

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0094**

State of Minnesota,
Respondent,

vs.

Cole Leo Dumont,
Appellant.

**Filed February 1, 2021
Reversed and remanded
Slieter, Judge**

Clay County District Court
File No. 14-CR-16-4313

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

Brian J. Melton, Clay County Attorney, Cecilia A. Knapp, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal from the district court's denial of his postconviction petition, appellant argues that the district court erred in denying his petition to withdraw his guilty plea and vacate his conviction of failure to register as a predatory offender. Because appellant's

out-of-state conviction does not require him to register as a predatory offender in Minnesota, we reverse and remand.

FACTS

On June 7, 2017, appellant Cole Leo Dumont entered an *Alford* guilty plea to the charge of failure to register as a predatory offender, in violation of Minn. Stat. § 244.166, subd. 5(a) (2016). This charge stemmed from appellant’s 2001 North Dakota misdemeanor conviction for corruption of a minor and the state’s allegation that he did not properly comply with predatory registration requirements in Minnesota. The Minnesota complaint alleges that the North Dakota conviction would have constituted a “registerable offense” if committed in Minnesota. Appellant subsequently petitioned for postconviction relief seeking withdrawal of his guilty plea and the resulting conviction, arguing that his North Dakota conviction did not qualify as a registrable offense. The district court denied appellant’s petition. This appeal follows.

DECISION

“[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) (quotation 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.” *Id.* at 94 (citation omitted). The burden rests on the defendant to establish the plea was invalid, and “[a]ssessing the validity of a plea presents a question of law that [appellate courts] review de novo.” *See id.* at 94. Appellate courts “review questions of statutory interpretation de novo.” *State v. Defatte*, 928 N.W.2d 338, 340 (Minn. 2019).

The issue presented is whether appellant was required to register as a predatory offender in Minnesota as a result of his 2001 North Dakota conviction for corruption of a minor. In Minnesota, a person must register as a predatory offender if:

charged with . . . an offense in another state that would be a violation of a law described in [Minn. Stat. § 243.166, subd. 1b(a)] if committed in this state and convicted of . . . that offense or another offense arising out of the same set of circumstances.

Minn. Stat. § 243.166, subd. 1b(b)(1) (2016).

Resolution of this issue derives squarely from the Minnesota Supreme Court’s recent holding in *State v. Martin*, 941 N.W.2d 119 (Minn. 2020).¹ In *Martin*, the supreme court for the first time examined “how to determine whether an out-of-state conviction qualifies as a violation of Minnesota law under Minn. Stat. § 243.166, subd. 1b(b)(1).” 941 N.W.2d at 123. The test *Martin* created is as follows:

We will compare the elements of the out-of-state offense to the elements of the Minnesota offense. An out-of-state conviction would be a violation of a Minnesota offense requiring registration if proving the elements of the out-of-state offense would *necessarily prove* a violation of that Minnesota law. But if the elements of the out-of-state offense could be proven without proving a violation of Minnesota law, then the out-of-state conviction would not be a violation of a Minnesota offense requiring registration.

¹ Because *Martin* was released after the district court ruled on appellant’s petition for postconviction relief, the district court did not have the benefit of the supreme court’s reasoning in that matter. We also note that the district court correctly interpreted our prior unpublished caselaw regarding analysis of out-of-state convictions for the purposes of predatory offender requirements, *State v. Hanson*, 2012 WL 538967, at *2 (Minn. App. Feb 21, 2012) (“[C]ourts must compare the elements of the out-of-state offense and the underlying facts supporting the conviction to the elements of the Minnesota offense.”).

Id. at 124 (emphasis added). This test does not, therefore, involve the facts related to the underlying out-of-state offense—only the elements are considered. *Id.* at 125-26.

Corruption of a minor in North Dakota requires proof that (1) the adult defendant engaged in a sexual act with another person, and (2) the other person was a minor 15 years of age or older. N.D.C.C. § 12.1-20-05 (1999). “Sexual act” is defined as “sexual contact between human beings,” sexual contact being defined as “any touching of the sexual or intimate parts of the person for the purpose of arousing or satisfying sexual or aggressive desires.” N.D.C.C. § 12.1-20-02 (1999). The statute states that such contact “occurs upon penetration, however slight.” *Id.*

We agree with the parties that the only Minnesota offense requiring registration that could arguably be proven by the elements of North Dakota’s corruption-of-a-minor statute is third-degree criminal sexual conduct, in violation of Minn. Stat. § 609.344, subd. 1(b) (2016). A defendant is guilty of third-degree criminal sexual conduct pursuant to subdivision 1(b) when (1) the defendant engaged in sexual penetration with another, (2) the other person was 13-15 years old, and (3) the defendant is more than 24 months older than the other person. *Id.*

There are clear differences between the elements of the North Dakota and Minnesota offenses. Whereas the North Dakota statute requires that the complainant be 15-17 years old, the Minnesota statute requires that the complainant be 13-15 years old. Additionally, though the Minnesota statute requires that the defendant be more than 24 months older than the complainant, the North Dakota statute has no such age-difference requirement. Therefore, proving the North Dakota elements for corruption of a minor

would not necessarily prove the elements of Minnesota’s third-degree criminal-sexual-conduct offense.

Respondent nevertheless argues that appellant’s North Dakota conviction qualifies as a registerable offense because, at the time of appellant’s North Dakota offense, the complainant in that matter was between 14-15 years old and appellant was 18-19 years old, thus factually satisfying the age and age-difference requirements of the Minnesota statute. We disagree that such facts are sufficient to establish a registrable offense in Minnesota. *Martin* clearly directs that we must look solely at “the elements of the out-of-state offense” and “the elements of the Minnesota offense.” 941 N.W.2d at 124. That the ages of appellant and the complainant in his North Dakota offense for which he was convicted would have factually satisfied the elements of the Minnesota statute is, therefore, irrelevant.²

In summary, because a person may be convicted of corruption of a minor in North Dakota without necessarily proving the elements of third-degree criminal sexual conduct pursuant to Minn. Stat. § 609.344, subd. 1(b), appellant’s North Dakota conviction is not an offense requiring registration in Minnesota. This conclusion necessitates granting appellant’s petition for postconviction relief. Therefore, we reverse and remand for the

² Moreover, whereas the North Dakota statute describes a “sexual act,” the Minnesota statute requires “sexual penetration.” Though the North Dakota statute states such contact “occurs upon penetration, however slight,” that statute defines sexual contact as “*any* touching of the sexual or other intimate parts.” N.D.C.C. § 12.1-20-02 (emphasis added). This difference also indicates that the North Dakota corruption-of-a-minor offense does not necessitate registration in Minnesota.

district court to allow appellant to withdraw his guilty plea and vacate the judgment of conviction.

Reversed and remanded.