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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-0814**

State of Minnesota,  
Respondent,

vs.

Harry Maddox, III,  
Appellant.

**Filed May 7, 2018  
Affirmed  
Halbrooks, Judge**

Sibley County District Court  
File No. 72-CR-16-60

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

David E. Schauer, Sibley County Attorney, Winthrop, Minnesota (for respondent)

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

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and  
Jesson, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS, Judge**

Appellant challenges the validity of his guilty plea to the crime of offering forged checks, arguing that his plea is inaccurate because he did not state in his plea colloquy that he intended to defraud. We affirm.

## FACTS

In 2015, an Eagan police officer was investigating a burglary involving business checks that were stolen from a bakery. According to the officer, the checks began appearing at gas stations in Minnesota and Wisconsin signed with names such as M.K., M.P., and A.W. Through video surveillance, the officer identified appellant Harry Maddox, III, as the individual who had forged the checks.

Police executed a search warrant at Maddox's residence. They found clothing that matched what Maddox wore in the gas-station surveillance videos and Minnesota identification cards belonging to M.P. and A.W. Maddox subsequently admitted offering forged checks.

The state charged Maddox with offering forged checks under Minn. Stat. § 609.631, subd. 3 (2014). The state offered Maddox a plea whereby he would be sentenced to 24 months in prison with 348 days' credit for time served, all fines and surcharges would be waived, and a civil judgment would be created for the victims who filed restitution affidavits. Maddox accepted the offer and pleaded guilty. The district court accepted Maddox's plea and sentenced him according to the terms of the plea agreement. This appeal follows.<sup>1</sup>

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<sup>1</sup> A defendant can seek plea withdrawal in a direct appeal without first presenting the matter to the district court. See *State v. Anyanwu*, 681 N.W.2d 411, 413 (Minn. App. 2004), *overruled on other grounds by Wheeler v. State*, \_\_\_ N.W.2d \_\_\_, \_\_\_, 2018 WL 1414708, at \*8 (Minn. Mar. 21, 2018).

## DECISION

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). But a district court must allow a defendant to withdraw a guilty plea if withdrawing the guilty plea is “necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice arises when a guilty plea is not valid. *Raleigh*, 778 N.W.2d at 94. A guilty plea is valid if it is accurate, voluntary, and intelligent. *Id.* The defendant seeking to withdraw his guilty plea carries the burden of proving that his plea was invalid. *Id.* We review the validity of a guilty plea de novo. *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. *Id.* A proper factual basis includes sufficient record facts that when taken together support a determination 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). A factual basis is inadequate if the defendant makes statements during the plea hearing that “negate an essential element of the charged crime.” *See id.* at 350 (reasoning that “such statements are inconsistent with a plea of guilty”).

Maddox pleaded guilty to offering forged checks. *See* Minn. Stat. § 609.631, subd. 3. The elements of the crime of offering a forged check are: (1) a person, with intent to defraud, (2) offers, or possesses with intent to offer, (3) a forged check, whether or not it is accepted. *Id.*

At the plea hearing, Maddox's public defender asked Maddox a series of questions about the check-forgery allegations:

- Q. Okay. And specifically, in the period between September 1st, 2015, and December 31, 2015, so in this three-month period, do you admit that you had possession of checks that were not in your name?
- A. What was that? Where does it say that?
- Q. No, I'm trying to—
- A. Oh, oh—
- Q. —ask you.
- A. Yes, I have—yes, I did so they say, yes.
- Q. Well, Mr. Maddox, you have to either admit to different elements of this crime or not?
- A. How many? Okay, yes.
- Q. When you had possession of these checks, is it correct that you offered these checks to various businesses?
- A. Yes, to the best of my recollection.
- Q. And part of that is that there are many businesses listed in this complaint, correct?
- A. Yes.
- Q. In offering these forged checks to the businesses, you were going to get a financial benefit back, correct? By giving them the forged check, you were getting something of value?
- A. Yes, it was services, products and financial ability.
- Q. Okay. And the establishments you were giving those checks to were not getting anything of value back?
- A. I doubt it.
- Q. You agree that this list of different establishments I'm not asking you to remember each one of those events or even admit that each one of those events was you, however, taken together is over \$7,000; do you admit that?
- A. Yes, that's the State's calculation.
- Q. You do admit that you took part in the forgery of over \$2,500 worth of it?
- A. Yes.

Maddox makes two arguments in support of his position that plea withdrawal is necessary here. First, Maddox maintains that the factual basis does not establish the intent

element of the crime of offering forged checks because he did not explicitly state during the plea colloquy that he had the specific intent to defraud. We disagree. A defendant need not expressly state that he had the specific intent to defraud in order for a plea colloquy to establish a proper factual basis because intent is most often proved circumstantially by the inferences that can be drawn from the defendant's words or his actions "in light of all the surrounding circumstances." *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) (quotation omitted). For example, in *State v. Knight*, the supreme court affirmed a guilty plea of theft by check, which also required that the state prove the defendant acted with the intent to defraud even though the defendant did not expressly state in the plea colloquy that he specifically intended to defraud. 292 Minn. 419, 422, 192 N.W.2d 829, 831 (1971).

Maddox admitted during the plea colloquy that (1) he possessed checks that were not in his name, (2) he offered them to businesses, and (3) he received "services, products and financial ability," and (4) the business received nothing of value in return. These facts are sufficient to establish that Maddox offered forged checks with the intent to defraud the businesses to which he offered them. *Cf. Chapman v. State*, 282 Minn. 13, 22, 162 N.W.2d 698, 704 (1968) (concluding defendant's guilty plea to a murder charge was inaccurate because he "specifically denied an intent to kill").

Second, Maddox checked a box in his plea petition stating: "I do . . . make the claim that I was so drunk or so under the influence of drugs or medicine that I did not know what I was doing at the time of the crime." After that sentence, there is hand-written text that says, "pain killers." Maddox contends that this statement in the record "calls into doubt whether [he] was even capable of forming the specific intent to defraud." We disagree.

We determine the accuracy of a guilty plea based on statements made on the record at the plea hearing. *Vernlund v. State*, 589 N.W.2d 307, 310 (Minn. App. 1999). During the plea hearing, Maddox did not testify that he lacked the proper state of mind or that he was high on pain killers when he offered the forged checks to various businesses. And when the district court asked Maddox follow-up questions about his state of mind to enter a guilty plea, the following exchange occurred:

- Q. Sir, one of the questions you were asked too about is whether you were thinking clearly today and you said, I hope so. Is there a question in your mind as to whether you're thinking clearly enough to fully understand the plea agreement that has been reached.
- A. Again, your Honor, that's a very, very difficult question when you're under nine different medications without a psychiatrist or medical doctor present for me to say, but as far as how I feel and how I think, yes.
- Q. Well, I'm sorry, I can't accept your plea petition unless I'm sure that you are thinking clearly now; do you understand?
- A. Yes, yes, I do at the moment, yes.
- Q. So you do understand what you're doing today?
- A. Correct, as of today, yes.
- Q. Well, we're taking your plea today so, as long as you understand this process today, and you are thinking clearly enough today, I can take your plea.
- A. Correct.
- Q. And you are thinking clearly enough, you fully understand what's happening here today; is that correct?
- A. Correct.
- Q. All right.

Based on the factual basis provided at the plea hearing, we conclude that there are sufficient facts that establish that Maddox's guilty plea was accurate. Because the plea was accurate, it is not invalid. There is therefore no manifest injustice requiring plea withdrawal.

In a pro se supplemental brief, Maddox argues that his imposed sentence exceeds the statutory limit and violates *Apprendi* and *Blakely*. Minn. Stat. § 609.631, subd. 4(2) (2014), provides that a person who is convicted of offering forged checks under Minn. Stat. § 609.631, subd. 3, may be sentenced “to imprisonment for not more than *ten years* . . . if the forged check or checks are used to obtain or in an attempt to obtain, property or services of more than \$2,500 or the aggregate amount of the forged check or checks is more than \$2,500.” (Emphasis added.) The district court sentenced Maddox to 24 months in prison—a duration well within the statutory limit.

With respect to Maddox’s pro se argument, “[a]ny fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be *admitted by the defendant* or proved to a jury beyond a reasonable doubt.” *United States v. Booker*, 543 U.S. 220, 244, 125 S. Ct. 738, 756 (2005) (emphasis added); *see Blakely v. Washington*, 542 U.S. 296, 313, 124 S. Ct. 2531, 2543 (2004); *Apprendi v. New Jersey*, 530 U.S. 466, 497, 120 S. Ct. 2348, 2366 (2000). Here, Maddox admitted in his plea colloquy that he offered checks that totaled more than \$2,500. Therefore, there is no *Blakely* issue. The district court did not err by imposing a 24-month sentence.

**Affirmed.**