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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1478**

Veterine Nicole McGhee, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 13, 2019
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-14-19846

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

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Hooten, Judge; and Cochran, Judge.

UNPUBLISHED OPINION

REYES, Judge

In this appeal from an order denying postconviction relief, appellant argues that the postconviction court should have granted her plea withdrawal based on the inaccuracy of

her plea because the factual basis failed to establish that, by her conduct, she knowingly encouraged, caused, or contributed to her children needing protection or services. We affirm.

FACTS

On June 1, 2014, Minneapolis police officers visited a residence in response to a call requesting a welfare check. Officers met with the caller at the residence, who told the officers that she had been caring for the two children of her neighbor, appellant Veterine Nicole McGhee, and could no longer do so. No other suitable caregiver could be located, so the police took the children to St. Joseph's Home for Children.

The children received an intake interview, a medical exam, and met with a child-protection worker. One of the intake staff observed red marks and scarring on the body of one of the children. When questioned by staff, the child stated that appellant hit her with a belt, broom, and a hanger. The state charged appellant with one count of gross misdemeanor malicious punishment of a child and one count of gross misdemeanor endangerment of a child.

The district court deemed appellant incompetent to stand trial and suspended the criminal proceedings. Appellant later regained competency, and the district court reinitiated the proceedings in her case. Appellant reached a plea agreement with the state in which she agreed to plead guilty to an amended charge of contributing to her children's need for protection or services under Minn. Stat. § 260C.425, subd. 1(a) (2012). As part of the plea agreement, the state dismissed the two original charges.

At the plea hearing, appellant offered, in her own words, the following on-the-record account of the incident:

On June 1, 2014 . . . I picked up my kids from their grandma's house, my neighbor is the one who keep, who - - on June 1, 2014, *I left my home and left my kids* in the [care] of my boyfriend Cyrus. . . *to go out into the community, and yes, I did use some substances while out in the community.*

I passed out on. . . 32nd and Emerson. I got taken [sic] to the hospital [and] was hospitalized overnight. My boyfriend which is Cyrus. . . who had my children wanted to come to the hospital and bring my medication because the doctors, you know, searched my stuff, found my phone, called my home and they wanted him to bring the medications I was on so they could see what medicine I was on because they were trying to figure out what was wrong with me. He asked my neighbor next door to keep an eye on the baby while he went to the hospital and she ended up giving him to St. Joe's. So what I'm trying to get at here is if -- no, I did not do drugs in my home around my children, I always got a babysitter so I can go out and do what I wanted, *but yes, I did use controlled substances and it made me unable to make it home to my children* and I ended up being at the hospital and –

Defense counsel interrupted appellant and asked “[a]nd that caused child protection to be involved?” To which appellant responded, “[t]hat caused them to be in St. Joe's, because if I had been home with them none of this would ever happen.” The district court asked appellant if she understood which rights she relinquished by signing the plea agreement. Appellant responded affirmatively, adding, “I can plead guilty to that charge and know that that's something I had done but I wasn't going to plead guilty to things I don't feel like I really did.” The district court sentenced appellant to a stay of imposition for a period of two years with several conditions.

On March 23, 2018, appellant filed a petition for postconviction relief, arguing that she entered an invalid guilty plea and should be allowed to withdraw it. Appellant argued that the factual basis of her guilty plea did not demonstrate that she encouraged, caused, or contributed to her children needing protection or services. The postconviction court denied appellant's petition, determining that appellant failed to present evidence to dispute the facts that arose from the plea hearing and that the record demonstrated no abuse of discretion by the district court. This appeal follows.

DECISION

I. The postconviction court did not err in determining that a sufficient factual basis supported appellant's guilty plea.

Appellant argues that she entered an inaccurate guilty plea, constituting a manifest injustice, because the plea record does not prove that she encouraged, caused, or contributed to her children's need for protection or services.¹ We disagree.

Whether a guilty plea is valid is a question of law which we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The court shall allow a defendant to withdraw a plea of guilty 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 defendant enters a constitutionally invalid guilty plea.

¹ Normally, a determination of the mental state required by a statute precedes an analysis as to whether appellant entered an accurate guilty plea pursuant to that statute. *See State v. Mikulak*, 903 N.W.2d 600, 603-04 (Minn. 2017). This would require us to address appellant's second argument (whether she entered a valid guilty plea when the plea record failed to show that she knew her conduct would subject her to criminal liability) first; however, because our discussion of the first issue resolves the second issue, we address appellant's issues in their original order.

Raleigh, 778 N.W.2d at 94. A guilty plea is constitutionally valid if it is accurate, voluntary, and intelligent. *Id.* To be accurate, a guilty plea must have a proper factual basis. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). The factual-basis requirement is satisfied if the record contains credible evidence supporting a jury verdict that the defendant is guilty of at least as great a crime as to which she has pleaded guilty. *State v. Genereux*, 272 N.W.2d 33, 34 (Minn. 1978).

Minn. Stat. § 260C.425, subd. 1(a), provides that “[a]ny person who by act, word, or omission encourages, causes, or contributes to the need for protection or services is guilty of a gross misdemeanor.” The statute recognizes sixteen different circumstances in which a child is deemed to be “in need of protection or services.” Minn. Stat. § 260C.007, subd. 6(1)-(16) (2012). A child meets the statutory definition of “a child in need of protection or services” under § 260C.007, subd. 6, only if one of the enumerated child-protection grounds exists *and* the child needs protection or services as a result. *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 732 (Minn. App. 2009).

The amended complaint prepared pursuant to the plea agreement fails to indicate which of the 16 enumerated child-protection grounds is implicated in the charge. Appellant argues that two of the 16 circumstances “are arguably relevant” to the facts of her case; namely when children:

- (1) [are] abandoned *or* without parent, guardian, or custodian; . . . [or]
- (3) [are] without necessary food, clothing, shelter, education, or other required care for the child[ren’s] physical or mental health or morals because the

child[ren's] parent, guardian, or custodian is unable or unwilling to provide that care[.]

Minn. Stat. § 260C.007, subd. 6(1), (3) (emphasis added). The state argues that, in addition to the two circumstances above, the following circumstances apply:

(8) [the children are] without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child[ren's] parent, guardian, or other custodian; [or]

(9) [the defendant] is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child[ren] or others. An injurious or dangerous environment may include, but is not limited to, the exposure of a child to criminal activity in the child[ren's] home.

Minn. Stat. § 260C.007, subd. 6(8)-(9). Because proof of only one circumstance is required to find appellant guilty under Minn. Stat. § 260C.425, subd. 1(a), we will analyze the plea record under Minn. Stat. § 260C.007, subd. 6(8), as it is the most applicable to the facts of this case.

Appellant admitted that “none of this would have happened if I wouldn’t have went out into the community and used [controlled substances] and I had been home with my children.” The record also contains additional evidence that satisfies the definition of “in need for protection or services” under Minn. Stat. § 260C.007, subd. 6(8). *See Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012) (plea petition and discussion may be supplemented by other evidence to establish factual basis necessary for guilty plea). Specifically, the complaint reflects appellant’s physical disability through a report of her chemical dependency. Further, the Competence to Proceed Evaluation demonstrates appellant’s mental disability through the evaluator’s opinion that appellant suffers from

mental illness. Because the record as a whole contains evidence to support appellant's guilty plea under Minn. Stat. § 260C.425, subd. 1(a), the postconviction court did not err in determining that a sufficient factual basis supported appellant's guilty plea.

II. The postconviction court did not err in determining that appellant entered a valid guilty plea.

Appellant argues that she entered an invalid guilty plea because the plea record fails to show that she knew her conduct would subject her to criminal liability under Minn. Stat. § 260C.425, subd.1. Appellant's argument lacks merit.

Mens rea is the element of a crime that requires that the defendant know the facts that make her conduct illegal. *State v. Rohan*, 834 N.W.2d 223, 226 (Minn. App. 2013). An offense is considered a general-intent crime “[w]hen a statute simply prohibits a person from intentionally engaging in the prohibited conduct.” *State v. Jama*, 923 N.W.2d 632, 634 (Minn. 2019) (citing *State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012)) (other citation omitted). In contrast, “[a] specific-intent crime requires a mental state above and beyond any mental state required with respect to the *actus reus* of the crime.” *Id.* (citations omitted). The fact that a statute lacks an intent element does not create a strict liability crime; rather, it simply creates a general-intent crime. *State v. Hart*, 477 N.W.2d 732, 736 (Minn. App. 1991).

Appellant contends that Minn. Stat. § 260C.425, subd.1(a), does not expressly contain a mens rea element and that interpreting the statute without a mens rea “would criminalize a broad range of otherwise legal conduct.” She requests that this court read a mens rea element into the statute and conclude that a person can only be guilty of the

offense if the person knows that their conduct will contribute to a child's need for protection or services. In essence, appellant requests that we read into the statute a specific-intent element. This is not necessary because appellant's plea colloquy sufficiently demonstrated that her actions satisfy the language of Minn. Stat. § 260C.425, subd. 1(a), because she testified that she left her children in the care of her boyfriend so that she could use controlled substances, and this "caused [her children] to be in St. Joe's." Even if we were to read into the statute a specific-intent element, appellant's existing plea colloquy demonstrates specific intent. Appellant admitted that she "can plead guilty to that charge and *know* that that's something [she] had done." Because appellant's plea colloquy satisfies the statute as written, the postconviction court did not err in determining that appellant entered a valid guilty plea.

Affirmed.