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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0399**

Nathan Christopher Braun, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 18, 2020
Reversed and remanded
Slieter, Judge**

Becker County District Court
File No. 03-CR-16-1744

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Brian W. McDonald, Becker County Attorney, Rose A. Hanson, Assistant County
Attorney, Detroit Lakes, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Larkin, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

SLIETER, Judge

On appeal from an order denying postconviction relief, appellant Nathan
Christopher Braun argues that he should be permitted to withdraw his guilty plea to fourth-

degree burglary because his plea is inaccurate. Because the crime of trespass may not form the underlying basis for a burglary conviction, Braun's guilty plea is inaccurate. We reverse and remand.

FACTS

The state charged Braun with second-degree burglary for entering or being in a building with burglary tools, in violation of Minn. Stat. § 609.582, subd. 2(a)(4) (2016), and second-degree burglary of a government, religious, historic, or school building, in violation of Minn. Stat. § 609.582, subd. 2(b) (2016). In December 2016, Braun entered an *Alford* plea to an amended charge of fourth-degree burglary, in violation of Minn. Stat. § 609.582, subd. 4 (2016), for entering a building without consent and committing a misdemeanor in the building.

The state identified the following evidence that it expected would be received at trial to support Braun's *Alford* plea. On August 2, 2016, after receiving a suspicious-person report, Detroit Lakes police officers found Braun inside a local church at approximately 10:40 p.m. Officers found Braun in possession of a flathead screwdriver and a set of keys. Officers then determined that Braun "made forcible entry into the church by prying open a dead-bolted door." Moreover, the state explained on the record that it would offer testimony that Braun did not have permission to be in the church such that Braun "would have committed the crime of trespass while inside the church." Braun acknowledged that there was a substantial likelihood that a jury would find him guilty beyond a reasonable doubt based on the state's anticipated evidence. The district court accepted Braun's *Alford*

plea and sentenced Braun to 365 days in jail, credited him with 134 days served, and placed him on a two-year probation term.

In October 2018, Braun filed a *pro se* petition for postconviction relief.¹ In January 2019, the district court denied Braun’s postconviction petition for failing to serve the county attorney and attorney general. The district court also ruled on the merits of Braun’s *pro se* claims, concluding that he did not establish grounds for relief.

This appeal follows.²

DECISION

Braun now argues on appeal with the assistance of counsel that he should be permitted to withdraw his guilty plea because it is inaccurate. “A postconviction petition is proper to seek withdrawal of a guilty plea after the time for a direct appeal has expired.” *Kubrom v. State*, 863 N.W.2d 88, 91 (Minn. App. 2015). “A defendant does not have an absolute right to withdraw a guilty plea once it [has been] entered.” *Dikken v. State*, 896 N.W.2d 873, 876 (Minn. 2017) (alteration in original) (quotation omitted). But “a court must allow a defendant to withdraw a guilty plea after sentencing only when the defendant establishes that withdrawal is necessary to correct a manifest injustice.” *Id.*

¹ The district court did not appoint counsel for Braun’s postconviction petition, as is required by Minn. Stat. § 590.05 (2018). See *Paone v. State*, 658 N.W.2d 896, 899-900 (Minn. App. 2003) (holding that Minn. Stat. § 590.05 grants an indigent defendant the right to representation in postconviction proceedings when the defendant has not exhausted his or her right to representation). We agree that Braun was entitled to representation, but because we conclude that his plea was inaccurate, we need not address this issue.

² Because the state did not file a brief, we determine this case on the merits. See Minn. R. Civ. App. P. 142.03 (recognizing that a respondent’s failure to file a brief means that the case shall be determined on the merits).

(quotation omitted). “A manifest injustice exists if a guilty plea is not valid.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). To be valid, a “plea must be accurate, voluntary, and intelligent.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983).

“A proper factual basis must be established for a guilty plea to be accurate.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). This “is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial.” *Trott*, 338 N.W.2d at 251. Generally, a factual basis is laid “by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime.” *Ecker*, 524 N.W.2d at 716.

When a defendant enters an *Alford* plea, however, “the record must establish that the evidence against the defendant is sufficient to persuade the defendant and his or her counsel that the defendant is guilty or likely to be convicted of the crime charged.” *Id.* An “adequate factual basis” requires “two related components: [1] a strong factual basis and [2] the defendant’s acknowledgment that the evidence would be sufficient for a jury to find the defendant guilty beyond a reasonable doubt.” *Williams v. State*, 760 N.W.2d 8, 12-13 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009). “The strong factual basis and the defendant’s agreement that the evidence is sufficient to support his conviction provide the court with a basis to independently conclude that there is a *strong* probability that the defendant would be found guilty of the charge to which he pleaded guilty.” *Id.* (quotation omitted).

The elements of fourth-degree burglary are met when a person “enters a building without consent and with intent to commit a misdemeanor *other than to steal*, or enters a

building without consent and commits a misdemeanor *other than to steal* while in the building.” Minn. Stat. § 609.582, subd. 4 (emphasis added). As part of the factual basis to support his guilty plea, the state contended, and Braun admitted, that he committed the crime of trespass while in the church.

Trespass cannot serve as the underlying crime for a burglary charge. “For a burglary conviction to stand, the state must prove that a defendant intended to commit some independent crime other than trespass.” *State v. Colvin*, 645 N.W.2d 449, 454 (Minn. 2002); *see also State v. Larson*, 358 N.W.2d 668, 670 (Minn. 1984) (“[T]he state has to do more than establish an intent to commit the crime of trespass in order to obtain a burglary conviction or a conviction of possessing burglary tools. The intent must be to commit some independent crime after entering the building illegally.”). Because the crime of trespass may not support the burglary charge, and the state presented no other evidence as part of the *Alford* plea of a qualified underlying offense to support burglary, Braun’s guilty plea is inaccurate. We therefore reverse the district court’s denial of Braun’s postconviction petition and remand with instructions to allow Braun to withdraw his guilty plea, if he so chooses.

Reversed and remanded.