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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0552**

State of Minnesota,
Respondent,

vs.

Curtis McCain, Jr.,
Appellant.

**Filed April 1, 2019
Reversed and remanded
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CR-17-12137

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the validity of his guilty plea to the crime of failing to register as a predatory offender, arguing that his plea is inaccurate because he made statements

during the plea hearing that negated the mens rea element of the offense. We reverse and remand.

FACTS

Appellant Curtis McCain Jr., is subject to lifetime predatory-offender registration following his conviction of fourth-degree criminal sexual conduct in 2006. McCain's supervised release ended in 2012. McCain traveled to Illinois to visit family but was arrested for an outstanding warrant and remained in custody in Illinois until 2015. Upon his release, McCain registered as a predatory offender in Illinois but did not register in Minnesota.

In 2017, a review of McCain's registration information revealed that he was noncompliant as of 2015 because he did not return his address-verification paperwork. McCain was charged with violating the predatory-offender registration requirements under Minn. Stat. § 243.166, subd. 5(a) (2014).

At a January 2018 hearing, McCain pleaded guilty to knowingly violating Minn. Stat. § 243.166, subd. 5(a), and requested a downward durational departure. The district court accepted McCain's guilty plea. The district court noted that this was McCain's first failure-to-register violation "despite having registered for years." The district court also found that McCain's failure to register "was less onerous than typical because, although [McCain was] not supposed to leave the state without telling Minnesota that [he] was leaving, [he] thought [he] had registered when [he] came out of prison in Illinois and that two different states was confusing at best." The district court granted the downward

durational departure and imposed the mandatory minimum prison term of one year and one day. This appeal follows.

DECISION

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But withdrawal must be allowed if “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 intelligent, voluntary, and accurate. *Id.* The defendant bears the burden of proving that a plea was invalid. *Id.* A defendant may challenge the validity of a guilty plea for the first time on direct appeal. *State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. App. 1987), review denied (Minn. Nov. 13, 1987). We review the validity of a guilty plea de novo. *Raleigh*, 778 N.W.2d at 94.

Here, McCain challenges only the accuracy of his plea. For a guilty plea to be accurate, it must be supported by a proper factual basis, with “sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *State v. Iverson*, 664 N.W.2d 346, 349-50 (Minn. 2003) (quotation omitted). The factual basis of a plea is inadequate if a defendant makes statements that negate an essential element of the charged offense. *Id.* at 350. We review the sufficiency of the factual basis for a plea from the record made when the defendant entered it. *State v. Lillemo*, 410 N.W.2d 66, 69 (Minn. App. 1987).

McCain pleaded guilty to violating Minn. Stat. § 243.166, subd. 5(a), which states that it is a felony to knowingly violate its provisions or to intentionally provide false

information to a corrections official. To be convicted of knowingly violating a provision of the predatory-offender registration statute, a defendant must know that he is violating the law at the time of the violation. *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017) (“Accordingly, the knowledge and the violation must occur at the same time.”).

At the plea hearing, McCain’s attorney asked McCain a series of questions about his failure to register:

Q. And, Mr. McCain, it is correct that back in December of 2015 you were under an obligation to register as . . . what we call a predatory offender in the state of Minnesota; is that right?

A. Correct.

Q. And you were aware of that requirement, and for many years you had been doing what you were supposed to do; is that correct?

A. Correct.

Q. And then you went to the state of Illinois for a visit, but unfortunately you were arrested and incarcerated in the state of Illinois; is that right?

A. Correct.

Q. But you understand one of the obligations under Minnesota law was that you were supposed to contact the state of Minnesota and let them know where you were; is that right?

A. Correct.

Q. And you did not do that; is that right?

A. Correct.

Q. Okay. And you understood you had an obligation and you attempted to make some steps but you didn’t do it; is that right?

A. Yes, sir.

Q. Okay. And that’s what makes you guilty of failing to comply with the registration requirements; is that correct?

A. Yes, sir.

Q. And you understand you are required to register for your lifetime; is that right?

A. Yes, sir.

Then, the prosecutor asked McCain, “[Y]ou knew of your requirement to register or to contact Minnesota if you were in a different state, correct? You knew that you were supposed to do that?” McCain responded, “I do now, yes, sir.” The prosecutor then inquired, “Well, did you know at the time that you were supposed to contact Minnesota if you left?” McCain stated, “I don’t think I did, but I do now.”

After an off-the-record conversation, McCain and his attorney had the following exchange:

- Q: Let me ask you this, Mr. McCain. You had gone through the list of requirements multiple times—
A: Right.
Q: —with your [probation] officer?
A: Correct.
Q: And you do recall that at some point you had been told that it’s your obligation to follow the requirements and to provide them with your address?
A: Correct.
Q: Is that right?
A: Correct.
Q: And when they went through the requirements with you, one of the things they told you is that if you left the state you have to notify them; is that right?
A: Yes, sir.

McCain asserts that his plea is inaccurate because his statements to the prosecutor negate the mens rea element of the failure-to-register offense. McCain analogizes to *Mikulak*, where the defendant was charged with knowingly violating a provision of the predatory-offender registration statute when he left his primary address in one county and went to visit a friend in another county without informing law enforcement. 903 N.W.2d at 602. The state alleged that Mikulak violated Minn. Stat. § 243.155, subd. 3a(a), (c)

(2016), which requires a predatory offender who leaves a primary residence without obtaining a new one to register within 24 hours of leaving the primary residence and 24 hours of entering a new jurisdiction. *Id.* Mikulak pleaded guilty but stated during the plea hearing that he did not register in the new county because he thought he had a week to do so. *Id.* at 602, 605. Mikulak agreed that he had been informed of the 24-hour registration requirement but stated that he did not remember at the time that he changed counties. *Id.* at 602. When asked whether he was satisfied that the seven-day registration period did not apply, Mikulak stated, “Yeah, now I am.” *Id.* The supreme court held that the “factual basis fails to satisfy the accuracy requirement for a valid plea because Mikulak made statements that were not withdrawn or corrected and that negated the mens rea element of the charged offense.” *Id.* at 605.

McCain’s statements during his plea hearing are nearly identical to those made by Mikulak. McCain agreed that he was under an obligation to register and did not do so. But when asked if he knew of the requirement to register in Minnesota if he was in a different state, McCain stated, “I do now, yes, sir.” When asked if he knew at the time that he was supposed to contact Minnesota when leaving the state, McCain responded, “I don’t think I did, but I do now.” Like the statements made by Mikulak, these statements negate the mens rea element of the failure-to-register offense because they show that McCain was not aware at the time of the violation that he was in violation of the statute.

The state contends that McCain’s plea was accurate because his statements were withdrawn or corrected during the second round of questions asked by his attorney. Specifically, McCain was asked if he reviewed the registration requirements with his

probation officer and whether he had been told “at some point” that it was his obligation to follow the requirements. McCain responded in the affirmative to the question.

In *Mikulak*, the defendant had similarly been informed of the registration requirement in the past and agreed that he had signed a reporting form acknowledging the 24-hour registration requirement. *Id.* at 602, 605. Nevertheless, the supreme court held that Mikulak’s statements on the record rendered his plea inaccurate because they did not support a conclusion that he knew, at the time of the violation, that he was violating the registration requirements. *Id.* at 605. The same is true here. McCain’s acknowledgment that he had previously been informed of the registration requirements and his agreement that he had signed a form of acknowledgment do not correct his previous statements that he did not know that he was violating the registration requirement at the time of the offense. These statements negate the mens rea requirement of “knowingly” imposed by Minn. Stat. § 243.166, subd. 5(a). Because the record does not show that these statements were withdrawn or corrected, we conclude that McCain’s guilty plea is inaccurate and, therefore, invalid. Because it is invalid, there is a manifest injustice and McCain should be permitted to withdraw his plea. We reverse and remand for proceedings consistent with this opinion.

Reversed and remanded.