

*This opinion will be unpublished and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
A19-0437**

Lonnie Har Larson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 13, 2020
Affirmed
Hooten, Judge**

Isanti County District Court
File No. 30-CR-17-317

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Jeffrey R. Edblad, Isanti County Attorney, Joel Whitlock, Assistant County Attorney, Cambridge, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In this appeal from an order denying postconviction relief, appellant argues that the postconviction court erred by denying his guilty plea withdrawal request because the

complainant recanted, her recantation was credible, and the recantation exonerated appellant. We affirm.

FACTS

On May 4, 2017, appellant Lonnie Har Larson took the car of his on-again-off-again girlfriend. When Larson failed to respond to his girlfriend's text messages demanding that he return the car, she contacted the police. The girlfriend explained to police that she watched Larson get into her car and drive away without her permission. Police arrested Larson at a gas station within an hour of the girlfriend's call. The state charged Larson with one count of theft of a motor vehicle under Minn. Stat. § 609.52, subd. 2(a)(17) (2016). The next day, the girlfriend went to the police station and recanted her original statement that Larson did not have permission to use the car at the time he was arrested.

Despite this recantation, Larson agreed to a plea deal in June of 2017, whereby he pleaded guilty to theft of a motor vehicle in exchange for a stay of imposition of his sentence, 120 days in jail, and five years of probation. As part of his plea, Larson admitted that he did not own the car and did not have specific permission to use the car when he took the car. The district court stayed the imposition of a felony sentence and placed Larson on probation for five years.

On March 5, 2018, after completing a rehabilitation program, the girlfriend sent an email to the Isanti County Attorney confessing that she lied to police. In June 2018, Larson filed a petition for postconviction relief in which he again requested to withdraw his guilty plea in light of the girlfriend's recantation. In support of Larson's petition, the girlfriend filed an affidavit again claiming that she lied to the police on the day Larson was arrested

and that Larson had permission to take the car as she considered him a co-owner of the vehicle.

The district court held an evidentiary hearing on October 17, 2018. At that hearing, the girlfriend testified as to her deception. Nevertheless, the district court denied Larson's petition for postconviction relief.

This appeals follows.

D E C I S I O N

Larson argues that the postconviction court erred when it denied his petition to withdraw his guilty plea after the girlfriend recanted her testimony as she was a credible witness and her testimony negated an element of the offense. "We review the denial of a petition for postconviction relief for an abuse of discretion." *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). A postconviction court abuses its discretion when it bases its ruling on an erroneous view of the law or makes clearly erroneous factual findings. *Id.*

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). Guilty pleas may be withdrawn only if one of two standards are met: (1) any time, including after sentencing, a plea must be withdrawn when there is a manifest injustice; or (2) before sentencing, a plea may be withdrawn when it is fair and just to do so. See Minn. R. Crim. P. 15.05, subds. 1, 2 (establishing the manifest-injustice and fair-and-just standards). "A manifest injustice exists if a guilty plea is not valid." *Raleigh*, 778 N.W.2d at 94. To be constitutionally valid, "a guilty plea must be accurate, voluntary, and intelligent." *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). The supreme court has explained these three requirements in greater detail:

The main purpose of the accuracy requirement 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. . . . The purpose of the voluntariness requirement is to insure that the defendant is not pleading guilty because of improper pressures. The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.

State v. Trott, 338 N.W.2d 248, 251 (Minn. 1983).

A guilty plea is invalid if it fails to meet any of these three requirements. *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007) (holding a plea invalid when it was not accurate). Thus, if a person's guilty plea is not accurate, voluntary, or intelligent, a district court must permit the person to withdraw the plea. *Id.* A defendant bears the burden of showing that his or her guilty plea is invalid. *Raleigh*, 778 N.W.2d at 94. We review the validity of a guilty plea de novo. *Barrow v. State*, 862 N.W.2d 686, 689 (Minn. 2015).

Larson argues that his plea was not accurate because the girlfriend recanted her statements to the police that Larson did not have permission to use her car on the day of the incident. He does not argue his plea was involuntary or unintelligent.

To satisfy the accuracy requirement, a guilty plea must "be established on a proper factual basis." *Raleigh*, 778 N.W.2d at 94. A proper factual basis exists if there are "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 (Minn. 2003).

The elements of theft of a motor vehicle are: (1) the defendant took or drove a motor vehicle; (2) the owner did not give the defendant consent to take or drive the motor vehicle;

and (3) at the time the defendant took or drove the motor vehicle, the defendant knew, or had reason to know, that the owner did not give consent. 10 *Minnesota Practice*, CRIMJIG 16.22 (2018). As the girlfriend's recantation would negate an essential element of the crime to which Larson pleaded guilty, Larson suggests that there is not a proper factual basis for his plea as his conduct would no longer fall within the bounds of Minn. Stat. § 609.52, subd. 2(a)(17).

Reviewing courts look with disfavor on petitions for postconviction relief “founded on alleged recantations unless there are extraordinary and unusual circumstances.” *McKenzie v. State*, 872 N.W.2d 865, 874 (Minn. 2015) (noting that motions for a new trial based on a recantation are looked on with disfavor as recantations can lack trustworthiness). A recantation by the complaining witness does not compel the district court to allow a defendant to withdraw his guilty plea. *State v. Tuttle*, 504 N.W.2d 252, 256–57 (Minn. 1993). The general rule is that district courts should not grant postconviction relief on the basis of recanted testimony “unless the court is reasonably certain that the recantation is genuine.” *State v. Risken*, 331 N.W.2d 489, 490 (Minn. 1983). A reviewing court will not reverse the postconviction court's factual findings, including witness credibility, unless they are clearly erroneous. *Carridine v. State*, 867 N.W.2d 488, 497 (Minn. 2015); *see also Bobo v. State*, 860 N.W.2d 681, 684 (Minn. 2015) (reviewing a postconviction court's witness credibility determinations on a clearly erroneous basis).

At the postconviction evidentiary hearing, the girlfriend testified that she lied when she told the police that Larson did not have permission to use the car as she considered

Larson the co-owner of the car. The girlfriend explained that she was angry with Larson at the time and was under the influence of methamphetamine. The girlfriend understood that her recantation subjected her to criminal prosecution. Despite the girlfriend's exonerating testimony, the district court determined that her recantation "was not credible and was not sufficient to show it was genuine on that essential [ownership] issue."

At the hearing, the girlfriend made several inconsistent statements during her testimony, including whether she and Larson were together at the time of the theft, whether she lived with Larson at the time of the theft, whether she gave Larson a key to the vehicle, and where she went with Larson on the day of the theft. All of these inconsistencies implicate the issue of ownership and reasonably cast doubt on the trustworthiness of her statements. In light of the deference afforded to district courts to make determinations as to witness credibility, *Carridine v. State*, 867 N.W.2d at 497, these inconsistencies with respect to the issue of ownership reasonably support the district court's determination that the girlfriend's recantation was not genuine or credible. Accordingly we decline to find the district court's actions clearly erroneous.

Furthermore, the record reflects that the girlfriend sent text messages to Larson demanding her vehicle be returned and then called the police when he failed to heed her request. This is evidence that the girlfriend denied Larson permission to use the car on May 4, 2017—permission a co-owner would be unlikely to need—and Larson admitted to not having specific permission to use the car on that day—an admission that a co-owner would be unlikely to make. In light of these facts, Larson's actions satisfy the elements of

theft of a motor vehicle even without the girlfriend's recantation and support that Larson's guilty plea was accurate.

Larson's admission during his plea that he did not have permission to use the car, and the unanswered text messages sent by Larson's girlfriend requesting that he return the car, support the postconviction court's determination that Larson's plea was valid as his conduct had a sufficient factual basis in the record to fall within the charge for which he pleaded guilty. As Larson bears the burden of showing that his guilty plea is invalid, *Raleigh*, 778 N.W.2d at 94, we hold that he did not meet this burden and the district court did not abuse its discretion when it denied Larson's petition for postconviction relief.

Affirmed.