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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0292**

State of Minnesota,
Respondent,

vs.

Philip Nelson Green,
Appellant.

**Filed January 25, 2021
Affirmed
Bjorkman, Judge**

Becker County District Court
File No. 03-CR-18-1303

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

Brian W. McDonald, Becker County Attorney, Holly A. Danielson, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction for violating a domestic-abuse no-contact order (DANCO), arguing that he is entitled to withdraw his guilty plea because it is not supported by a proper factual basis. We affirm.

FACTS

In April 2018, appellant Philip Green was served with a DANCO prohibiting him from having contact with a female protected person. In the early morning hours of July 6, a Minnesota State Patrol trooper pulled Green's vehicle over for speeding. The protected person was in the passenger seat. Green was charged with a felony-level DANCO violation. An amended complaint asserted an additional charge for possessing stolen property.

The parties reached an agreement under which Green would plead guilty to the DANCO violation and the state would dismiss the stolen-property charge. During the October 10, 2019 plea hearing, Green and his lawyer discussed his knowledge of the DANCO at the time of the offense:

Q: So, Mr. Green, do you agree that back on July 6, 2018, you were traveling through Becker County?

A: Yes, sir.

Q: And at that time, you were approached by law enforcement, correct?

A: Yes, sir.

....

Q: And so you agree there was a passenger in that vehicle?

A: Yes, sir.

Q: And there was an active court order prohibiting contact with that person?

A: It was in the middle of hearings for cancellation or dismissal based on evidence and rights for which was to be followed that wasn't followed. But, yes, at the time, it was still pretty much active even though it was in the midst of hearings for cancellation.

Q: So fair to say the circumstances were a little confusing whether the order was active or not in your mind?

A: Yes.

Q: But you were aware that the order needed another order to be canceled, correct?

A: I was actually waiting on the documentation for the cancellation at the time in which I was pulled over.

Q: But it just so happens that on July 6, 2018, you hadn't actually received a physical order canceling it?

A: I did not receive the physical order until after the fact. It required one more hearing for cancellation of it, and I had to wait until I was out of detainment to be able to participate in the cancellation hearing along with the sentencing hearing; for which on March 8th [2019,¹] I was finally given the cancellation document, which does not date when it was actually placed into effect.

Q: But you'll agree today that—so at that time when you were pulled over with that person that you hadn't received the order, so, therefore, you should have reasonably should have know[n] that it was probably still in effect?

A: Correct.

Following this exchange, the district court inquired further:

THE COURT: I just want to clarify, Mr. Green, that although you had taken some steps to have the no contact order canceled, at the time of the incident, it was still in place; is that correct?

A: Under my belief, the judge was waiting to do his own research based on the evidence for which I presented to him. I had not heard back. And all I know is that I got contacted by my attorney, my public defender out of Thief River, indicating that we needed to have what was called a cancellation hearing and a sentencing hearing for the other prior offense.

THE COURT: Okay. So you did not have any document in your possession indicating the order had been canceled at the time of the incident?

A: No. I actually asked the judge from the other district if I needed something with his statement in regards to him doing his research for cancellation and he said I didn't.

THE COURT: Okay.

A: So I didn't—and my own knowledge for the way it was presented by the judge, he didn't state that it was active or inactive so I honestly didn't know.

THE COURT: Okay. Thank you.

A: But I can't argue once it comes up on my record.

¹ The DANCO was vacated on May 8, 2019.

The district court determined that the facts supported Green’s guilty plea, and that he entered his plea voluntarily and intelligently. The court adjudicated Green guilty and stayed imposition of a sentence for five years, pursuant to the plea agreement. Green appeals.

DECISION

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a defendant must be allowed to do so if the plea is not valid. *Id.* at 94. To be valid, a plea must be accurate, voluntary, and intelligent. *Id.* We review the validity of a guilty plea de novo. *State v. Johnson*, 867 N.W.2d 210, 214-15 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015).

Green contends that his guilty plea is inaccurate. The accuracy requirement is designed to protect a defendant from pleading guilty to a more serious charge than he could be convicted of if he went to trial. *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009) (citing *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994)), *review denied* (Minn. Apr. 21, 2009). This goal is achieved by establishing a “proper factual basis” for the plea, usually by asking the defendant to explain the circumstances of the offense in his own words. *Id.* The district court must ensure that “facts exist from which the defendant’s guilt of the crime charged can be reasonably inferred.” *Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016) (quotation omitted). A factual basis “is inadequate when the defendant makes statements that negate an essential element of the charged crime because such statements are inconsistent with a plea of guilty.” *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003).

A person violates a DANCO when the person “knows of the existence of a domestic abuse no contact order issued against the person and violates the order.” Minn. Stat. § 629.75, subd. 2(b) (2016). Accordingly, an element of the offense is Green’s knowledge that the DANCO existed.

Green argues that his guilty plea lacks a proper factual basis because his statement to the district court that he “honestly didn’t know” whether the DANCO was “active or inactive” negates the knowledge element of the offense. We are not persuaded.

This isolated statement stands in marked contrast to the rest of Green’s testimony and other evidence presented during the plea hearing. The DANCO was issued and personally served on Green in April 2018. It did not contain an expiration date, and explicitly states that it “WILL REMAIN IN EFFECT UNTIL DISPOSITION OF THE CASE OR UNTIL FURTHER ORDER OR MODIFICATION.” During the plea colloquy, Green said he understood the DANCO “was in the middle of hearings for cancellation or dismissal” on the day the state trooper found him with the protected person. But he agreed that “at the time, it was still pretty much active.” Green explained that one more hearing was required before the DANCO would be cancelled, and that hearing had not yet taken place at the time of the offense. He confirmed this in response to the district court’s questioning, stating that he knew he needed a cancellation order from the court that issued the DANCO and did not have such an order in July 2018. This record assures us that Green’s guilt may be reasonably inferred from the circumstances of the offense. *Nelson*, 880 N.W.2d at 861.

In sum, we are confident that Green did not plead guilty to a more serious crime than he could have been convicted of following a trial. The record demonstrates ample factual support for his guilty plea.

Affirmed.