

*This opinion is nonprecedential except as provided by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
A20-0258**

State of Minnesota,
Respondent,

vs.

Dustin Mitch Nickaboine,
Appellant.

**Filed February 22, 2021
Affirmed
Hooten, Judge**

Mille Lacs County District Court
File No. 48-CR-19-207

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

Joe Walsh, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Hooten, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this direct appeal from his conviction for gross misdemeanor escape from
custody, appellant argues that he must be permitted to withdraw his guilty plea because the

factual basis for the plea was inaccurate and the record does not support that he was in lawful custody at the time of the offense. We affirm.

FACTS

Appellant Dustin Mitch Nickaboine was charged with gross misdemeanor escape from custody under Minn. Stat. § 609.485, subd. 2 (2018), for an incident that occurred in January 2019. The charge stemmed from Nickaboine's failure to return to jail after a nine-hour furlough. Nickaboine pleaded guilty to gross misdemeanor escape. There was no plea agreement between the parties as to sentencing.

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

Q: Mr. Nickaboine, back on January 24th, 2019, you were released from the Mille Lacs County Jail in Mille Lacs County, Minnesota, on a 9-hour furlough; is that correct?

A: Yes.

Q: And you were to return to the Mille Lacs County Jail after—nine hours after being released on that same day; is that correct?

A: I didn't return. No.

Q: And, in fact, you were arrested several days later; is that true?

A: Yes.

Q: And at the time you were in custody in the Mille Lacs County Jail and released on that furlough, you were sitting a sentence on a gross misdemeanor 911 interference; is that correct?

A: Yes.

Q: And also a gross misdemeanor DANCO violation?

A: I don't think so. I don't—no.

Q: Well, you were under sentence on three files; you understand that?

A: What's that?

Q: You were under sentences on three files. You had three sentences to serve?

A: Yes.

Q: Okay. Two of them were gross misdemeanors?

A: Yes.

Q: To your knowledge? And one was a misdemeanor?

A: Something like that. Yes.

Following this exchange, the district court accepted Nickaboine's plea, and the parties submitted briefs on whether Nickaboine's escape sentence should be imposed consecutively to some or all of the following three sentences he had previously received in other matters for offenses occurring in 2018: (1) a 365-day sentence for a gross misdemeanor domestic-abuse no-contact order (DANCO) violation, (2) a 365-day sentence for gross misdemeanor interference with a 911 call, and (3) a 90-day sentence for misdemeanor fleeing on foot. All three of these sentences had been imposed consecutively pursuant to a plea agreement.

At sentencing, Nickaboine argued that the sentence for gross misdemeanor escape should be imposed consecutively only to his sentence for the DANCO violation, as he had served 207 of the 243 days needed to satisfy his sentence for the DANCO violation, but

had not yet started serving the sentences for interference with a 911 call or fleeing on foot. The state argued that Nickaboine's sentence should be imposed consecutively to his sentences for the DANCO violation and interference with a 911 call but not to his sentence for fleeing on foot.

The district court found that Nickaboine was in custody on all three previous files at the time of the escape offense. The district court then imposed an executed 365-day sentence to be served consecutively to Nickaboine's sentences for the DANCO violation and interference with a 911 call, but concurrently with his sentence for fleeing on foot. Nickaboine appeals.

DECISION

Nickaboine argues that the district court must allow him to withdraw his guilty plea to correct a manifest injustice because the plea was invalid due to its inaccuracy. Nickaboine argues that there is an insufficient factual basis supporting his guilty plea to gross misdemeanor escape because he did not admit, and the record does not otherwise reflect, that he was in *lawful* custody at the time of the offense.

"A defendant has no absolute right to withdraw a guilty plea after entering it." *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a court "must allow" a defendant to withdraw a plea at any time if it is proved to the satisfaction of the court that withdrawal is necessary to correct a "manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice results from an invalid guilty plea. *Raleigh*, 778 N.W.2d at 94. To be constitutionally valid, a guilty plea must be voluntary, intelligent, and accurate. *Id.* at 94. "To be accurate, a plea must be established on a proper factual basis." *Id.* Whether a plea

is valid is a question of law that we review de novo. *Id.* It is the defendant's burden to show that a plea is invalid. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

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.” *Lussier v. State*, 821 N.W.2d 581, 588–89 (Minn. 2012). Establishing a proper factual basis is “typically” accomplished “by asking the defendant to express in his own words what happened.” *Raleigh*, 778 N.W.2d at 94. Even when a proper factual basis is not established by eliciting proper responses from a defendant through questioning, “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). In reviewing the record, a court may consider the facts alleged in a criminal complaint. *See State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983).

Under Minn. Stat. § 609.485, subds. 1, 2 (2018), a defendant commits escape from custody if he “escapes while . . . in *lawful* custody on a charge or conviction of a crime.” (emphasis added). Based on the plain language of this statute, for an escape to occur, it is not enough that a defendant be in custody; the custody must also be *lawful*.

An adequate factual basis is established only when the record shows “that the defendant's conduct meets all elements of the charge to which he is pleading guilty.” *Barnslater v. State*, 805 N.W.2d 910, 914 (Minn. App. 2011). The parties do not dispute the sufficiency of the facts establishing that Nickaboine was in custody following the conviction of a crime at the time of his escape. At the plea hearing, Nickaboine admitted that he was serving a sentence for gross misdemeanor interference with a 911 call and that

he was “under sentence” on three matters at the time of his escape. However, the parties dispute whether the facts from the plea hearing and the record sufficiently establish that Nickaboine was in *lawful* custody.

Nickaboine argues that a factual basis for his plea was not established at the plea hearing because he never admitted that he was in *lawful* custody during his colloquy with the prosecutor and the evidence in the record does not establish a factual basis for his plea. Nickaboine contends that the complaint in this case contains no factual allegations regarding the lawfulness of the custody, indicating only that Nickaboine was “in custody in the Mille Lacs County jail” and failed to return. He asserts that the remainder of the record actually demonstrates that his custody was unlawful because his sentence violated Minn. Stat. § 609.15, subd. 2 (2018), which provides that “[i]f the court specifies that the sentence shall run consecutively” and “[i]f the sentences are for a gross misdemeanor and one or more misdemeanors, the total of the sentences shall not exceed two years.” Nickaboine points out that the total length of his previously-imposed consecutive sentences for two gross misdemeanors and one misdemeanor was two years and 90 days, arguing that this length exceeds the two-year maximum set forth in Minn. Stat. § 609.15, subd. 2.

The state counters that Nickaboine voluntarily provided a sufficient factual basis for his plea when he “admitted he was serving three consecutive sentences at the time the escape offense occurred.” The state also contends that, even if we determine that Nickaboine’s admissions at the plea hearing were insufficient to establish an adequate factual basis for his plea, the record as a whole establishes that he was in lawful custody at the time of his escape offense. To support this argument, the state cites the following

evidence in the record from the plea hearing: (1) Nickaboine's lack of concern regarding the lawfulness of his three previously-imposed sentences and whether he was in lawful custody at the time of the escape offense, (2) Nickaboine's admission that he had three sentences to serve when he did not return from furlough, and (3) Nickaboine's statement that he did not have anything else he wanted to discuss with his attorney prior to pleading guilty to the escape offense. The state also cites the following discussion of Minn. Stat. § 609.15, subd. 2, at sentencing:

THE COURT: If the sentences are for a gross misdemeanor and one or more misdemeanors the total of the sentences shall not exceed two years.

So I emphasized the word "a" when I just read that, because you could see the sense, you know, of the legislature that if it's one gross misdemeanor and a whole bunch of misdemeanors, we don't want to create a gigantic prison-looking sentence out of a pile of misdemeanors. That makes sense. But if it's for more than one gross misdemeanor, that changes the equation.

DEFENSE COUNSEL: I don't necessarily disagree with what the [c]ourt's saying, but the other part in that part of the law also says that if they're all gross misdemeanors the total of the sentences shall not exceed four years.

So if the [c]ourt is intending to make this consecutive to all three of his previously ordered sentences, I think there is a cap of at least four years, somewhere between two and four years.

THE COURT: Agreed. I agree.

The state contends that the district court correctly interpreted the statute as establishing a four-year—not a two-year—maximum sentence when multiple gross misdemeanor sentences are involved.

Although Nickaboine agreed that he was in custody on three files at the time of his escape offense, he never expressly admitted that he was in *lawful* custody. However, he did admit that he was “sitting a sentence on a gross misdemeanor 911 interference,” one of three sentences that he was in jail to serve. A summary of Nickaboine’s criminal offenses, which is included in the record, indicates that Nickaboine was convicted of all three offenses leading to the sentences that he was in jail to serve, and the parties do not dispute those convictions. They only dispute the lawfulness of the total length of Nickaboine’s consecutive sentences for a gross misdemeanor DANCO violation, a gross misdemeanor interference with a 911 call, and a misdemeanor fleeing on foot.

Resolving the parties’ dispute on this sentencing length issue requires us to interpret Minn. Stat. § 609.15, subd. 2. We review questions of statutory interpretation *de novo*. *State v. Townsend*, 941 N.W.2d 108, 110 (Minn. 2020). The first step in statutory interpretation is to determine whether the statute’s language, on its face, is unambiguous. *State v. Jama*, 923 N.W.2d 632, 636 (Minn. 2019). When the language of a statute is susceptible to only one reasonable interpretation, it is unambiguous, and we must apply its plain meaning. *State v. Culver*, 941 N.W.2d 134, 139 (Minn. 2020).

Minn. Stat. § 609.15, subd. 2, places the following limits on sentences for misdemeanors and gross misdemeanors:

If the court specifies that the sentence shall run consecutively and all of the sentences are for misdemeanors, the total of the sentences shall not exceed one year. If the sentences are for a gross misdemeanor and one or more misdemeanors, the total of the sentences shall not exceed two years. If all of the sentences are for gross misdemeanors, the total of the sentences shall not exceed four years.

The plain language of this statute is unambiguous. If a court imposes consecutive sentences for a *singular* gross misdemeanor and one or more misdemeanors, then the length of the combined sentences shall not exceed two years. If a court imposes consecutive sentences for *multiple* gross misdemeanors, then the length of the combined sentences shall not exceed four years. Here, the district court had previously imposed consecutive sentences for two gross misdemeanors and one misdemeanor, which does not trigger the two-year limit for a *singular* gross misdemeanor and one or more misdemeanors. Therefore, the district court did not violate Minn. Stat. § 609.15, subd. 2, by imposing consecutive sentences totaling two years and 90 days for Nickaboine’s two gross misdemeanors and one misdemeanor, and we are unable to find any evidence in the record establishing that Nickaboine was in unlawful custody at the time of his escape offense¹

Nickaboine has failed to demonstrate an improper factual basis for his guilty plea, without which he may not withdraw the plea. *See* Minn. R. Crim. P. 15.05, subd. 1; *Raleigh*, 778 N.W.2d at 93–94. There is evidence in the record—in particular the summary of Nickaboine’s criminal offenses indicating his convictions for gross misdemeanor DANCO violation and gross misdemeanor interference with a 911 call—that would support a verdict of Nickaboine’s guilt for gross misdemeanor escape from custody, and he has not met his burden in showing otherwise. *See Lussier*, 821 N.W.2d at 588–89.

Affirmed.

¹ Even if Nickaboine’s consecutive sentences did trigger the two-year limit under Minn. Stat. § 609.15, subd. 2—which they do not—Nickaboine still would have been in lawful custody at the time of his escape offense because he had not yet served the entire two-year portion of his sentences to which he does not object.