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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0604**

State of Minnesota,
Respondent,

vs.

Stephen Forrest Towle,
Appellant.

**Filed March 4, 2019
Affirmed
Reilly, Judge**

Sibley County District Court
File No. 72-CR-17-168

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

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

Richard L. Swanson, Chaska, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Reilly, Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant argues that the district court abused its discretion by denying his
presentence motion to withdraw his guilty plea under the manifest-injustice standard and

the fair-and-just standard. Because appellant has not satisfied his burden of establishing that he is entitled to relief under either standard, we affirm.

D E C I S I O N

Appellant Stephen Forrest Towle challenges the denial of his presentence motion to withdraw his guilty plea. “A defendant has no absolute right to withdraw a guilty plea after entering it.” *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016) (quotation omitted). Plea withdrawal may be permitted under two circumstances. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). First, a district court must allow a defendant to withdraw a guilty plea “[a]t any time” if “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Second, a district court may allow a defendant to “withdraw a plea at any time before sentence if it is fair and just to do so.” *Id.*, subd. 2. The decision to withdraw a presentence guilty plea is left to the sound discretion of the district court and will be reversed only in the “rare case” that the district court abused that discretion. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

I. Appellant is not entitled to relief under the manifest-injustice standard.

Under the manifest-injustice standard, a district court must allow a defendant to withdraw his guilty plea “upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid.” *Barrow v. State*, 862 N.W.2d 686, 691 (Minn. 2015). “To be valid, a guilty plea must be accurate, voluntary, and intelligent.” *Taylor*, 887 N.W.2d at 823. The district court must allow the defendant

to withdraw a guilty plea if the defendant proves that the plea was not accurate, voluntary, and intelligent. *See Barrow*, 862 N.W.2d at 689 (placing burden of proof on defendant).

Appellant does not contest the voluntary or intelligent nature of his plea, but claims that his plea was inaccurate because the factual basis was established through the use of leading questions. The accuracy requirement provides that a factual basis must be established showing that the defendant's conduct meets all elements of the offense to which he is pleading guilty. *State v. Iverson*, 664 N.W.2d 346, 349-50 (Minn. 2003). The Minnesota Supreme Court has "cautioned against the use of exclusively leading questions to establish a proper factual basis for a guilty plea." *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012) (citations omitted). But "a defendant may not withdraw his plea simply because the court failed to elicit proper responses if the record contains sufficient evidence to support the conviction." *Raleigh*, 778 N.W.2d at 94; *see also Barnslater v. State*, 805 N.W.2d 910, 914 (Minn. App. 2011) ("The use of leading questions is therefore disfavored, but it does not by itself invalidate a guilty plea.").

Sufficient evidence supports the conviction. A Domestic Abuse No Contact Order (DANCO) prohibited appellant from having any contact with A.T., his former domestic partner. Appellant contacted A.T. on multiple occasions and pressured her to drop the charges supporting the DANCO. Appellant had two prior convictions for domestic assault and DANCO violations and two open cases for domestic assault and violating an order for protection, enhancing any subsequent offense to a felony-level crime. The state charged appellant with one felony count of violating the DANCO in violation of Minn. Stat. § 629.75, subd. 2(d)(1) (2016), and appellant entered a plea of guilty to that charge.

Minnesota law provides that “[a] person is guilty of a felony . . . if the person violates this subdivision . . . within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency.” Minn. Stat. § 629.75, subd. 2(d)(1). Counsel established the factual basis for the crime through the following colloquy:

DEFENSE COUNSEL: Mr. Towle, on June 1, 2017, was there a Domestic Abuse No Contact Order in place between you and a person with the initials A.T.?

APPELLANT: Yes.

DEFENSE COUNSEL: And that No Contact Order prevented you or prohibited you from having any contact with A.T., correct?

APPELLANT: Correct.

DEFENSE COUNSEL: While that was in place, you had sent text messages to A.T.?

APPELLANT: Correct.

DEFENSE COUNSEL: And you knew that that was something that was prohibited by the No Contact Order?

APPELLANT: Correct.

. . . .

DEFENSE COUNSEL: And at the time of this incident, you had two prior, at least two prior no contact convictions?

APPELLANT: Correct.

. . . .

PROSECUTOR: . . . Those prior convictions were within the last ten years, correct?

APPELLANT: Correct.

By pleading guilty, a defendant “in effect judicially admit[s] the allegations contained in the complaint.” *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983). The court may “look to the whole record, beyond what the defendant said, when evaluating the quality of a guilty plea’s factual basis.” *Barnslater*, 805 N.W.2d at 914. “The complaint may provide a factual basis for a defendant’s plea, and [reviewing courts] are permitted to examine the complaint to assess whether a defendant’s plea was accurate.” *Sanchez v. State*, 868 N.W.2d 282, 289 (Minn. App. 2015), *aff’d*, 890 N.W.2d 716 (Minn. 2017).

Here, the complaint and the police report reveal that appellant contacted A.T. on numerous occasions, despite knowing that a DANCO prohibited him from doing so. The police department received an anonymous report that appellant was interacting with A.T. in violation of the DANCO. Police officers arrived at the scene and observed appellant and A.T. sitting together in the same vehicle. The interaction was captured on a police squad car camera. The material presented in the complaint and the police report, coupled with the colloquy at the plea petition hearing, supports a determination that appellant knew that the DANCO prohibited him from contacting A.T., and that he contacted her in violation of that order. Although his admissions at the plea hearing consisted entirely of leading questions, the record nevertheless supports the conviction. We therefore determine that the district court did not abuse its discretion by rejecting appellant’s request to withdraw his guilty plea under the manifest-injustice standard.

II. Appellant is not entitled to relief under the fair-and-just standard.

The fair-and-just standard is “a less demanding standard than the manifest-injustice standard, but it does not permit withdrawal of a guilty plea for simply any reason.” *State*

v. Townsend, 872 N.W.2d 758, 764 (Minn. App. 2015) (quotation omitted). In analyzing a motion to withdraw a guilty plea under the fair-and-just standard, a district court considers: (1) the reasons the defendant advances to support withdrawal of the guilty plea; and (2) whether granting the motion prejudices the state. Minn. R. Crim. P. 15.05, subd. 2. Underlying this rule is the principle that “giving a defendant an absolute right to withdraw a plea before sentence would undermine the integrity of the plea-taking process.” *Kim*, 434 N.W.2d at 266. The defendant bears the burden of advancing sufficient reasons to support plea withdrawal. *Raleigh*, 778 N.W.2d at 97. “The state bears the burden of showing prejudice caused by withdrawal.” *Id.* If that burden is met, the burden shifts to the state to show prejudice caused by withdrawal of a plea. *Id.* We review appellant’s claim for an abuse of discretion. *Kim*, 434 N.W.2d at 266.

Appellant did not argue that his plea was involuntary or unintelligent under the manifest-injustice standard. Instead, appellant sought to withdraw his guilty plea before sentencing on the grounds that he did not understand the charges against him or the consequences of his plea. The district court did not find the reasons advanced by appellant to be persuasive, stating:

There was the factual basis that was stated, full recitation of rights, as I think [counsel] ably points out, that was all, that was all part of that record that day and there doesn’t seem to me to be anything wrong with the way that was done, with the way it was put together.

So on the basis of the, the fact that Mr. Towle, at the time you were under oath, you were advised of all your rights, and it certainly looks to this Court like you freely, voluntarily and intelligently waived your rights and admitted that factual basis

with no reference to the DANCO being dismissed then or earlier, I have to deny that motion to vacate the plea.

We discern no abuse of discretion here. Appellant stated on the record that he wished to enter a plea of guilty to a felony DANCO violation and, through questioning, provided a factual basis supporting the plea. Based upon the record, the district court denied appellant's motion to withdraw his guilty plea. The record supports the district court's decision. *See State v. Abdisalan*, 661 N.W.2d 691, 694 (Minn. App. 2003) (affirming district court's decision to deny withdrawal of plea under fair-and-just standard where "[n]othing objectively in the record suggests that [defendant] failed to comprehend the nature, purpose, and consequences of his plea"), *review denied* (Minn. Aug. 19, 2003). The evidence in the record establishes a valid factual basis for the district court's decision denying the withdrawal motion and we conclude that the district court did not abuse its discretion.

Because appellant did not satisfy his burden of showing that it was fair and just to allow him to withdraw his plea, the district court did not consider whether the state would be prejudiced by the plea withdrawal. Even if there is no prejudice to the State, the court may still deny a plea withdrawal. *See Raleigh*, 778 N.W.2d at 97-98 (holding that the court did not abuse its discretion in denying plea withdrawal when the prejudice to the State was overstated but defendant failed to provide any valid reason why the withdrawal would be fair and just). "A district court may deny plea withdrawal under rule 15.05, subdivision 2, if the defendant fails to advance valid reasons why withdrawal is fair and just." *State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013), *review denied* (Minn. Dec. 31, 2013).

The district court acted within its discretion by declining to address the possible prejudice to the state where appellant failed to advance valid reasons why plea-withdrawal would be fair and just, and we affirm.

Affirmed.