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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1480**

State of Minnesota,
Respondent,

vs.

Darren Lee Whitelow,
Appellant.

**Filed July 27, 2020
Affirmed
Halbrooks, Judge***

Ramsey County District Court
File No. 62-CR-19-1913

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

Lyndsey M. Olson, St. Paul City Attorney, Kyle A. Lundgren, Assistant City Attorney,
St. Paul, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and
Halbrooks, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his conviction of violating an order for protection, arguing that he must be permitted to withdraw his guilty plea because it did not establish an adequate factual basis for the offense and was therefore not accurate. We affirm.

FACTS

In March 2018, L.W. obtained an order for protection (OFP) that prohibited appellant Darren Lee Whitelow from contacting her or going to her residence. L.W. petitioned for the OFP after Whitelow threatened to kill her on multiple occasions, including one incident in which he held a machete to her throat. In October 2018, Whitelow was charged with violating the OFP. He pleaded guilty to the offense and was sentenced to probation in January 2019. The OFP remained in effect, and the district court also issued a domestic-abuse no-contact order (DANCO), which similarly prohibited Whitelow from contacting L.W. Whitelow was personally served with both orders.

On March 13, 2019, law enforcement responded to a report that Whitelow was living at L.W.'s residence in violation of the OFP and DANCO. Both orders remained in effect at the time, and Whitelow was still on probation for his prior conviction of violating the OFP. When law enforcement arrived, Whitelow was not at the residence. But L.W. and her daughter confirmed that Whitelow had been staying there for several days in violation of the orders.

On March 15, 2019, respondent State of Minnesota charged Whitelow with one count of violating the OFP and one count of violating the DANCO. Whitelow pleaded

guilty to violating the OFP, and the state dismissed the charge of violating the DANCO. Whitelow admitted that on March 13 he was at the residence of L.W. in violation of the OFP and that he had a prior conviction for violating an OFP. The district court accepted the guilty plea and adjudicated Whitelow guilty of violating the OFP. The district court sentenced Whitelow to 365 days in jail, stayed execution for one year, and placed Whitelow on probation. This appeal follows.

DECISION

A defendant does not have an absolute right to withdraw a guilty plea after it has been entered. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). But “a court must allow withdrawal of a guilty plea if withdrawal is necessary to correct a ‘manifest injustice.’” *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010) (quoting Minn. R. Crim. P. 15.05, subd. 1). A manifest injustice occurs if a plea is not valid. *Id.* at 94. A constitutionally valid plea must be voluntary, intelligent, and accurate. *Id.*; see also *Perkins*, 559 N.W.2d at 688. 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). The defendant bears the burden of showing that his plea was invalid. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012). The validity of a guilty plea is a legal question that we review de novo. *Raleigh*, 778 N.W.2d at 94.

Whitelow argues that he must be entitled to withdraw his guilty plea because he did not admit to an essential element of the crime. Whitelow pleaded guilty to violating Minn.

Stat. § 518B.01, subd. 14 (2018), which provides that when an OFP is granted and “the respondent or person to be restrained knows of the existence of the order” that violation of the OFP is a misdemeanor. The crime is enhanced to a gross misdemeanor if a person has been convicted of a qualified domestic-violence-related offense within the past ten years. Minn. Stat. § 518B.01, subd. 14(c). Violation of an OFP is a qualified domestic-violence-related offense. Minn. Stat. § 609.02, subd. 16 (2018); *see also* Minn. Stat. § 518B.01, subd. 2(c) (2018).

During the plea hearing, the prosecutor asked Whitelow the following questions to establish the factual basis for the offense:

Q: Sir, I’m going to ask you some questions about the offense. On March 13, 2019, were you in the vicinity of [L.W.’s residence]?

A: Yes.

Q: Were you at Unit B at that address on that date?

A: Yes.

Q: And was that in violation of an order for protection directing you that you couldn’t be at that address and you couldn’t have contact with a woman whose initials are L.W. who lives at that address?

A: Yes.

Q: Do you have a prior conviction for an order for protection violation within the last ten years?

A: Yes.

Following this exchange, the district court accepted Whitelow’s guilty plea to gross misdemeanor violation of an OFP. Whitelow contends that he must be entitled to withdraw his guilty plea because his plea did not establish that he knew of the existence of the OFP when he violated the order. He argues that the plea colloquy established that he was at the

residence in violation of the OFP, but not that he was aware of the existence of the OFP at that time.

We agree that the plea colloquy did not establish an explicit factual basis for every element of the offense. The plea colloquy established that an OFP had been issued, that Whitelow violated the OFP, and that Whitelow had a prior conviction for a qualified domestic-violence-related offense within the past ten years. But Whitelow did not admit that he was aware of the existence of the OFP at the time he violated the order. The plea colloquy therefore did not establish a factual basis for the element that the “person to be restrained knows of the existence of the order.” Minn. Stat. § 518B.01, subd. 14(b).

But even when a proper factual basis is not established during the plea colloquy, “a defendant may not withdraw his plea if the record contains sufficient evidence to support the conviction.” *Lussier*, 821 N.W.2d at 589 (quotation omitted). 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.” *Id.* at 588-89 (quotation omitted). The plea petition and colloquy may be supplemented by other evidence, including the presentence investigation (PSI). *See State v. Hoaglund*, 240 N.W.2d 4, 6 n.9 (Minn. 1976) (permitting use of whole record, including the PSI, to determine if there was an adequate factual basis for the guilty plea); *Burnett v. State*, 195 N.W.2d 187, 188 (Minn. 1972) (noting that the PSI established an adequate factual basis for the guilty plea).

Accordingly, we must analyze the record to determine if it establishes a factual basis for the element that Whitelow was aware of the existence of the OFP at the time he violated

the order. Here, the record contains the following information regarding Whitelow's knowledge of the existence of the OFP: Whitelow was personally served with the OFP after it was issued, and it remained in effect until March 27, 2020. He was previously charged with violating the OFP in October 2018. The record includes the PSI from that offense and summarizes an interview with Whitelow on January 11, 2019—just two months before the current offense. During the interview, Whitelow admitted that he was aware that there was an OFP in place that prohibited him from contacting L.W. Whitelow pleaded guilty in that case and was sentenced to probation. During the interview for the PSI in the current case, Whitelow reported that the underlying conduct in this case led to a probation-violation report in his prior case. He admitted to the probation violation, and as a result, was required to serve time in the county jail. Finally, the complaint includes a statement from L.W. that Whitelow was at her residence in violation of the OFP and DANCO. *See Vernlund v. State*, 589 N.W.2d 307, 311 (Minn. App. 1999) (stating witness statements may be considered when determining whether the record establishes an adequate factual basis).

On this record, we conclude that there is credible evidence that would support a jury verdict that Whitelow is guilty of knowingly violating the OFP. *See Lussier*, 821 N.W.2d at 588-89. Whitelow was personally served with the OFP. He admitted during the plea colloquy that he was at the residence in violation of the OFP and had recently been convicted of violating the same OFP. He admitted that he was aware of the OFP just two months before the current offense, that he was still on probation for previously violating the OFP, and that he violated the conditions of probation by contacting L.W. Because the

record establishes an adequate factual basis for the offense, Whitelow is not entitled to withdraw his guilty plea.

Affirmed.