

*This opinion is nonprecedential except as provided by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
A23-0054**

State of Minnesota,
Respondent,

vs.

Joel Armen Underwood, III,
Appellant.

**Filed January 16, 2024
Affirmed
Larson, Judge**

Scott County District Court
File No. 70-CR-22-4094

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

Ronald Hovevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

In this direct appeal from his conviction and appeal from the denial of a petition for postconviction relief, appellant Joel Armen Underwood argues his conviction violated due process and that he entered an inaccurate and unintelligent plea. We affirm.

FACTS

In 1999, a Dakota County district court convicted Underwood of third-degree assault—a crime of violence—and placed him on probation. *See* Minn. Stat. § 624.712, subd. 5 (1996)¹ (defining “crime of violence” to include third-degree assault). In 2000, the district court discharged Underwood from probation and issued an order that restored all his “civil rights” and “full citizenship” (the discharge order). The discharge order, correctly stating the law at the time, prohibited Underwood from possessing a firearm “until [ten] years” after the court restored his civil rights because he committed a crime of violence. *See* Minn. Stat. § 624.713, subd. 1(b) (2000). Three years later, the Minnesota legislature amended the statute to replace the ten-year ban with a lifetime ban for individuals who commit a crime of violence. *See* 2003 Minn. Laws, ch. 28, art. 3, §§ 8, at 293-94; 10, at 296.

In May 2021, respondent State of Minnesota charged Underwood in Anoka County with unlawful firearm possession under Minn. Stat. § 624.713, subd. 1(2) (2020), based on his 1999 third-degree-assault conviction. About 10 months later, law-enforcement officers in Scott County found Underwood with a handgun. The state again charged Underwood with unlawful firearm possession under Minn. Stat. § 624.713, subd. 1(2).

In April 2022, Underwood pleaded guilty to the Scott County charge. During his plea hearing, the prosecutor asked Underwood whether he understood: (1) the 1999 third-

¹ We note that the definition of “crime of violence” continued to include third-degree assault at the time Underwood was accused of firearm possession in March 2022 in Scott County. *See* Minn. Stat. § 624.712, subd. 5 (2020).

degree-assault conviction was a crime of violence and (2) that his conviction made it unlawful for him to possess a firearm. Underwood responded that he did “understand that,” but then said, “at the time [he] did everything [he] was told” and that “[he] thought it would be dropped to a—like a gross misdemeanor.” Underwood later pleaded guilty to the Anoka County charge as well.

Underwood directly appealed his Scott County conviction. After filing his appeal, Underwood discovered a copy of the discharge order from 2000. We then granted Underwood’s motion to stay his appeal, allowing Underwood to petition for postconviction relief so the postconviction court could consider the import of the discharge order.

In his postconviction petition, Underwood argued that due process prohibited his conviction because the discharge order stated that he would regain his right to possess a firearm after ten years. The postconviction court rejected Underwood’s petition, reasoning, in part, that Underwood knew he was ineligible to possess a firearm after the state charged him in Anoka County, which occurred before his conduct in Scott County. This appeal follows.

DECISION

Underwood challenges both his conviction in Scott County and the postconviction court’s decision to deny his petition for postconviction relief. Underwood argues: (1) his conviction for unlawful firearm possession violated due process because, in 2000, the district court informed him in the discharge order that he could possess a firearm after ten years and (2) he did not enter an accurate and intelligent plea. We address Underwood’s arguments in turn.

I.

Underwood argues that his conviction for unlawful firearm possession violated due process and, therefore, the postconviction court abused its discretion when it denied his petition for postconviction relief. We review a decision to deny postconviction relief for an abuse of discretion. *Eason v. State*, 950 N.W.2d 258, 263 (Minn. 2020). An abuse of discretion means the postconviction court’s decision was based “on an erroneous view of the law” or was “against logic and the facts in the record.” *Id.* at 263-64 (quotation omitted). To determine whether a postconviction court abused its discretion, we review “legal conclusions de novo” and factual findings for clear error. *Id.* at 264.

Both the federal and state constitutions prohibit the government from denying “life, liberty, or property” absent due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. The U.S. Supreme Court has held that due process prohibits the government from affirmatively misleading people about their legal rights and then punishing them for exercising those legal rights. *Raley v. Ohio*, 360 U.S. 423, 425-26, 437-39 (1959); *Cox v. Louisiana*, 379 U.S. 559, 571 (1965). We recognize the same due-process protections under the Minnesota Constitution. *See Whitten v. State*, 690 N.W.2d 561, 565 (Minn. App. 2005) (citing *State v. White*, 464 N.W.2d 585, 590 (Minn. App. 1990), *rev. denied* (Minn. Mar. 15, 1991)).

Underwood relies on *Whitten* to argue that his conviction under Minn. Stat. § 624.713 violated due process because the district court informed him in the discharge order that he was eligible to possess a firearm after ten years. We disagree.

Under section 624.713, a person cannot possess a firearm if they receive a conviction for a violent crime. Minn. Stat. § 624.713, subd. 1(2). In *Whitten*, we established that, when a district court affirmatively misstates to a defendant that their right to possess a firearm is restored, a conviction for unlawful possession violates due process. 690 N.W.2d at 565-66. However, in *State v. Linville*, we concluded that, once the state corrects the misstatement, a defense under *Whitten* is no longer available. 755 N.W.2d 314, 316 (Minn. App. 2008), *rev. denied* (Minn. Nov. 18, 2008). There, we reasoned that, when the state had previously charged and arraigned a defendant for illegal possession of a firearm, the state “clearly communicated to [him] that he was ineligible to possess firearms.” *Id.* As a result, *Whitten* did not provide a valid defense against a subsequent charge for unlawful firearm possession. *Id.*

Similarly here, the state informed Underwood that he was ineligible to possess a firearm when it charged him in Anoka County. By bringing this charge, the state clearly communicated to Underwood that he was ineligible to possess a firearm. Thus, ten months later when officers arrested Underwood for possessing a second firearm in Scott County, a defense under *Whitten* based on the discharge order was no longer available to him.

Underwood argues *Linville* is distinguishable. First, Underwood notes that in *Linville*, after the defendant posted bond for his first unlawful-firearm-possession charge, his release order stated that he could not possess any firearms. *Id.* at 315. Second, Underwood observes that the defendant in *Linville* successfully challenged his initial charge on due-process grounds. *Id.* We disagree with Underwood that these distinctions change the analysis. In *Linville*, we concluded the defendant’s arraignment and receipt of

his complaint corrected the earlier misstatement, not his release order or his successful due-process challenge. *See id.* at 316. Here, likewise, the state corrected any misstatement in the discharge order when it charged Underwood with unlawful firearm possession in Anoka County. A *Whitten* due-process challenge was not available for Underwood's subsequent Scott County charge. Therefore, the district court did not abuse its discretion when it denied Underwood's petition for postconviction relief.

II.

Underwood argues on direct appeal that he should be allowed to withdraw his guilty plea on constitutional grounds. An appellant may challenge a guilty plea's validity in the first instance on direct appeal. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). We review whether a defendant entered a valid guilty plea de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). If a defendant entered an invalid guilty plea, we reverse and remand for the district court to allow the defendant to withdraw their guilty plea. *State v. Davenport*, 948 N.W.2d 176, 181 (Minn. App. 2020).

"To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Raleigh*, 778 N.W.2d at 94 (citing *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)). "To be accurate, a plea must be established on a proper factual basis." *Id.* The record must "support[] the conclusion that the defendant actually committed an offense at least as serious as the crime to which [the defendant] is pleading guilty." *State v. Trott*, 338 N.W.2d 248, 251-52 (Minn. 1983). Voluntariness refers to "what the parties reasonably understood to be the terms of the plea agreement" and whether the defendant pleaded "guilty due to improper pressure or coercion." *Raleigh*, 778 N.W.2d at 96.

Intelligence “ensures that a defendant underst[ood] the charges against him, the rights he [waived], and the consequences of his plea.” *Id.*

Underwood first argues that he is entitled to withdraw his guilty plea because it was inaccurate. Underwood contends his plea was inaccurate because it lacked a factual basis to establish the mens rea element that he knew his firearm possession was unlawful. For support, Underwood points to *Rehaif v. United States*, in which the U.S. Supreme Court interpreted a federal statutory scheme—barring certain individuals from firearm possession—to require proof that the defendant knew their possession was unlawful at the time of possession. *See* 139 S. Ct. 2191, 2194-98 (2019) (citing 18 U.S.C. §§ 922(g), 924(a)(2)).

The statute at issue in *Rehaif* is distinguishable from section 624.713. First, unlike the statute in *Rehaif*, section 624.713 does not explicitly include a mens rea element in the text. *Compare Rehaif*, 139 S. Ct. at 2195 (“‘Whoever knowingly violates’ certain subsections . . . ‘shall be’ subject to penalties of up to [ten] years’ imprisonment.” (alteration omitted) (quoting 18 U.S.C. § 924(a)(2))), *with* Minn. Stat. § 624.713, subds. 1(2), 2(b) (providing that those not entitled to possess firearms include “a person who has been convicted of . . . a crime of violence” and that such persons who possess firearms are “guilty of a felony”). And to the extent Minnesota courts have inferred a mens rea element in section 624.713, they have required a defendant to knowingly exercise dominion over a firearm, not to knowingly violate the law. *See State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017); *In re Welfare of S.J.J.*, 755 N.W.2d 316, 318 (Minn. App. 2008).

Moreover, although a district court must inform defendants convicted of a crime of violence that they cannot possess firearms, a district court's failure to inform a defendant "does not affect the applicability of the . . . possession prohibition or the felony penalty." Minn. Stat. § 624.713, subd. 3(a). Thus, the legislature did not intend to require the state to prove that Underwood knew he was ineligible. For these reasons, Underwood failed to show that his guilty plea was inaccurate.²

Underwood also argues that his plea was unintelligent because he reasonably believed that he could possess a firearm after ten years. But to have an intelligent plea, a defendant need only understand the charges, his waived rights, and the consequences of the plea. *See Raleigh*, 778 N.W.2d at 96. Here, the record shows Underwood acknowledged that he understood the charges, committed the acts that constituted the offense, understood the consequences of his plea, and waived his rights. Specifically, Underwood stated that he understood his third-degree assault conviction made him ineligible to possess a firearm and he admitted to possessing the firearm. Underwood failed to show his guilty plea was unintelligent.

Because he entered a constitutionally valid guilty plea, Underwood is not entitled to withdraw his guilty plea.

Affirmed.

² Two nonprecedential opinions from this court also reject the argument Underwood presents. *See State v. Mitchell*, No. A22-1475, 2023 WL 4167862, at *1-2 (Minn. App. June 26, 2023), *rev. denied* (Minn. Oct. 17, 2023); *Bo v. State*, No. A20-0497, 2020 WL 6266353, at *2-3 (Minn. App. Oct. 26, 2020). We cite these nonprecedential opinions for their persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).