guilty as an accomplice under the plain language of Minn. Stat. § 609.05.” 901 N.W.2d 657, 662 (Minn. App. 2017), *review denied* (Minn. Nov. 14, 2017). The district court in *Smith* instructed the jury with respect to proof of the knowledge element that “the defendant knew her alleged accomplices were going to or were committing a crime.” *Id.* at 660. The appellant in *Smith* contended that the district court misstated the law, arguing that “foreknowledge of the accomplice’s plan or intent to commit a crime is necessary for a conviction under section 609.05.” *Id.* at 662. We concluded that the district court did not err, *id.* at 664, reasoning that accomplice liability attaches if the defendant “possess[es] knowledge of the crime *before the defendant intentionally aids in its commission.*” *Id.* at 662.

It follows from *Smith* that, although Woller stated that he did not know that D.S. possessed a gun or intended to shoot J.E.V., Woller’s conduct nevertheless satisfied the knowledge requirement for aiding and abetting second-degree assault. Woller’s plea colloquy established that Woller acquired knowledge of the assault before his presence or actions furthered its commission. *See id.* Woller admitted in his plea colloquy that he observed D.S. exit the vehicle and approach J.E.V. While Woller denied knowing about or seeing a gun, he admitted he heard a gunshot. And Woller did not deny that D.S. shot

J.E.V. Therefore, Woller had the requisite knowledge of the second-degree assault. See *id.*

We must next determine if Woller's plea colloquy establishes that, after forming the knowledge of the second-degree assault, he intended his presence or actions to further its commission. Woller maintains that his plea-colloquy statements do not establish that he intended his presence or actions to further the commission of D.S.'s second-degree assault. Woller asserts that he anticipated only a confrontation between D.S. and J.E.V. We disagree.

Woller testified that, after hearing the gun shot, and knowing that D.S. shot J.E.V., he helped D.S. try to push the vehicle out of a rut, ran and hid with D.S. in a ditch, and contacted T.H. to pick them up. Woller's plea colloquy satisfied the essential elements of aiding and abetting second-degree assault and provided an adequate factual basis for his guilty plea.

Because there is no manifest injustice requiring a plea withdrawal, the district court acted within its discretion by denying Woller's petition for postconviction relief.

Affirmed.