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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1079
A19-1230**

Donald Lester Milks, III, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 23, 2020
Affirmed
Florey, Judge**

Wabasha County District Court
File No. 79-CR-16-1053

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

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

Karrie Kelly, Wabasha County Attorney, Wabasha, Minnesota (for respondent)

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

UNPUBLISHED OPINION

FLOREY, Judge

In this consolidated appeal from orders denying postconviction relief in two district
court files, appellant argues that guilty-plea withdrawal was required because his plea to

terroristic threats was inaccurate where he did not remember sending the text message, and the recipient of the message understood that it was the product of his mental illness and suicidal state. Appellant also argues that his Sixth Amendment rights were violated when his attorney failed to follow his directive to move to withdraw his guilty plea to terroristic threats before the sentencing hearing. We affirm.

FACTS

In November 2016, police responded to the home that Donald Lester Milks III shared with his girlfriend, S.B. S.B. told the police that Milks had been “increasingly agitated of late” and had been screaming and breaking windows. She also told police about text messages that Milks sent her a week earlier, including one stating, “I’m gonna end your life when I see you Not joking.” Milks was charged with terroristic threats, and a domestic abuse no-contact order (DANCO) was issued. In December, S.B. filed a letter with the district court requesting that the DANCO be lifted. She wrote that she did not feel unsafe “or afraid in any way for myself, my children or my home life,” and that she called the police only for a welfare check on Milks. S.B.’s request was denied. In February 2017, Milks pleaded guilty to terroristic threats. He stated that after receiving bad news, he “said something in the lines to my future wife about threatening her life.” Milks was sentenced to 15 months in prison, stayed for five years. The district court revoked the stay and executed Milks’s sentence in October.

In November 2018, Milks filed a petition for postconviction relief, asserting that his guilty plea was inaccurate and that his attorney violated his Sixth Amendment rights. In

May 2019, after an evidentiary hearing, the postconviction court denied Milks's petition to withdraw his guilty plea.

In February 2017, Milks was also charged with a felony-level DANCO violation. In March, Milks pleaded guilty to the DANCO charge. Milks filed a postconviction petition to withdraw that plea in May 2019. That petition was denied in June 2019. This consolidated appeal follows.

D E C I S I O N

“A defendant has no absolute right to withdraw a guilty plea after entering it. Withdrawal is permitted in two circumstances. First, a court must allow withdrawal of a guilty plea if withdrawal is necessary to correct a ‘manifest injustice.’ Second, a court may allow withdrawal any time before sentencing if it is ‘fair and just’ to do so.” *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010) (citations omitted). “A manifest injustice exists if a guilty plea is not valid. To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent. A defendant bears the burden of showing his plea was invalid. Assessing the validity of a plea presents a question of law that we review de novo.” *Id.* at 94 (citations omitted). We review the denial of a postconviction petition for an abuse of discretion. *Davis v. State*, 784 N.W.2d 387, 390 (Minn. 2010).

Milks challenges the accuracy of his plea. For a guilty plea to be accurate, it must be supported by a proper factual basis, with “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) (quotation omitted). We

review the sufficiency of the factual basis for the plea from the record made when the defendant entered the plea. *State v. Lillemo*, 410 N.W.2d 66, 69 (Minn. App. 1987).

A defendant commits a terroristic threat when he: (1) threatens to commit any crime of violence (2) “with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror.” Minn. Stat. § 609.713, subd. 1 (2016).

Milks contends that he lacked the requisite intent because he did not remember sending the messages, because he never intended to terrorize S.B., and because S.B. never felt terrorized by the text messages. While a finding of intent generally cannot be based entirely on the effect the actor’s conduct had on the victim, a victim’s reaction to that conduct is circumstantial evidence that is relevant to intent. *State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975). Intent may be inferred “from the idea that a person intends the natural consequences of his or her actions.” *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) (quotation omitted).

At the plea hearing, Milks stated the following: “I had sent a text message. . . . I had gotten some pretty bad news that had shocked me . . . and I said something in the lines to my future wife about threatening her life. Guilty.” The court asked if Milks had “put into one of those texts, ‘I’m going to end your life when I see you Not joking.’” Milks responded, “I assume so, yeah. Yes. I don’t remember that day much, but it was my phone. I did send messages. It was a pretty stressful day and I’m not going to say that I didn’t send it.”

Based on Milks’s statements, the postconviction court determined that it was reasonable to infer that Milks recklessly disregarded the risk of terrorizing S.B. The

postconviction court also noted that other evidence supported this conclusion, including the multiple messages that Milks sent before and after the quoted text which were all threatening to S.B. Here, the postconviction court did not abuse its discretion by denying Milks's petition because the facts in the record are sufficient to support the conclusion that Milks's conduct falls within the charge of terroristic threats. Milks's plea was valid.

Because we conclude that Milks's guilty plea to the terroristic-threats charge is valid, the DANCO put in place was appropriate. Thus, there is no basis for Milks to contest the validity of his plea to the DANCO violation. Accordingly, we affirm the postconviction court's denial of Milks's petition to withdraw his guilty plea to the DANCO violation.

Milks asserts that the postconviction court failed to address his Sixth Amendment claim. But the postconviction court construed this claim as one of ineffective assistance of counsel and concluded that Milks did not establish that postconviction relief was warranted, because he did not overcome the strong presumption that counsel's performance was reasonable.

[W]hen we review a postconviction court's denial of relief on a claim of ineffective assistance of counsel, we will consider the court's factual findings that are supported in the record, conduct a de novo review of the legal implication of those facts on the ineffective assistance claim, and either affirm the court's decision or conclude that the court abused its discretion because postconviction relief is warranted.

State v. Nicks, 831 N.W.2d 493, 503-04 (Minn. 2013).

Here, the record reflects that Milks's attorney stated that she *might* file a motion to withdraw his guilty plea before the sentencing, but would need to further discuss the matter with Milks first. Several weeks later, Milks had the opportunity to address the court at

sentencing. He did not state that he wished to withdraw his plea, or that he had asked his attorney to do so, and she refused. Here, the postconviction court did not fail to address Milks's argument, nor did it abuse its discretion by concluding that Milks failed to establish that postconviction relief on grounds of ineffective assistance of counsel was warranted.

Affirmed.