

*This opinion is nonprecedential except as provided by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
A24-0806**

Connor Jerome Eischens, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 23, 2024
Affirmed
Wheelock, Judge**

Scott County District Court
File No. 70-CR-21-15144

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

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

Ronald Hovevar, Scott County Attorney, Elisabeth M. Johnson, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this appeal from the district court's order denying postconviction relief, appellant argues that (1) his guilty plea lacked a sufficient factual basis because it did not establish that he committed second-degree assault and (2) the district court abused its discretion by

failing to address his durational-departure argument in its order denying postconviction relief. We affirm.

FACTS

We take the following facts from the criminal complaint and appellate record. In October 2021, appellant Connor Jerome Eischens and victim A.G. got into an altercation outside of a gas station. Eischens was driving a motor vehicle; A.G. was driving a motorcycle. The two vehicles almost collided near the parking lot, and the “close call” led to an argument during which Eischens grabbed a pistol BB gun from his vehicle. He pointed it in the general direction of A.G., causing A.G. to fear that he would be shot. As A.G. attempted to flee the area on his motorcycle, he crashed and sustained injuries. Respondent State of Minnesota charged Eischens with second-degree assault causing fear with a dangerous weapon in violation of Minn. Stat. § 609.222, subd. 1 (2020).

The district court held a plea hearing at which Eischens pleaded guilty to second-degree assault. He provided the following factual basis for the plea:

EISCHENS’S COUNSEL: And at some point did you retrieve a pistol BB gun from your vehicle?

EISCHENS: Yes.

EISCHENS’S COUNSEL: And you and I had a chance to discuss how Minnesota law would treat such an item; is that correct?

EISCHENS: Correct.

EISCHENS’S COUNSEL: And that item would be considered a dangerous weapon under Minnesota law; is that correct?

EISCHENS: Yes.

EISCHENS’S COUNSEL: And at some point during that argument did you point that BB gun pistol in the general direction of the motorcyclist?

EISCHENS: Yes.

EISCHENS’S COUNSEL: And in doing so was it your intent to cause that individual to be fearful that they were going to suffer some measure of bodily harm or serious injury?

EISCHENS: Yes.

The district court then accepted his plea.

At his sentencing hearing, Eischens moved for downward dispositional and durational departures. Eischens argued that his remorse, acceptance of responsibility, community support, struggles with mental health and substance abuse, and motivation to change justified the requested departures. The district court denied the motions, stating:

Mr. Eischens, I don’t doubt that you wish to turn things around, and that’s only to your benefit obviously. The difficulty the Court has here is we have somebody who is arguably using, arguably having mental health struggles, with a firearm in a vehicle. That’s just over the top, and that—that behavior to this Court is so concerning that I cannot find enough of a nexus between your chemical use disorder and problems and the possession and use of that firearm. . . . I mean, had you, you know, written bad checks, had you done things to get money for drugs, that would be different, but this behavior isn’t directly related to drug use in my mind, or alcohol. So that’s the hardest part for this Court because you are making some great changes in your life, but I don’t think they address why we are here.

The district court denied Eischens’s motions and sentenced him to 39 months in prison—a sentence squarely within the Minnesota Sentencing Guidelines’ presumptive range for his offense. Eischens did not directly appeal his conviction or sentence.

Eischens filed a petition for postconviction relief in January 2024, arguing that (1) his guilty plea was inaccurate because the factual basis presented in the plea colloquy failed to establish that he committed second-degree assault and (2) the district court abused its discretion when it failed to address Eischens’s argument for a downward durational and

dispositional departures. The district court denied his petition, concluding that adequate facts supported Eischens's guilty plea because the pistol BB gun "was transformed from a recreational device into a dangerous weapon," and reiterated the reasons for which it had denied Eischens's motion for a downward dispositional departure.

Eischens appeals.

DECISION

On appeal to this court, Eischens asserts the same two arguments from his postconviction petition to the district court. First, he argues that his guilty plea was inaccurate because the factual basis elicited in the plea colloquy failed to establish that he committed second-degree assault and, thus, that entering a judgment of conviction was an error. Second, he argues that the district court abused its discretion by not explaining its reasons for denying his motion for a downward durational departure. We address each argument in turn.

I. Eischens's plea colloquy provided sufficient facts to support the district court's determination that he committed assault with a dangerous weapon.

Appellate courts review a district court's denial of a postconviction petition for an abuse of discretion. *Sanchez v. State*, 890 N.W.2d 716, 719-20 (Minn. 2017). Appellate courts review findings of fact for clear error, *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012), and legal conclusions de novo, *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). The validity of a guilty plea is a question of law that appellate courts review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

A defendant must be allowed to withdraw their guilty plea at any time if they prove that withdrawal “is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1; *accord State v. Ecker*, 524 N.W.2d 712, 715-16 (Minn. 1994). A manifest injustice exists when a guilty plea is not valid. *Raleigh*, 778 N.W.2d at 94. The defendant bears the burden of showing that their plea was not valid. *Id.* A valid guilty plea is intelligent, voluntary, and accurate. *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003). The accuracy requirement protects a defendant from pleading “to a more serious offense than he could be convicted of were he to insist on his right to trial.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). Accuracy requires “sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *Kelsey v. State*, 214 N.W.2d 236, 237 (Minn. 1974). “To be accurate, a plea must be established on a proper factual basis.” *Raleigh*, 778 N.W.2d at 94. In other words, the district court “must make certain that facts exist from which the defendant’s guilt of the crime charged can be reasonably inferred.” *Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016) (quotation omitted).

Eischens pleaded guilty to second-degree assault, which is an assault with a “dangerous weapon.” Minn. Stat. § 609.222 (2020). Minnesota law defines “assault” as either “an act done with intent to cause fear in another of immediate bodily harm or death” or the intentional infliction of bodily harm upon another. Minn. Stat. § 609.02, subd. 10 (2020). An assault that is intended to cause fear in another is a specific-intent crime. *State v. Fleck*, 810 N.W.2d 303, 312 (Minn. 2012). Minnesota Statutes section 609.02, subdivision 6, defines “dangerous weapon” as (1) “any firearm,” (2) “any device designed

as a weapon and capable of producing death or great bodily harm,” or (3) “any . . . other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.” Minn. Stat. § 609.02, subd. 6 (2020). “Great bodily harm” is defined as “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” *Id.*, subd. 8 (2020).

A. Eischens’s plea colloquy supports the district court’s determination that he threatened A.G. with a dangerous weapon.

Eischens argues that his plea colloquy did not accurately establish that his pistol BB gun satisfied the dangerous-weapon element of second-degree assault. He also argues that, because his plea colloquy did not show that his pistol BB gun was not actually an “airsoft gun,” it cannot support a conclusion that his pistol BB gun was a dangerous weapon. The state argues that Eischens’s plea colloquy supports a conclusion that his pistol BB gun was a dangerous weapon within the statutory definition.

A “BB” is a projectile made to “pierce and harm the objects” it strikes. *State v. Coquette*, 601 N.W.2d 443, 446 (Minn. App. 1999), *rev. denied* (Minn. Dec. 14, 1999). The loss of a tooth or an eye is great bodily harm. *State v. Bridgeforth*, 357 N.W.2d 393, 394 (Minn. App. 1984) (loss of tooth), *rev. denied* (Minn. Feb. 6, 1985); *State v. Hysell*, 449 N.W.2d 741, 744 (Minn. App. 1990) (loss of eye), *rev. denied* (Minn. Mar. 15, 1990). And in a persuasive nonprecedential opinion, we have concluded that “BB pellets, due to the force with which they strike an object can cause loss of a tooth or an eye. Therefore, a

BB gun is capable of producing great bodily harm.” *State v. Donson*, No. A16-0306, 2017 WL 393424, at *2 (Minn. App. Jan. 30, 2017), *rev. denied* (Minn. Apr. 26, 2017).¹ At the plea hearing, Eischens agreed that he “retrieve[d] a pistol BB gun from [his] vehicle,” that he pointed it “in the general direction of” A.G., and that he discussed “how Minnesota law would treat” this pistol BB gun as “a dangerous weapon with his attorney.” These facts support a reasonable inference that Eischens threatened A.G. with a dangerous weapon because BB guns are weapons that can inflict great bodily harm. Regardless of the district court’s determination that Eischens’s conduct “transformed [his pistol BB gun] from a recreational device into a dangerous weapon,” Eischens’s admission provided sufficient facts to support a conclusion that his pistol BB gun was a dangerous weapon because it was a device designed as a weapon and capable of producing great bodily harm or death.²

Eischens cites *Hayes v. State* to argue that his plea colloquy about a pistol BB gun did not establish that he had a dangerous weapon. No. A18-0592, 2019 WL 273117, at *2

¹ “Nonprecedential opinions . . . may be cited as persuasive authority.” Minn. R. Civ. App. P. 136.01, subd. 1(c).

² The parties dispute whether *State v. Grunig*, which permits an appellate court to affirm based on an alternative *theory* under certain conditions, must apply to our conclusion that Eischens’s guilty plea is accurate. 660 N.W.2d 134 (Minn. 2003). In this case, Eischens’s guilty plea demonstrated his knowledge that his pistol BB gun was a dangerous weapon under an alternative *definition* in Minn. Stat. § 609.02, subd. 6. Because guilty pleas must be accurate to prevent defendants from pleading “to a more serious offense than [they] could be convicted of were [they] to insist on [their] right to trial,” *Trott*, 338 N.W.2d at 251, and Eischens’s plea colloquy accurately establishes a factual basis for the offense of which he could have been convicted had he asserted his right to trial, we do not need to apply *Grunig*.

(Minn. App. Jan. 22, 2019). In *Hayes*, we determined that a jury instruction stating that a BB gun was a firearm, and thus a dangerous weapon, constituted grounds for reversal. *Id.* at *1-3. Eischens’s argument is unpersuasive because *Hayes* is not binding precedent and it is inapposite. The defendant in *Hayes* received a new trial because the jury instructions deprived him of the right to have a jury determine every element of his second-degree assault charge. *Id.* Here, the issue is whether Eischens’s plea colloquy provided the district court with sufficient facts for it to reasonably infer that he threatened A.G. with a dangerous weapon. Therefore, Eischens’s comparison to *Hayes* is not persuasive.

We are also not persuaded by Eischens’s argument regarding an absence of evidence showing that his pistol BB gun was not an “airsoft gun.” Eischens does not cite any Minnesota law supporting a delineation between airsoft guns and BB guns. Thus, we reject this argument.

Because the district court did not err when it determined that Eischens provided a sufficient factual basis to support the conclusion that his pistol BB gun was a dangerous weapon, we turn to Eischens’s next argument.

B. Eischens’s plea colloquy supports the district court’s determination that he intended to cause A.G. fear of immediate bodily harm or death.

Eischens argues that the district court erred by denying his petition because his plea colloquy did not establish that he intended to cause A.G. fear of immediate bodily harm or death. The state argues that Eischens’s plea colloquy supports a conclusion that he intended to cause A.G. fear of immediate bodily harm or death.

An assault includes “an act done with intent to cause fear in another of immediate bodily harm or death.” Minn. Stat. § 609.02, subd. 10(1). “‘With intent to’ . . . means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result.” *Id.*, subd. 9(4) (2020). A court may infer intent through “the idea that a person intends the natural consequences of his or her actions.” *Nelson*, 880 N.W.2d at 860 (quotation omitted). Minnesota courts have upheld guilty pleas in which the defendant was not questioned about intent, but the requisite intent was established by testimony about the surrounding facts and circumstances. *See, e.g., State v. Russell*, 236 N.W.2d 612, 613 (Minn. 1975) (“[Appellant’s] answers to questions by the prosecutor in this case disclose a factual basis for the plea even though no question was specifically directed to the element of intent to kill.”); *State v. Hopkins*, 198 N.W.2d 542, 542 (Minn. 1972) (“[Appellant’s] answers to questions by the prosecutor disclose a factual basis for the plea even though no question was specifically directed to the element of intent.”); *State v. Bye*, No. A12-0405, 2013 WL 141672, at *3 (Minn. App. Jan. 14, 2013) (concluding that a plea to second-degree assault was valid because, in addition to the appellant’s admission of intent, circumstances surrounding the appellant’s conduct established that the appellant intended to cause fear of immediate bodily harm), *rev. denied* (Minn. Mar. 19, 2013).

Eischens’s plea colloquy provided the district court with sufficient facts for it to reasonably infer that Eischens intended to cause A.G. fear of immediate bodily harm or death because his plea established that he intended “to cause [A.G.] to be fearful that [he was] going to suffer some measure of bodily harm or serious injury.” While this is

sufficient to support the intent element, Eischens's conduct independently demonstrates the requisite intent, too. Eischens drew a pistol and pointed it toward A.G. while they were having a dispute. The natural consequence of drawing a pistol—whether it is a firearm or a BB gun—on an adversary during a dispute is to cause the adversary fear of great bodily harm. Therefore, Eischens's conduct, to which he admitted, provides a second, independent basis for us to conclude that the district court had sufficient evidence to support his guilty plea. For these reasons, we conclude that Eischens's plea colloquy and conduct provided the district court with ample facts to support a conclusion that he intended to cause A.G. fear of immediate bodily harm or death.

Because Eischens testified that he produced and aimed a pistol BB gun in the direction of A.G. and we have concluded that BB guns are capable of great bodily harm, there was an accurate factual basis to support Eischens's guilty plea and the district court did not err in denying Eischens's postconviction petition requesting withdrawal of his guilty plea.

II. The district court did not abuse its discretion by failing to address Eischens's durational-departure argument in its order denying postconviction relief.

Eischens finally argues that we should remand this matter to the district court for express consideration of his durational-departure argument because the district court did not address it in its order denying postconviction relief. The state argues that the district court did not abuse its discretion and that we should affirm the court's order.

“The district court must order the presumptive sentence provided in the sentencing guidelines unless substantial and compelling circumstances warrant a departure.” *State v.*

Pegel, 795 N.W.2d 251, 253 (Minn. App. 2011) (quotation omitted). “Although the [district] court is required to give reasons for departure, an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.” *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985); *see State v. Musse*, 981 N.W.2d 216, 220 (Minn. App. 2022) (applying this aspect of *Van Ruler* to the denial of a durational-departure motion), *rev. denied* (Minn. Dec. 28, 2022).

The district court imposed a sentence within the applicable presumptive range and was therefore not required to give reasons for rejecting Eischens’s durational-departure argument. *See Van Ruler*, 378 N.W.2d at 80. Eischens cites *Gilbert v. State* to support his argument that we should remand this matter for consideration of his durational-departure argument. 2 N.W.3d 483 (Minn. 2024). In *Gilbert*, the issue was “what record, if any, the district court must make in determining whether a postconviction claim is procedurally barred under *Knaffla*.” *Id.* at 487 (citing *State v. Knaffla*, 243 N.W.2d 737, 741 Minn. 1976)). Eischens’s petition does not present this issue; therefore, we are not persuaded to apply *Gilbert* to this matter.

Because the district court imposed a sentence within the presumptive range, the district court did not err when it declined to address Eischens’s durational-departure argument expressly in its order denying postconviction relief.

Affirmed.