

*This opinion is nonprecedential except as provided by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
A20-0998**

Samuel Morton Post, III, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 26, 2021
Affirmed
Slieter, Judge**

Hubbard County District Court
File No. 29-CR-17-1192

Cathryn Middlebrook, Chief Appellate Public Defender, Chelsie M. Willett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Jonathan D. Frieden, Hubbard County Attorney, Park Rapids, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the district court's denial of his postconviction petition seeking to withdraw his guilty plea to violation of an order for protection (OFP) as inaccurate. Because appellant admitted that he told his children to wish their mother, the

OFP petitioner, happy Mother's Day and such third-party contact is a violation of the OFP, the guilty plea was accurate and we affirm.

FACTS

In 2016, appellant Samuel Morton Post's wife obtained an OFP prohibiting Post from contacting her either directly or through a third party. In 2018, the state charged Post with a gross misdemeanor violation of an OFP, in violation of Minn. Stat. § 518B.01, subd. 14(c) (2016). Post pleaded guilty to an amended count of a misdemeanor violation of an OFP, in violation of Minn. Stat. § 518B.01, subd. 14(b) (2016).

During the plea hearing, Post admitted that he violated the OFP by "[telling his] children to tell their mother happy Mother's Day." He acknowledged that he was aware of the OFP at the time of his conduct, that he had been served with the OFP, and that the OFP prohibited him from having "[a]ny form of contact including third party" with his wife. The district court accepted Post's guilty plea, entered judgment of conviction, and sentenced him.

In 2020, Post filed a petition for postconviction relief, seeking to withdraw his guilty plea on the ground that there was not an adequate factual basis for his guilt. He argued that the facts he admitted during the plea hearing established only that he "remind[ed]" his children to wish their mother a happy Mother's Day, and therefore he did not admit to violating the OFP. The district court denied Post's petition. Post 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). However, a defendant is allowed to withdraw

a guilty plea if the plea is invalid. *Id.* at 94. To be constitutionally valid, a guilty plea must be accurate. *Id.* Whether a defendant's plea is accurate is a question appellate courts review *de novo*. *Id.* "To be accurate, a plea must be established on a proper factual basis." *Id.* A defendant is entitled to withdraw an inaccurate guilty plea on the ground that an inaccurate plea is a "manifest injustice." *Id.* at 93 (quotation omitted).

To be guilty of a misdemeanor OFP violation, a defendant must have (1) known of the existence of the OFP, and (2) violated a condition of that OFP. Minn. Stat. § 518B.01, subd. 14(b). Post's guilty plea colloquy established each of these elements.

Post argues his plea colloquy did not establish that he violated the OFP but, instead, established that he was "being a good father and reminding his children about how to honor their mother on her special day." The record does not support Post's claim. Post acknowledged during the plea hearing that the OFP prohibited "any form of contact" between him and the protected person, including third-party contact. When asked by his attorney to describe the conduct that lead to the OFP violation, Post replied "I told my children to tell their mother happy Mother's Day."

The OFP prohibited Post from contacting the petitioner via third parties and Post admitted directing his children to contact his wife, who is the mother of the children and the OFP petitioner. This provides a factual basis that Post violated the OFP and establishes that Post acted in violation of the OFP statute. Because a factual basis exists to establish Post's guilt of each element of the charged offense, the plea is accurate. This satisfies the concern that a defendant not plead guilty to a more serious offense than they would be

convicted for if they went to trial. *See State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983).

Therefore, the district court properly denied Post's petition.

Affirmed.