

*This opinion is nonprecedential except as provided by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
A22-1019**

State of Minnesota,
Respondent,

vs.

Andre Shyron Kidd,
Appellant.

**Filed June 12, 2023
Affirmed
Worke, Judge**

Stearns County District Court
File Nos. 73-CR-19-8248; 73-CR-20-4878; 73-CR-22-535

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

Janelle P. Kendall, Stearns County Attorney, River D. Thelen, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that he is entitled to withdraw his guilty pleas in a global
agreement because his guilty plea to second-degree drug sale is invalid. We affirm.

FACTS

In September 2019, the state charged appellant Andre Shyron Kidd with first-degree controlled-substance sale. In July 2020, Kidd was charged with felon in possession of a firearm and two counts of fifth-degree controlled-substance possession. And in September 2020, he was charged with misdemeanor domestic assault.

In January 2022, Kidd pleaded guilty to a second-degree controlled-substance offense, unlawful possession of a firearm, and misdemeanor domestic assault as part of a global plea agreement. In establishing the factual basis to support Kidd's guilty plea to second-degree controlled-substance crime, Kidd agreed that between April and May 2019 he sold "cocaine to a confidential informant." In establishing the amount of cocaine he sold, the following exchange occurred:

Q: How much cocaine did you sell during those buys?

A: I believe I sold to him two or three times They found cocaine in my house and tried to use that as an actual weight.

. . . .

Q: And on those three occasions you sold 3.1, 2.8 and 3.8 grams of cocaine; is that correct?

A: Okay. That's not over ten grams.

. . . .

[Defense counsel]:

Q. Mr. Kidd, you'd agree that when the officers executed the search warrant they did find some cocaine?

[Kidd]:

I admitted [that]. . . . They found the rest of it in the house.

[Q]: Right. And that's because you were planning to sell that cocaine or a portion of it, is that fair to say?

[A]: I don't know. Somebody would have did [sic] it before I sold it. . . . I don't sell that sh-t if you do ask me for it, period.

[Q]: Fair to say, Mr. Kidd, between the sales . . . and the amount of cocaine that you had in your house you had more than ten grams of cocaine –

[A]: In my possession, yeah, absolutely.

[Q]: And that you were actively selling at that period of time.

[A]: Okay.

THE COURT:

Okay. Is that an okay or are you –

[Kidd]:

That's correct. I did sell during those times.

. . . .

[Prosecutor]:

. . . .

Q: And with the . . . sales plus 7.2 grams found in your residence, you agree that . . . you committed controlled substance sale in the second degree?

A: I didn't sell drugs over ten grams. I had over ten grams. I had in my possession over ten grams. I didn't sell ten grams. I can't agree with that statement. I didn't sell over ten grams, no. That's basically what you're asking me on the second degree, correct?

Q: Correct. But that isn't necessarily selling a total over ten grams and you've agreed you sold twice, right?

A: I do.

Q: And that would be approximately six grams.

A: Another seven grams.

Q: And then you had 7.2 grams on May 15th, 2019 with the scale, packaging materials and the money at the residence, correct?

A: I had to use them before, the other two times so yes, that's correct.

Q: Yup. . . . I can get you over 10 grams . . . with the 7.2 grams you had.

A: It's enough, it's enough to sell over ten grams?

Q: Did you possess enough to sell over ten grams?

A: I possessed enough to sell over ten grams, correct.

At Kidd's sentencing hearing, Kidd also agreed to plead guilty to a new charge of domestic assault by strangulation. The district court sentenced Kidd to concurrent sentences of 100 months in prison for the drug-sale conviction, 60 months in prison for the felon-in-possession conviction, 90 days in jail for the domestic-assault conviction, and 30 months in prison for the domestic-assault-by-strangulation conviction. This appeal followed.

DECISION

Kidd argues that he should be permitted to withdraw his guilty pleas because the factual basis supporting his controlled-substance-sale conviction is inaccurate, making his plea invalid. We review the validity of a guilty plea de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). Kidd bears the burden to establish that his guilty plea is invalid. *See id.*

A criminal defendant does not have an "absolute right" to withdraw a guilty plea. *Id.* at 93. But a court must allow plea withdrawal "to correct a manifest injustice." *Id.*

(quotation omitted). “A manifest injustice exists when a guilty plea is not valid.” *State v. Fugalli*, 967 N.W.2d 74, 77 (Minn. 2021). To be valid, a guilty plea must be “accurate, voluntary, and intelligent.” *Id.* Kidd challenges the accuracy of his guilty plea.

“The accuracy requirement protects the defendant from pleading guilty to a charge more serious than he could have been convicted of at trial.” *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017). “To be accurate, a plea must be established on a proper factual basis.” *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (quotation omitted). To ensure that a guilty plea is supported by a proper factual basis, the district court must “make certain that facts exist from which the defendant’s guilt of the crime charged can be reasonably inferred.” *Id.* at 861 (quotation omitted). The defendant’s admissions at the plea hearing must “support a conclusion that [his] conduct falls within the charge to which he desires to plead guilty.” *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (quotation omitted). A guilty plea is inaccurate, and therefore invalid, if the defendant “negate[s] an essential element of the charged crime.” *Id.* at 350.

Kidd argues that the factual basis for the second-degree controlled-substance-crime guilty plea is inaccurate because he negated an essential element of the offense. We must determine whether the facts established at the plea hearing reasonably support the inference that Kidd’s conduct falls within the crime to which he pleaded guilty.

Kidd pleaded guilty to second-degree controlled-substance sale. *See* Minn. Stat. § 152.022, subd. 1(1) (2018). “A person is guilty of controlled substance crime in the second degree if . . . on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing a narcotic

drug” *Id.* Kidd argues that he did not admit to selling or intending to sell more than ten grams of cocaine. To sell means, “(1) to sell, give away, barter, deliver, exchange, distribute or dispose of to another . . . ; or (2) to offer or agree to perform an act listed in clause (1); or (3) to possess with intent to perform an act listed in clause (1).” Minn. Stat. § 152.01, subd. 15a (2018).

Kidd admitted facts that establish a sufficient factual basis supporting his second-degree controlled-substance-sale conviction. Kidd agreed that he sold 9.7 grams of cocaine to a confidential informant. He agreed that during the execution of a search warrant, officers “found the rest of it in the house” along with a “scale, packaging materials and . . . money.” The “rest” was 7.2 grams of cocaine. He admitted that he “absolutely” had “more than ten grams of cocaine” “in [his] possession” and that he was “actively selling.” He stated: “I possessed enough to sell over ten grams.” When asked whether he planned to sell that cocaine, he replied: “I don’t know. Somebody would have did [sic] it before I sold it. . . . I don’t sell that sh-t if you do ask me for it, period.”

These facts show that: (1) Kidd was actively selling cocaine; (2) Kidd *sold* 9.7 grams of cocaine; (3) Kidd had 7.2 grams of cocaine, a scale, packaging material, and money at his home; (4) Kidd did not know if he would have sold that 7.2 grams of cocaine because *someone might have used it* before he could sell it; and (5) Kidd will *give* cocaine to someone “if [they] do ask [him] for it.” Kidd’s conduct is consistent with the statutory definition of selling ten or more grams of cocaine because “sell” means “(1) to *sell, give away, barter, deliver, exchange, distribute or dispose* of to another . . . or . . . to possess

with intent to perform an act listed in clause (1).” *See id.* (emphasis added). Kidd fails to show that his guilty plea to second-degree controlled-substance sale is inaccurate.

Affirmed.