

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1496
A18-1644**

State of Minnesota,
Respondent,

vs.

Don Juan Guthrie, Jr.,
Appellant.

**Filed July 15, 2019
Affirmed
Ross, Judge**

St. Louis County District Court
File Nos. 69DU-CR-16-4883, 69DU-CR-17-1405,
69DU-CR-17-3064

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

Mark S. Rubin, St. Louis County Attorney, Nathaniel T. Stumme, Assistant County Attorney, Duluth, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Bratvold, Judge; and Klaphake,
Judge.*

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

UNPUBLISHED OPINION

ROSS, Judge

Don Guthrie Jr. climbed through the window of a house and assaulted its two occupants. He pleaded guilty to first-degree burglary but now appeals his conviction, arguing that the facts underlying his guilty plea do not establish that he entered the house without consent. Because the record establishes that Guthrie did not have consent to enter the house, we affirm.

FACTS

In August 2017 Don Guthrie Jr. broke into a house that, according to him, he thought his girlfriend was occupying with another man. He was greeted instead by the homeowner and her brother. The brother attempted to subdue Guthrie, and Guthrie bit him. Officers soon arrived and arrested Guthrie. They searched Guthrie's backpack and found drug paraphernalia. The state charged him with two counts of first-degree burglary and one count of possession of drug paraphernalia.

Guthrie agreed to plead guilty to one count of first-degree burglary under Minnesota Statutes, section 609.582, subdivision 1(c) (2016), in exchange for dismissal of the other two charges. At the plea hearing, Guthrie acknowledged that he did not know who owned the house and that he did not have permission to enter. He claimed, "I thought my girlfriend was staying there. She thought it was abandoned and I thought it was her in there with another guy." Guthrie acknowledged that he tussled with the home's occupants. The district court accepted Guthrie's plea, sentenced him to 58 months in prison, and stayed execution of the sentence on probationary terms for five years. Guthrie almost immediately

violated his probation, and the district court revoked the stay and executed the prison sentence.

Guthrie appeals.

D E C I S I O N

Guthrie argues on appeal that he should be permitted to withdraw his guilty plea because it is inaccurate. A defendant has the right to withdraw his guilty plea to avoid a manifest injustice, such as when the plea is invalid because it is inaccurate. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A guilty plea is inaccurate if it lacks a sufficient factual basis. *Id.* We review the validity of Guthrie’s plea de novo. *See id.*

We see no merit to Guthrie’s contention that there was an insufficient factual basis for his plea and conviction. Guthrie committed first-degree burglary if he entered the house without consent and committed an assault inside. Minn. Stat. § 609.582, subd. 1(c) (2016). Guthrie argues only that the facts did not establish that he entered without consent. His theory is that the record lacks evidence that there was anyone who could have given him consent (or denied him consent) to enter. We reject the theory.

A person enters a building without consent if he enters “without the consent of the person in lawful possession.” Minn. Stat. § 609.581, subd. 4(a) (2016). The supreme court has held that a person is in lawful possession if he or she has the “legal right to exercise control over the building in question.” *State v. Spence*, 768 N.W.2d 104, 109 (Minn. 2009). Assuming the district court accepted as true Guthrie’s claim that he was entering to pursue his girlfriend and that he thought the home had been abandoned, someone still had the right to lawfully possess the home. *Denman v. Gans*, 607 N.W.2d 788, 795 (Minn. App 2000)

(“The legal title to real property cannot be lost by abandonment.”), *review denied* (Minn. June 27, 2000). The facts indicate that, whoever that was, he or she did not give Guthrie consent to enter. Guthrie therefore entered, quite literally, without consent. The prosecutor asked Guthrie, “Did you know the people who owned [the] residence?” Guthrie admitted, “No, ma’am, I didn’t.” And she asked, “[D]id you have permission to go inside [the house]?” Guthrie again admitted, “No, ma’am, I didn’t.” The admitted facts established that Guthrie did not have entry consent from the person who lawfully possessed the home. This defeats his theory on appeal.

Affirmed.