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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0456**

State of Minnesota,
Respondent,

vs.

Ligarius Deauntae Munn,
Appellant.

**Filed March 16, 2020
Affirmed
Worke, Judge**

Washington County District Court
File Nos. 82-CR-18-3535 and 82-CR-18-3545

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

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that he should be permitted to withdraw his guilty pleas because the factual basis supporting his guilty pleas to violations of a domestic-abuse no-contact order (DANCO) is inadequate. We affirm.

FACTS

On February 1, 2018, a DANCO was issued that prohibited appellant Ligarius Deauntae Munn from having contact with M.D. or going to her residence.

On August 13, 2018, Munn called his probation officer (PO). After the call was prematurely disconnected, Munn's PO called Munn back by dialing the phone number Munn had used to call her. The call was answered by R.D., M.D.'s grandmother and legal guardian, who resides with M.D. R.D. told the PO that Munn was at her residence and she had asked him to leave. The PO reported the incident to law enforcement. On August 16, 2018, officers were dispatched to M.D.'s residence and met with R.D., who told officers that Munn had been at her residence.

Munn was charged with two felony violations of a DANCO, in violation of Minn. Stat. § 629.75, subd. 2(d)(1) (2018). On October 3, 2018, Munn pleaded guilty to the charges. The state agreed to a 180-day sentence, stayed for five years, and to dismiss charges for two additional DANCO violations. Munn understood that if he failed to return for sentencing, the district court could impose a sentence without regard to the agreement. In establishing the factual basis supporting the pleas, the following exchange occurred:

Q: You're aware that on February 1, 2018, a DANCO . . . was issued [t]hat . . . says that you are to have no contact with [M.D.], and you are to stay away from her residence Are you aware of that DANCO?

A: Yes, sir.

Q: On August 13, 2018, you did have contact with [M.D.] when you called and spoke to her and you arrived at her address Is that correct, Mr. Munn?

A: Yes, sir.

. . . .
Q: On August 16, 2018, you had contact with [M.D.] when you arrived at her residence. Is that correct?

A: Yes, sir.

The district court found that Munn admitted facts supporting his guilty pleas, ordered a presentence investigation (PSI), and scheduled sentencing for November 15, 2018. Munn did not appear for sentencing on November 15. At Munn's sentencing on December 20, 2018, the district court stated that it opted to disregard the sentence contemplated by the plea agreement because Munn failed to appear for his original sentencing, and sentenced Munn to 30 months in prison for each offense served concurrently. This appeal followed.

D E C I S I O N

Munn argues that his guilty pleas are invalid, and he therefore must be permitted to withdraw them. Munn did not raise this argument to the district court, but he may raise it for the first time on direct appeal from his conviction and sentence. *See Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) ("A defendant is free to simply appeal directly from a judgment of conviction and contend that the record made at the time the plea was entered is inadequate"); *State v. Johnson*, 867 N.W.2d 210, 214 (Minn. App. 2015) (considering appellant's challenge to the accuracy requirement of his guilty plea even though he did not present it to the district court), *review denied* (Minn. Sept. 29, 2015).

This court reviews the validity of a guilty plea de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

A defendant does not have an absolute right to withdraw a guilty plea. *Id.* at 93. But plea withdrawal must be allowed when “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.” *Raleigh*, 778 N.W.2d at 94. A defendant bears the burden of showing that his guilty plea is invalid. *Id.*

A valid guilty plea must be “accurate, voluntary, and intelligent.” *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). Munn argues that his guilty pleas are not accurate. An accurate guilty plea must “be established on a proper factual basis.” *Raleigh*, 778 N.W.2d at 94. A proper factual basis exists when “sufficient facts on the record . . . support a conclusion that [the] 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) (quotation omitted). “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.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983).

Munn pleaded guilty to felony violation of a DANCO. In order to be guilty of that offense, Munn had to know of the existence of the DANCO and violate it “within ten years of the first of two or more previous qualified domestic violence-related offense convictions.” Minn. Stat. § 629.75, subd. 2(b), (d)(1) (2018). In order for his guilty pleas to be valid, Munn’s factual basis must show proof (1) of an existing DANCO; (2) that Munn had knowledge of the DANCO; (3) that Munn violated the DANCO; (4) of venue;

(5) of either two or more previous qualified domestic-violence-related offense convictions; and (6) that Munn knowingly violated the order. *See State v. Watkins*, 820 N.W.2d 264, 267 (Minn. App. 2012), *aff'd on other grounds*, 840 N.W.2d 21 (Minn. 2013). Munn argues that his pleas are inaccurate because he did not admit that he knew of the DANCO at the time of the offenses. *See id.* at 268 (stating that in order to sustain a conviction of a felony-level violation of a DANCO, it must be established that the defendant “was aware that his behavior was prohibited by the order”).

Here, the plea colloquy fails to establish that Munn knew that the DANCO existed when he violated it. Munn was asked: “You’re aware that on February 1, 2018, a . . . DANCO . . . was issued . . . [t]hat . . . says that you are to have no contact with [M.D.], and you are to stay away from her residence Are you aware of that DANCO?” In other words, Munn was asked if he was *currently* aware of the DANCO. He was not asked if he had knowledge of the DANCO on August 13 and 16, 2018, when he was present at M.D.’s residence. The statute requires that Munn have knowledge that his behavior was prohibited when he violated the DANCO, not that he had knowledge of the DANCO at the time he pleaded guilty to violating the DANCO. But while the colloquy alone does not provide a sufficient factual basis to satisfy the elements of the offense, the record as a whole shows that Munn knew about the DANCO when he violated it.

A proper factual basis is established when “the record contains a showing that there is credible evidence available which would support a jury verdict that [the] defendant is guilty of at least as great a crime as that to which he pled guilty.” *Lussier v. State*, 821 N.W.2d 581, 588-89 (Minn. 2012) (quotation omitted). Even when a proper factual basis

is not established by eliciting proper responses from a defendant through questioning, “a defendant may not withdraw his plea if the record contains sufficient evidence to support the conviction.” *Id.* at 589 (quotation omitted). The plea petition and colloquy may be supplemented by other evidence to establish the factual basis. *See State v. Hoaglund*, 240 N.W.2d 4, 6 n.9 (1976) (permitting use of whole record, including the PSI); *Burnett v. State*, 195 N.W.2d 187, 188 (1972) (noting PSI, which contained defendant’s version of crime, constituted an adequate factual basis for guilty plea).

Here, the state claims that Munn admitted during his PSI that he knew about the DANCO when he violated it. Munn acknowledges that the factual basis may be supplemented by other evidence in the record, including the PSI, but notes that the supreme court does “not approve of this practice.” *See Burnett*, 195 N.W.2d at 188 (noting that while supreme court “do[es] not approve of this practice,” relying on defendant’s version of crime in the PSI in concluding that sufficient factual basis existed for guilty plea because defendant’s due-process rights were not violated). The record shows that:

During the PSI interview . . . [Munn] remarked that we “both wanted contact” with each other, but that he fully understands the DANCOs and the restriction regarding the [c]ourt order and is “tired of going to jail.” [Munn] expressed frustration that the 17 year old victim has not been able to voice her opinion to the court. He contends that the victim’s grandmother, the legal guardian, does not like him so continues to request the DANCO.

The PSI reporter stated: “A previous PSI noted [that Munn] did not fully understand the DANCO; however, [Munn] informed this agent that after all the subsequent charges that

he did understand the protection orders and the restrictions associated with those orders, yet still made the decision to have contact with the protected party.”

The record as a whole shows that Munn understood the DANCO, but asserted that he and M.D. mutually desired contact and it was R.D. who obtained the DANCO. He also told the PSI reporter that, although he understood the DANCO, he “made the decision to have contact” with M.D. In this case, we have no concern with supplementing the colloquy with the PSI, which establishes that Munn knowingly violated the order, because Munn did not plead guilty to a more serious offense than he could have been convicted of following a trial. Accordingly, we conclude that Munn’s guilty pleas are accurate and valid.

Affirmed.