

*This opinion is nonprecedential except as provided by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
A24-0294**

State of Minnesota,
Respondent,

vs.

DaJohn Cortez Yarborough,
Appellant.

**Filed March 31, 2025
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-22-11140

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

Mary F. Moriarty, Hennepin County Attorney, Matthew D. Hough, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from a judgment of conviction for second-degree intentional murder, appellant DaJohn Cortez Yarborough argues that his guilty plea was invalid because, during the plea colloquy, he negated having the intent to kill the victim and this

negation was never cured. In a pro se supplemental brief, Yarborough argues that ineffective assistance from counsel affected the outcome of the plea process. We conclude that, even if Yarborough negated the element of intent, his plea was rehabilitated and, accordingly, the plea was valid. We decline to reach the merits of Yarborough's ineffective-assistance-of-counsel claim because the record requires factual development, and we preserve the issue for postconviction review. We affirm.

FACTS

The following facts are drawn from the criminal complaint, Yarborough's plea agreement, and the plea-hearing transcript.

In April 2022, a man was shot multiple times outside of a Minneapolis apartment building and died after being transported to a hospital. Respondent State of Minnesota charged Yarborough with second-degree intentional murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2020), and unlawful possession of a firearm, in violation of Minn. Stat. § 624.713, subd. 1(2) (2020). Pursuant to a plea agreement, Yarborough agreed to plead guilty to second-degree intentional murder and the state agreed to dismiss the firearm charge and not to seek an indictment for first-degree intentional murder. The agreement also provided that the state would seek a 480-month prison sentence.

A plea hearing was held, during which Yarborough's attorney confirmed that Yarborough understood that, by entering a guilty plea, he was waiving certain rights. The prosecutor then began to solicit from Yarborough the factual basis for the plea. Yarborough acknowledged that, while driving near an intersection in Minneapolis, he saw a man walking toward an apartment building; that he got out of the car and approached the man

on foot; and that, from a few yards away, he shot at the man numerous times. When the prosecutor asked Yarborough whether he intended to kill the man, the following exchange occurred:

PROSECUTOR: And was it your intention, in firing those shots at that man, to kill him?

YARBOROUGH: No. But -- is this like -- I thought this was a plea agreement. I didn't know we had to do all this, like, answer questions and --

At that point, Yarborough's attorney intervened:

DEFENSE COUNSEL: One of the things you have to do when you enter a plea is lay, what they call, a factual basis.

YARBOROUGH: Okay.

DEFENSE COUNSEL: There's two parts to a plea: There's a waiver of your rights, which we did. And then the judge can't accept the plea from anybody who says they're innocent, and has to have a factual basis to do so. So one of the elements in this is intent.

YARBOROUGH: Okay.

DEFENSE COUNSEL: And shoot with intent to kill. And it's -- and it's not -- doesn't make it any worse or better, these are just the facts. So is it true, on this particular night, that you shot at the decedent with the intention --

YARBOROUGH: Yeah.

DEFENSE COUNSEL: -- to --

YARBOROUGH: The --

DEFENSE COUNSEL: -- kill him?

YARBOROUGH: She can proceed. Yeah. The prosecutor.

The prosecutor resumed questioning Yarborough:

PROSECUTOR: All right. Mr. Yarborough, you fired the gun multiple times at that man; is that right?

YARBOROUGH: Yes.

PROSECUTOR: Okay. And in doing so, was it your intent to kill him?

YARBOROUGH: Yes.

PROSECUTOR: And did you know that, by shooting at him numerous times, you would kill him?

YARBOROUGH: Yes.

The district court accepted the plea and sentenced Yarborough to 480 months in prison.

This appeal follows.

DECISION

I. To the extent that Yarborough negated the element of intent, his negation was properly cured.

The law does not afford a criminal defendant an “absolute right to withdraw a guilty plea after entering it.” *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). A defendant may, however, challenge the constitutional validity of a plea, including for the first time on direct appeal. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). The burden of showing that a plea was invalid rests with the defendant. *Raleigh*, 778 N.W.2d at 94. “Assessing the validity of a plea presents a question of law that [appellate courts] review de novo.” *Id.*

“To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Id.* At issue in this case is the accuracy of Yarborough’s plea. For a plea to be

accurate, “[a] proper factual basis must be established.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). The factual-basis requirement ensures that the defendant does not plead guilty to an offense for which it would be impossible to secure a conviction had the defendant asserted his or her right to trial. *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016). Put differently, “[t]he factual-basis requirement is satisfied if the record contains a showing that there is credible evidence available which would support a jury verdict that [the] defendant is guilty of at least as great a crime as that to which he pled guilty.” *Id.* (quotation omitted). A factual basis is generally “established by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime.” *Ecker*, 524 N.W.2d at 716.

Pertinent to this case, a plea’s 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). But a negation does not invalidate a guilty plea if “the defendant subsequently withdraws or corrects the statement, or the guilty plea is otherwise rehabilitated.” *State v. Jones*, 7 N.W.3d 391, 396 (Minn. 2024).

To convict Yarborough of second-degree intentional murder, the state had to prove that he “cause[d] the death of [the victim] *with intent to effect the death of [the victim] or another.*” Minn. Stat. § 609.19, subd. 1(1) (emphasis added); *see State v. Ewing*, 84 N.W.2d 904, 909 (Minn. 1957) (“In order to warrant a conviction, the state is required to establish by proof beyond a reasonable doubt all of the essential elements of the crime with which the defendant is charged in the indictment.”). Yarborough argues that, because he negated

having the intent to kill the victim during the plea colloquy and his negation was never cured, his plea is inaccurate and thus invalid.

When the prosecutor asked Yarborough whether it was his intention to kill the victim, he responded, “No. But -- is this like -- I thought this was a plea agreement. I didn’t know we had to do all this, like, answer questions” Yarborough asserts that he negated the intent to kill when he stated, “No.” The state argues that, in context, Yarborough was simply taking issue with having to answer questions from the prosecutor about his state of mind. We assume without deciding that Yarborough negated the intent element and turn our focus to whether this negation was cured.

In arguing that the negation was not cured, Yarborough relies heavily on the supreme court’s recent decision in *Jones*. There, the defendant pleaded guilty to third-degree criminal sexual conduct using force. *Jones*, 7 N.W.3d at 393. During the plea hearing, the prosecutor asked the defendant whether he understood that the conviction could enhance future charges against him. *Id.* at 394. In response, the defendant stated, “I was going to fight this case cuz I’m not scared of this case *and I never raped my baby momma*, so it will never happen again.” *Id.* Neither the judge, the prosecutor, nor the defense attorney addressed this statement. *Id.* The defense attorney then elicited the factual basis for the plea using exclusively leading questions. *Id.* Again, there was no follow up as to Jones’s previous contradictory assertion. *Id.* at 395. The district court accepted the plea. *Id.*

The supreme court reversed the defendant’s conviction and allowed him to withdraw his plea, concluding that the plea was not accurate because the defendant “made

a statement at the plea hearing essentially negating an element of the charged offense, defense counsel only asked leading questions to attempt to rehabilitate [the defendant's] plea, [the defendant] did not withdraw or correct the statement on the record, and the factual basis for the plea was not sufficiently established by other means.” *Id.* at 399.

In reaching that conclusion, the *Jones* court compared the case to *Nelson*, 880 N.W.2d 852, in which it upheld the defendant's plea. *Id.* at 398. *Nelson* involved a challenge to a guilty plea to first-degree premeditated murder stemming from a stabbing. 880 N.W.2d at 853-54. During the plea colloquy, the defendant initially did not admit to having the intent to kill the victim, stating that he “wasn’t sure” whether the victim would die from the stab wounds, that his intention was “just to get her hurt,” that he “just lashed out irrationally,” and that the stabbing “just happened.” *Id.* at 855. The district court paused the proceedings and informed the attorneys that the factual basis was on “shaky ground.” *Id.* at 856. The defendant's attorney then took the defendant to a private room for a discussion. *Id.* Questioning later resumed, during which the district court asked the defendant through a leading question whether he had intended to kill the victim. *Id.* The defendant answered in the affirmative, and the district court accepted the plea. *Id.* The supreme court concluded that an adequate factual basis supported the plea. *Id.* at 861.

The *Jones* court determined that *Nelson* was distinguishable because, unlike in *Jones*, the district court in *Nelson* paused proceedings immediately after the defendant negated the intent element; the defendant's attorney had a private discussion with him during the recess; and the defendant was asked leading questions only at the end of the

hearing and previously had an opportunity to explain, in his own words, his plan to stab the victim. 7 N.W.3d at 398.

Comparing *Jones* and *Nelson* to this case, we conclude that Yarborough's negation was cured and the plea was accurate. Unlike in *Jones* and like in *Nelson*, the proceedings here were paused after Yarborough negated intent, at which point Yarborough's attorney stepped in to clarify Yarborough's statement. During an exchange with Yarborough, Yarborough's attorney explained the purpose of laying a factual basis and the reason why the prosecutor asked Yarborough about intent. Although Yarborough notes that, unlike in *Nelson*, his attorney did not have a private conversation with him, we do not find this difference to be material. Indeed, we find it helpful that this conversation occurred on the record because it allows us to review what was said to Yarborough after he negated intent. After his attorney explained the purpose of the prosecutor's questions, Yarborough, on his own initiative, allowed the prosecutor to resume questioning him, stating, "She can proceed. Yeah. The prosecutor." Yarborough then agreed that he fired the gun at the victim multiple times; that, in doing so, it was his intent to kill him; and that he knew that, by shooting at the victim numerous times, he would kill him.

Yarborough points out, though, that both the rehabilitation of the plea and the earlier testimony establishing the factual basis were accomplished via leading questions. Although "leading questions are discouraged and should be used sparingly in guilty plea hearings," "the use of leading questions will not on its own invalidate a guilty plea." *Jones*, 7 N.W.3d at 398 & n.5. Because Yarborough's attorney intervened to explain the process after Yarborough negated intent and Yarborough then initiated the prosecutor's continued

questioning, during which he expressly admitted that he shot with the intent to kill the victim, we conclude that Yarborough's negation was cured.

II. We decline to address the merits of Yarborough's ineffective-assistance-of-counsel claim.

In his pro se supplemental brief, Yarborough seeks to withdraw his guilty plea, arguing that ineffective assistance of counsel affected the outcome of the plea process. Yarborough raises several arguments in support of this claim: (1) his attorney did not respond to Yarborough's multiple inquiries about trial strategy; (2) his attorney repeatedly pressured Yarborough to accept the state's plea offer; (3) his attorney accepted the plea without Yarborough's consent; (4) and his attorney failed to adequately investigate or advocate for him by not contacting his codefendant's attorney to investigate potentially exculpatory information, by not apprising himself of Yarborough's criminal-history score, by failing to investigate mitigating circumstances in Yarborough's background, and by failing to engage an expert on fetal-alcohol syndrome.

To prevail on an ineffective-assistance-of-counsel claim, a criminal defendant must show that "(1) his trial counsel's representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different." *State v. Jones*, 977 N.W.2d 177, 193 (Minn. 2022) (quotation omitted); *see also Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

"When a claim of ineffective assistance of trial counsel can be determined on the basis of the trial record, the claim must be brought on direct appeal" or the claim will later

be procedurally barred under the *Knaffla* rule. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013); *see also State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976) (holding that “claims known but not raised” on direct appeal “will not be considered upon a subsequent petition for postconviction relief”). But, when a “claim requires examination of evidence outside the trial record or additional fact-finding,” the claim is better brought in a postconviction proceeding, rather than on direct appeal. *Andersen*, 830 N.W.2d at 10.

Because it is unclear whether Yarborough’s ineffective-assistance-of-counsel claim can be determined based on the existing record, we decline to address the merits of this claim and we preserve Yarborough’s right to pursue this claim in a separate postconviction proceeding. *See State v. Jackson*, 726 N.W.2d 454, 463 (Minn. 2007) (denying defendant’s ineffective-assistance-of-counsel claim when the claim required examination of facts not in the record and preserving defendant’s right to raise them in a postconviction proceeding).

Affirmed.