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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1720**

Jennifer Natalie Bernard, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 13, 2018
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-CR-14-7405

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John Choi, Ramsey County Attorney, Adam E. Petras, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Stauber, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Judge

In 2014, Jennifer Natalie Bernard pleaded guilty to first-degree burglary. In 2017, she petitioned for post-conviction relief on the grounds that her guilty plea is invalid because it is not accurate. The post-conviction court denied the petition. We conclude that the post-conviction court did not err because Bernard's plea has a proper factual basis. Therefore, we affirm.

FACTS

In September 2014, Bernard's boyfriend visited his children at the home of his estranged wife, A.C. Bernard was upset by the fact that her boyfriend was visiting his children at A.C.'s house. While waiting for him to return, she drank heavily and called his cell phone repeatedly. After receiving no response, she and a friend drove to A.C.'s house. Bernard pounded on A.C.'s front door so hard that she broke the glass pane in the door. A.C. came to the door. According to the complaint, A.C. saw Bernard reach her hand inside the frame of the broken glass pane and unlock the door. Once inside the house, Bernard and her friend repeatedly punched A.C. and pulled her hair. Bernard's boyfriend broke up the fight. Bernard and her friend drove away.

The state charged Bernard with first-degree burglary, in violation of Minn. Stat. § 609.582, subd. 1(c) (2014). In December 2014, Bernard pleaded guilty to the charge without any agreement concerning her sentence. During the plea hearing, Bernard stated that her boyfriend and A.C. had invited her to A.C.'s house to resolve conflicts among the three of them. Bernard stated that she pounded hard on A.C.'s front door until the glass

pane of the door broke. Bernard also stated (contrary to the complaint) that her boyfriend let her into A.C.'s house. Bernard admitted that she struck A.C. after entering the house. The district court determined that the factual basis of the plea was sufficient but deferred acceptance of the plea until sentencing. The district court later imposed a sentence of 58 months of imprisonment but stayed the sentence and placed Bernard on probation. The district court revoked Bernard's probation in May 2015 after finding that she violated the terms of her probation.

In February 2017, Bernard petitioned for post-conviction relief. She claimed that she received ineffective assistance of counsel and that her guilty plea is invalid on the ground that it is not accurate. The post-conviction court conducted an evidentiary hearing on three days in April and June 2017. Bernard called four witnesses, three of whom provided testimony that was relevant only to her ineffective-assistance claim. The state did not call any witnesses.

In September 2017, the post-conviction court issued a 31-page order in which it denied Bernard's petition. The post-conviction court rejected Bernard's claim that her guilty plea is not accurate on the ground that Bernard admitted at the plea hearing that she had no legal right to be in A.C.'s home when she assaulted A.C. Bernard appeals.

D E C I S I O N

Bernard argues that the post-conviction court erred by denying her petition on the ground that her guilty plea is invalid.

A criminal offender may file a post-conviction petition to seek relief on the ground that her conviction "violated [her] rights under the Constitution or laws of the United States

or of the state.” Minn. Stat. § 590.01, subd. 1(1) (2016). An offender may obtain post-conviction relief if she can prove that her guilty plea is invalid. *Nelson v. State*, 880 N.W.2d 852, 858 (Minn. 2016). A guilty plea is valid if it is “accurate, voluntary, and intelligent.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010); *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). If a guilty plea is not accurate, not voluntary, or not intelligent, the plea is invalid. *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007).

If the post-conviction court conducts an evidentiary hearing on such a claim, the petitioner must “establish the facts by a fair preponderance of the evidence.” Minn. Stat. § 590.04, subd. 3 (2016). This court applies a clear-error standard of review to a post-conviction court’s findings of fact and will not reverse the post-conviction court’s decision unless its findings “are not factually supported by the record.” *Nelson*, 880 N.W.2d at 858 (quoting *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012)). If the relevant facts are undisputed, this court applies a *de novo* standard of review to a post-conviction court’s decision concerning the validity of a guilty plea. *Id.*; see also *State v. Johnson*, 867 N.W.2d 210, 214-15 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015).

In this case, Bernard argues that her guilty plea is not accurate because the record does not show that she assaulted A.C. *after* entering A.C.’s house without consent or remaining in her house without consent. “The main purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than [she] could be convicted of were [she] to insist on [her] right to trial.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). The accuracy requirement requires that a guilty plea “be established on a proper factual basis.” *Raleigh*, 778 N.W.2d at 94. A proper factual basis exists 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*, 880 N.W.2d at 859 (quoting *State v. Genereux*, 272 N.W.2d 33, 34 (Minn. 1978)). “However, ‘[t]he 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.* (quoting *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003)).

To evaluate the accuracy of Bernard’s guilty plea, we must identify the essential elements of first-degree burglary. A person is guilty of first-degree burglary if she “enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice,” and “assaults a person within the building.” Minn. Stat. § 609.582, subd. 1(c). The phrase “enters a building without consent” is defined by statute to mean:

- (a) to enter a building without the consent of the person in lawful possession;
- (b) to enter a building by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; or
- (c) to remain within a building without the consent of the person in lawful possession.

Minn. Stat. § 609.581, subd. 4 (2014). In light of the definition of “enters a building without consent,” Bernard’s guilty plea has a proper factual basis even if she entered A.C.’s house with consent. Bernard is guilty of first-degree burglary if she remained in the house without consent and assaulted A.C. *See id.* §§ 609.581, subd. 4(c), .582, subd. 1(c).

Bernard's argument is based on the premise that, to be guilty of the offense, she must have entered or remained in the house without consent *before* she assaulted A.C. Assuming without deciding that the premise is valid, the record shows that Bernard engaged in conduct that violated the statute. Even if Bernard was invited to A.C.'s home, and even if her boyfriend let her into the house, as she stated in the plea hearing, consent for her presence in the house was withdrawn immediately after she entered the house. During the plea hearing, Bernard stated that "we [*i.e.*, the three women] were all hitting each other," "we were all fighting," and "it all happened very fast." Bernard's attorney asked her, "would you agree that once you got into this fight in the house, any consent or permission you had to enter the house was withdrawn?" Bernard answered in the affirmative. Similarly, the prosecutor asked, "Did it become clear to you once you were in the residence that you were not welcome in the residence?" Bernard answered, "Yes, it became clear." The prosecutor clarified the issue by asking further, "You became aware that you were not—whether you had been previously invited or not, you were not welcome in [A.C.'s] home." Bernard again answered in the affirmative. The prosecutor completed her questioning by asking, "when you committed that assault, you had no legal right to be in that home?" Bernard answered, "Yes." Thus, it is reasonable to conclude that, even if Bernard had consent to enter the house, that consent was withdrawn immediately after she entered, either before she began her assault of A.C. or before she completed the assault. See *Nelson*, 880 N.W.2d at 861 (stating that guilty plea has proper factual basis if "facts exist from which the defendant's guilt of the crime charged can be reasonably inferred" (quotation omitted)).

Bernard also contends that her guilty plea is invalid because it is based on her answers to the prosecutor's leading questions, which, she contends, are "directly contrary to all statements made by Ms. Bernard throughout [her] colloquy." The supreme court has "repeatedly discouraged the use of leading questions to establish a factual basis." *Id.* at 860 (citing cases). But the supreme court has "never held that the use of leading questions automatically invalidates a guilty plea." *Id.* We return to the central question: whether "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." *Id.* at 859 (quotation omitted). We conclude that the record does contain such evidence. We also reject Bernard's contention that her answers to the prosecutor's leading questions contradicted statements she had made earlier in the plea hearing with respect to whether she was present in A.C.'s house with or without consent. To be sure, the prosecutor sought to establish that Bernard gained entry by opening the locked front door herself, as alleged in the complaint. But Bernard consistently maintained that she did not herself open the door but that her boyfriend opened it for her. Nonetheless, the record is clear that, immediately upon confronting A.C., Bernard no longer had consent to remain in the house. In light of that fact, it does not matter whether Bernard entered the house without consent. *See* Minn. Stat. § 609.581, subd. 4.

In sum, the post-conviction court did not err by concluding that there is a proper factual basis for Bernard's guilty plea and, thus, did not err by denying Bernard's post-conviction petition.

Affirmed.