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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1087**

State of Minnesota,
Respondent,

vs.

Nyla Tomeka Murrell-French,
Appellant.

**Filed May 18, 2020
Affirmed
Jesson, Judge**

Ramsey County District Court
File No. 62-CR-18-4496

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

After pleading guilty to first-degree assault for stabbing a woman in the neck during
a fight, appellant Nyla Tomeka Murrell-French challenges her conviction and sentence.

First, she contends that her criminal history score was incorrectly calculated. In the alternative, she argues that her plea was inaccurate and that she should be permitted to withdraw it. Finally, she asserts that she should have been granted a downward dispositional departure at sentencing. Because her criminal history score was correct, her plea was accurate, and she is not entitled to a dispositional departure, we affirm.

FACTS

While in a car with two of her friends at a gas station in St. Paul, appellant Nyla Tomeka Murrell-French observed a woman (L.B.) approach the store. Murrell-French and L.B. had “bad blood.” As L.B. walked up, Murrell-French and her friend got out of the car and Murrell-French grabbed a knife that was in the car. The friend and L.B. started fighting, and Murrell-French joined in as the altercation moved into the store. Murrell-French stabbed L.B. in the neck with the knife she brought from the car. The stab wound was close to an artery, and L.B. lost a significant amount of blood. When police arrived, L.B. told them that Murrell-French stabbed her.

The state charged Murrell-French with first-degree assault (great bodily harm) and second-degree assault with a dangerous weapon. Murrell-French pleaded guilty to first-degree assault, and the second-degree charge (a lesser-included offense) was dismissed. There was no agreement as to a sentence. During her plea colloquy, Murrell-French acknowledged that the statutory maximum sentence for first-degree assault was 20 years and that, based on her estimated criminal history score, she was facing a presumptive prison sentence. She acknowledged that, while she would ask for a downward dispositional departure, her plea came with “no promises” about sentencing and it would

be up to the district court's discretion at the hearing. And Murrell-French offered the following testimony to establish the factual basis for her plea:

[ATTORNEY]: Well, why don't you tell me what happened that day?

[MURRELL-FRENCH]: We were at a gas station and just at the pump. It was three of us in the car. And we seen [L.B.] and another girl walk up. Well, we don't. The boy in the car could. So me and my friend got out the car and I grabbed the knife.

[ATTORNEY]: And where was the knife that you had to grab it from?

[MURRELL-FRENCH]: It was in the passenger door.

[ATTORNEY]: So just a knife in the car and you grab it?

[MURRELL-FRENCH]: Yes.

[ATTORNEY]: Okay.

[MURRELL-FRENCH]: My friend and [L.B.] start fighting.

[ATTORNEY]: Yep.

[MURRELL-FRENCH]: And I jump in it outside of the gas station.

[ATTORNEY]: Okay.

[MURRELL-FRENCH]: And then it spilled into the store and I had the knife in my hand and I stabbed her in the neck.

....

[ATTORNEY]: And it might not have been your intention to cause great bodily harm, but it was your intention to stab her with that knife as part of the fight; is that right?

[MURRELL-FRENCH]: Yes.

Murrell-French also acknowledged that L.B. had serious injuries from the assault, including a collapsed lung and permanent nerve damage. Following the colloquy, the district court accepted Murrell-French's plea, finding that it contained a sufficient factual basis for the offense. And—anticipating Murrell-French would make a request for a departure at sentencing—the court told her that, in order to conclude she is particularly amenable to probation, it was important for her to “have no new offenses between now and then.”

Murrell-French cooperated with a presentence investigation. In the report, the interviewer quoted Murrell-French's version of her conduct:

When I got out of the car, I grabbed a knife that was in the passenger door because there was two of them and just my friend. When I jumped in the fight I still [had] the knife in my hand, I forgot I had it. I didn't intend to stab her. I didn't know I did until I saw the blood. I dropped the knife, stepped back and they still kept fighting. We all finally left. I didn't know how bad she was hurt.

The interviewer recommended Murrell-French be sentenced to 98 months in prison, a guidelines sentence based on her criminal history score, because there was “nothing noted to warrant a departure.”

On the sentencing worksheet submitted to the court, first-degree assault is a severity-level-nine crime. And Murrell-French had one criminal history point from juvenile adjudications for felony theft and felony possession of a weapon by a minor. Based on these adjudications, her offense was subject to a presumptive sentence of 98 months in prison, with a range of permissible sentences from 84 to 117 months.

At sentencing, the district court noted that it had reviewed the presentence investigation and Murrell-French's downward-dispositional-departure request. And the court expressed concern about Murrell-French being amenable to probation given the nine or 10 additional criminal charges she incurred since her plea hearing, a little over three months before. Accordingly, the district court declined to grant the departure and sentenced Murrell-French to 84 months in prison, the bottom of the guidelines range. The defense then made a motion for a downward durational departure to 36 months, but the district court again denied the request.

Murrell-French appeals.

D E C I S I O N

Murrell-French advances alternate theories on appeal. She contends first that her criminal history score should have been zero, entitling her to a shorter sentence. In the alternative, she asserts that she should be permitted to withdraw her guilty plea. And in a pro se supplemental brief, she argues that she should have been granted a downward dispositional departure. We address each issue in turn.

I. Murrell-French's criminal history score was correctly calculated.

Murrell-French first argues that the district court erred by calculating her criminal history score, resulting in a longer sentence. The district court accepted the sentencing worksheet provided, which indicated a criminal history score of one. This score was based on two juvenile adjudications: felony theft in 2017 and felony possession of a weapon by a minor in 2016.

The district court's determination of Murrell-French's criminal history score will not be reversed absent an abuse of discretion. *See State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002). And while the state must prove the defendant's criminal history score is warranted under the sentencing guidelines, it is the role of the district court to resolve any factual dispute regarding the score. *State v. Oberg*, 627 N.W.2d 721, 723 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001).¹

The key issue here concerns whether to include juvenile adjudications for felony offenses in the calculation of Murrell-French's criminal history score. Under Minnesota Sentencing Guidelines 2.B.4.a (Supp. 2017), sentencing courts “[a]ssign an offender one point for every two adjudications for felony offenses the offender committed, and for which the offender was prosecuted as a juvenile.”² Given this guideline and the undisputed fact that Murrell-French has two juvenile adjudications for felonies, her one criminal history point is correct.

But, according to Murrell-French, her unlawful possession offense should not be included in the calculation because it is a “status offense,” which should not be accorded felony status. For this argument, she relies on a comment to Minnesota Sentencing Guidelines 2.B.4.a. The comment explains: “[o]nly juvenile adjudications for offenses that

¹ Although there was no dispute here about the criminal history score at the time of sentencing, the supreme court has held that failing to object to one's score's calculation does not prevent review. *See State v. Maurstad*, 733 N.W.2d 141, 148 (Minn. 2007) (“[A] defendant cannot forfeit review of his criminal history score calculation.”).

² There are a few other caveats to this calculation that are not relevant here. *See* Minn. Sent. Guidelines 2.B.4.a.(1)-(3).

are felonies under Minnesota law will be considered in computing the criminal history score. *Status offenses*, dependency and neglect proceedings, and misdemeanor or gross misdemeanor-type offenses will be excluded from consideration.” Minn. Sent. Guidelines cmt. 2.B.402 (Supp. 2017) (emphasis added).

We disagree with this assertion. Here, the guideline is clear, while the comments to the guidelines are not binding. *See State v. Scovel*, 916 N.W.2d 550, 555 (Minn. 2018) (“[W]e strive for an interpretation that is consistent with the comments to the [g]uidelines, but the comments are merely advisory, not binding.”). When presented with this conflicting language, we apply the clear language of the guidelines without regard to the comment’s advice.

Our conclusion here is bolstered by the previous version of the guidelines and comment. We note that the relevant provisions of the sentencing guidelines were substantively amended to the current language in 1997, and the previous language provides insight into this issue. Before the 1997 amendments, Minnesota Sentencing Guidelines II.B.4 (1996) read: “The offender is assigned one point for every two offenses committed and prosecuted as a juvenile *that would have been felonies if committed by an adult . . .*” And the corresponding comment read:

First, *only juvenile offenses that would have been felonies if committed by an adult* will be considered in computing the criminal history score. Status offenses, dependency and neglect proceedings, and misdemeanor or gross-misdemeanor type offenses will be excluded from consideration.

Minn. Sent. Guidelines cmt. II.B.402 (1996) (emphasis added). But the phrase “felonies if committed by an adult” was later replaced with “felonies under Minnesota law” in both the guidelines and the comment. See Minn. Sent. Guidelines II.B.4 & cmt. II.B.402 (Supp. 1997). And the 1997 amendment summary described that these changes were intended to “clarify that Minnesota felony level offenses that can only be committed by juveniles *should be included* in calculating juvenile criminal history points.” Minn. Sent. Guidelines Comm’n, *Summary of Adopted Modifications to the Sentencing Guidelines* 5 (Aug. 1997), https://mn.gov/sentencing-guidelines/assets/1997-Modifications_tcm30-31104.pdf. This amendment confirms our reading of the guidelines to permit inclusion of Murrell-French’s juvenile adjudication for unlawful possession in her score.

In sum, the relevant comment to the sentencing guidelines referring to status offenses is not binding. But the district court was bound by the relevant guidelines language, which permits consideration of Murrell-French’s unlawful-possession adjudication in her criminal history score. Accordingly, her criminal history score was calculated correctly, and the district court did not abuse its discretion.

II. The district court did not err by accepting Murrell-French’s plea.

In the alternative, Murrell-French asserts that the district court erred by accepting her guilty plea because it was inaccurate. This court reviews the validity of a guilty plea de novo. *State v. Johnson*, 867 N.W.2d 210, 215 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015). Murrell-French does not have an absolute right to withdraw her guilty plea. See *Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002). Since her request was made after her sentencing, a court must allow Murrell-French to withdraw her guilty plea only if

“withdrawal is 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.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). To be valid, “a guilty plea must be accurate, voluntary, and intelligent.” *Id.*

Here, Murrell-French challenges the accuracy of her plea, arguing that the factual basis was insufficient. To be accurate, a plea must contain a proper factual basis. *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007). The district court is responsible for ensuring that “an adequate factual basis has been established in the record.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). But Murrell-French bears the burden of establishing facts that show her guilty plea was invalid. *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017).

To determine whether the factual basis is sufficient, this court must look at what is required to prove the charge. A person who “assaults another and inflicts great bodily harm” commits first-degree assault. Minn. Stat. § 609.221, subd. 1 (2016). And great bodily harm is “bodily injury which creates a high probability of death . . . or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” Minn. Stat. § 609.02, subd. 8 (2016).

During her plea colloquy, Murrell-French testified that she grabbed a knife and approached a fight between her friend and L.B. As she joined the fight, she stabbed L.B. in the neck. Murrell-French responded in the affirmative when asked whether she intended to stab L.B. And she acknowledged that L.B. suffered permanent injuries as a result of the

stabbing. The factual basis to which Murrell-French testified constitutes a sufficient factual basis for her plea.

Still, Murrell-French advances two primary reasons for why her plea was inaccurate.³ First, she asserts that the factual basis was only established by leading questions, which makes it invalid. Murrell-French correctly asserts that the Minnesota Supreme Court discourages using leading questions to establish a factual basis. *Raleigh*, 778 N.W.2d at 95. The factual-basis requirement is typically satisfied by the defendant expressing what happened in her own words. *Id.* at 94. Here, Murrell-French's plea colloquy consisted of several leading questions. But her attorney also had her describe what happened in her own words and she provided a narrative description of the altercation. Thus, the factual basis was not provided entirely through leading questions.

Second, Murrell-French argues that she did not admit to the requisite intent for first-degree assault. This is a general intent crime, requiring "only the general intent to do the act that results in bodily harm." *State v. Dorn*, 887 N.W.2d 826, 831 (Minn. 2016). And intent may be shown by inferences from a person's actions in certain circumstances and 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).

From the record, the district court could infer that Murrell-French intended to strike L.B. after joining the altercation. That satisfies the mens rea requirement for this crime.

³ Murrell-French also argues that her later description of her intent during the presentence investigation somehow invalidates her admissions during the plea colloquy. But we are not persuaded that her subsequent statements, not made under oath, render her plea inaccurate.

But more than mere inferences support her intent here, including her testimony and narrative of the altercation. In Murrell-French’s testimony, she said she grabbed the knife, joined the fight, and stabbed L.B. in the neck. When asked if she intended to stab L.B. during the fight, Murrell-French responded, “Yes.” In our review, there is ample evidence in the record of Murrell-French’s intent.

In sum, Murrell-French fails to establish that her plea was inaccurate such that it constitutes a manifest injustice. As a result, she is not entitled to withdraw it.

III. The district court did not abuse its discretion by declining to grant Murrell-French a dispositional departure.

Murrell-French also contends in a pro se supplemental brief that, if she is not permitted to withdraw her guilty plea, then a downward dispositional departure is warranted. She appears to assert that the district court abused its discretion in not granting her request for a departure during the sentencing hearing. The district court determined that a departure was not warranted because Murrell-French continued to engage in illegal behavior after her plea hearing, accumulating at least nine new criminal charges.

This court reviews a district court’s decision about whether to depart from the presumptive guidelines sentence for an abuse of discretion. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). And this court will only reverse a sentencing court’s refusal to depart in “rare” circumstances. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

To depart from the guidelines range, a sentencing court must find mitigating circumstances that show “a substantial and compelling reason not to impose a guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). If a

defendant is particularly amenable to probation, a district court may grant a downward dispositional departure but it is not required to do so. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009). Here, the district court was not satisfied that Murrell-French was particularly amenable to probation. Nor was it satisfied that there were compelling reasons to grant her a dispositional departure based on her inability to remain law-abiding. This was within the court's wide discretion.

Still, Murrell-French maintains she should have been granted the departure for two reasons. First, she contends that she was told that the probability was high for the district court to grant her a departure, which she alleges influenced her decision to plead guilty. But she acknowledged during the plea colloquy that she was not promised anything in return for her plea and that it was a "straight plea," which meant that the district court could sentence her up to the maximum penalty. This claim does not support her argument that the district court should have granted her a departure.

Second, according to Murrell-French, this was her "first and only crime committed as an adult." But her attempt to frame this crime as an anomaly is unavailing. Defendants are not entitled to a downward dispositional departure on their first adult conviction. And Murrell-French fails to show why she should be granted such a rare outcome here. *See Kindem*, 313 N.W.2d at 7. Consequently, the district court did not abuse its discretion by not granting her a departure on this record.

Affirmed.