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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-1846**

State of Minnesota,  
Respondent,

vs.

Steven Francis Martinez,  
Appellant.

**Filed December 14, 2020  
Reversed and remanded  
Slieter, Judge**

Ramsey County District Court  
File No. 62-CR-18-8686

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

**UNPUBLISHED OPINION**

**SLIETER**, Judge

Appellant Steven Francis Martinez pleaded guilty to failure to register as a predatory offender. During the plea colloquy Martinez acknowledged that he failed to inform the

Bureau of Criminal Apprehension (BCA) of his current address, but did not say whether he notified local law enforcement or his corrections agent of his change of address as required by statute. On direct appeal from judgment of conviction, Martinez argues that he should be permitted to withdraw his guilty plea because it lacked an adequate factual basis. Because we agree that Martinez's statements in the plea colloquy were insufficient to establish a factual basis for his guilt, we reverse and remand to allow Martinez to withdraw his guilty plea.

### **FACTS**

In 2018, respondent State of Minnesota charged Martinez with failure to register as a predatory offender, in violation of Minn. Stat. § 243.166, subd. 5(a) (2018).

On July 8, 2019, Martinez signed a petition to enter a plea of guilty to the charged offense. During the plea hearing, the only questions asked of Martinez in support of his guilty plea were by the prosecutor as follows:

Q: At some point after you filled out [the] change of information card, you left the [St. Paul] residence. Is that correct?

A: Correct.

Q: And did you update your information with the BCA?

A: No, I didn't.

Q: And you understand that that's a violation of the terms of your requirement to register. Is that correct?

A: Correct.

Q: And you're pleading guilty because you are guilty?

A: Yes.

PROSECUTOR: Your Honor, if that's sufficient?

THE COURT: I believe it is. What I'm going to do is accept your plea of guilty and adjudicate you guilty of the charge.

After accepting Martinez's guilty plea and adjudicating him guilty of the charge, the judge ordered Martinez to complete a presentence investigation (PSI).

The district court sentenced Martinez to 39 months' imprisonment subject to a stay of execution, and placed him on supervised probation for three years. Martinez appeals.

### **D E C I S I O N**

Martinez argues that he must be allowed to withdraw his plea because it was not constitutionally valid. The state counters that Martinez's plea colloquy, when combined with the contents of the complaint and PSI, establishes a constitutionally-valid factual basis for the plea.

To be constitutionally valid, a guilty plea must be accurate, and whether a defendant's plea is accurate is a question appellate courts review *de novo*. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "To be accurate, a plea must be established on a proper factual basis." *Id.* A defendant may be entitled to withdraw an inaccurate guilty plea on the ground that an inaccurate plea is a "manifest injustice." *Id.* at 93-94.

Establishing a proper factual basis is "typical[ly]" accomplished "by asking the defendant to express in his own words what happened." *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012) (quoting *Raleigh*, 778 N.W.2d at 94). "The defendant's statement usually will suggest questions to the court which then, with the assistance of counsel, can

interrogate the defendant in further detail.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). “It is to be hoped that the trial judge, in [accepting a plea], will ask the questions with respect to the factual basis for the crime so as to avoid the rather common inclination of counsel to elicit these facts by leading questions.” *State v. Hoaglund*, 240 N.W.2d 4, 6 (Minn. 1976).

Pursuant to Minn. Stat. § 243.166 (2018), Martinez was subject to the following registration provision: “[A]t least five days before [Martinez] starts living at a new primary address, including living in another state, [Martinez] shall give written notice of the new primary address to the *assigned corrections agent* or to the *law enforcement authority* with which [Martinez] currently is registered.” Minn. Stat. § 243.166, subd. 3(b) (emphasis added). Martinez was also required to “give written notice to the *assigned corrections agent* or to the *law enforcement authority* that has jurisdiction in the area of [Martinez’s] primary address that [he] is no longer living or staying at an address, immediately after [he] is no longer living or staying at that address.” *Id.* (emphasis added).

Martinez’s plea colloquy failed to establish whether he gave notice of a new primary address to his assigned corrections agent or to law enforcement at least five days before he began living at his new address. Instead, in response to the state’s leading questions, Martinez agreed only that he had not informed the BCA that he had left his registered address. Martinez was never asked, and therefore never admitted, that he failed to provide timely written notice of his new primary address to his assigned corrections agent or to the law enforcement authority to which he is currently registered.

The state argues that we may nevertheless conclude that his guilty plea was accurate when considered with the information set forth in the complaint and the PSI. We are not convinced the legal authority cited by the state establishes that we may consider the complaint or the PSI, neither of which were offered as evidence, to supplement Martinez's statements in order to determine whether his guilty plea was constitutionally accurate. Moreover, neither document provides the necessary factual basis that was absent from Martinez's colloquy, and so we conclude that—even if supplemented as the state suggests—Martinez's plea would still not be constitutionally accurate.

The complaint states, in relevant part, that "Martinez'[s] current whereabouts are not known. Martinez has not registered a new address with the BCA and he has not registered as homeless." The PSI report states, in relevant part, "[Martinez] was interviewed for this presentence investigation. When asked about the current offense, Mr. Martinez stated he 'took off' because he knew" he "violated [his] supervised release." But neither statement addresses the statutory requirement that Martinez inform his assigned corrections agent or law enforcement authority, and so they add nothing to Martinez's plea colloquy. Even if we were to consider the complaint and PSI as respondent urges, neither document provides additional information to establish his guilt.

**Reversed and remanded.**