

*This opinion is nonprecedential except as provided by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
A21-1743**

State of Minnesota,
Respondent,

vs.

Gary Christopher Petersen,
Appellant.

**Filed October 31, 2022
Affirmed
Wheelock, Judge**

Anoka County District Court
File No. 02-CR-17-2064

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant argues that he should be allowed to withdraw his guilty plea to aiding and abetting a kidnapping involving great bodily harm because the factual basis provided in support of the plea failed to establish the great-bodily-harm element. We affirm.

FACTS

In April 2018, a jury found appellant Gary Christopher Petersen guilty of aiding and abetting second-degree criminal sexual conduct, kidnapping, and second-degree assault. *State v. Petersen*, 933 N.W.2d 545, 548-49 (Minn. App. 2019) (*Petersen I*). The district court sentenced Petersen to concurrent aggravated sentences of 120 months' imprisonment for aiding and abetting both second-degree criminal sexual conduct and kidnapping, and it imposed a concurrent guidelines sentence of 21 months for aiding and abetting second-degree assault. *Id.* at 549.

Petersen filed a direct appeal from the district court's judgments of conviction, arguing that the district court denied his right to a public trial when it excluded the public from the courtroom during parts of voir dire. *Id.* We concluded that the district court's action constituted a "true closure" of the courtroom and remanded the case to the district court "for an evidentiary hearing and findings concerning whether the closure was justified." *Id.* at 552-53.

Following the hearing, the district court found that the closure of the courtroom was not justified, but it declined to address the proper remedy. *State v. Petersen*, No. A20-0843, 2020 WL 7332902, at *2 (Minn. App. Dec. 14, 2020) (*Petersen II*). Petersen filed a second appeal, and we concluded that Petersen's convictions and sentences should be reversed based on the district court's improper courtroom closure. *Id.* at *4-5. We remanded for a new trial. *Id.* at *5.

Instead of a second jury trial, respondent State of Minnesota extended Petersen a plea offer, the terms of which provided that in exchange for Petersen's plea of guilty to

kidnapping involving great bodily harm—the same crime of which a jury had previously found him guilty—the remaining charges would be dismissed. Petersen accepted the plea offer and pleaded guilty to kidnapping involving great bodily harm.

During the plea colloquy, Petersen’s counsel questioned Petersen about the offenses, and Petersen admitted to the following facts in support of his plea. In September 2016, Petersen assaulted the victim in a basement. During the assault, Petersen held on to the end of a rope that had been tied around the victim’s wrist and thrown over a beam. He held the rope tight to restrain the victim, preventing him from leaving. Petersen also acknowledged the victim’s testimony that the victim suffered bodily harm, including a broken nose and a large facial gash. The prosecutor also questioned Petersen about the great-bodily-harm element. He asked Petersen whether Petersen had a chance to speak with his counsel about what constitutes “great bodily harm” under the statute. Petersen confirmed that he had. The prosecutor then asked whether Petersen agreed that the victim’s injuries satisfied the great-bodily-harm standard. Petersen agreed that they did. The district court accepted the guilty plea and sentenced Petersen to 96 months in prison.

Petersen appeals.

DECISION

Petersen challenges the accuracy of his guilty plea. To be constitutionally valid, a guilty plea must be accurate, and whether a defendant’s plea is accurate is a question that appellate courts review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial.

Lussier v. State, 821 N.W.2d 581, 588 (Minn. 2012). “For a guilty plea to be accurate, a factual basis must be established showing that the defendant’s conduct meets all elements of the offense to which he is pleading guilty.” *State v. Jones*, 921 N.W.2d 774, 779 (Minn. App. 2018), *rev. denied* (Minn. Feb. 27, 2019). “The factual-basis requirement is satisfied if the record contains a showing that there is credible evidence available that would support a jury verdict that defendant is guilty of at least as great a crime as that to which he pled guilty.” *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (quotation omitted). A defendant may be entitled to withdraw an inaccurate guilty plea because an inaccurate plea constitutes a “manifest injustice.” *Raleigh*, 778 N.W.2d at 94 (quotation omitted); *see* Minn. R. Crim. P. 15.05, subd. 1 (stating that guilty-plea withdrawal is permitted when “necessary to correct a manifest injustice”).

Petersen contends that his plea colloquy did not establish that the victim suffered great bodily harm during the kidnapping. We disagree.

During the plea colloquy, Petersen agreed with the description of the victim’s injuries, including that the victim suffered from a broken nose, a large facial gash, a swollen face, and cuts to his hands. Petersen confirmed that he “had an opportunity to speak with [his counsel] about what great bodily harm is, under the statute,” and that “[f]or the purposes of this plea today . . . all of the injuries combined in this case . . . meet that standard of great bodily harm.” In fact, Petersen confirmed that he spoke with his counsel “at some length” about the statutory definition of “great bodily harm” and thereafter agreed that the victim’s injuries here satisfied that definition. Moreover, while the jury’s guilty verdict earlier in these proceedings does not dictate our result because we reversed it on

appeal for a structural error unrelated to the evidence presented at trial, it nevertheless demonstrates that credible evidence is available that would support a jury verdict that Petersen is guilty of at least as great a crime as that to which he pleaded guilty. We are satisfied that Petersen's guilty plea is accurate and discern no manifest injustice on this record.

Affirmed.