*This opinion is nonprecedential except as provided by*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**
**A24-1209**

State of Minnesota,
Respondent,

vs.

Shawn Henry Wellner,
Appellant.

**Filed July 21, 2025**
**Affirmed**
**Reyes, Judge**

Aitkin County District Court
File No. 01-CR-21-577

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

James P. Ratz, Aitkin County Attorney, Lisa Roggenkamp Rakotz, Assistant County Attorney, Aitkin, Minnesota (for respondent)

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

Considered and decided by Reyes, Presiding Judge; Cochran, Judge; and Halbrooks, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## NONPRECEDENTIAL OPINION

**REYES**, Judge

Appellant argues that he must be permitted to withdraw his guilty plea for failure to register a secondary address as a predatory offender. Appellant maintains that he is entitled to withdraw his plea under the manifest-injustice standard because his plea is inaccurate and under the fair-and-just standard because he received ineffective assistance of counsel. We affirm.

## FACTS

Respondent State of Minnesota charged appellant Shawn Henry Wellner with one count of felony failure to register a secondary address in violation of Minn. Stat. § 243.166, subd. (5)(a)(1) (2020).[1] According to the complaint, appellant was required to register as a predatory offender and had previously registered a primary address as required by statute. The complaint further alleges that an officer stopped at appellant's primary residence on Loon Avenue in Turner Township to complete a predatory-offender registration check on April 8, 2021. The officer did not make contact with appellant. The officer left his business card with a note informing appellant that he was listed as noncompliant with the Bureau of Criminal Apprehension (BCA). When the officer returned four days later, his business card was still in appellant's door. The officer returned to appellant's residence on May 1, May 5, May 13, May 26, and June 13, but did not locate appellant. Deputies in the sheriff's

[1] The district court dismissed Count I of the complaint.

office were told by members of the community that appellant had been living at another residence.

In August 2022, the state reached an agreement with appellant in which he would plead guilty to failing to register his secondary address. Later that month, the parties appeared for a plea hearing. Appellant testified that he understood the proceedings and that he had gone over the plea agreement with his counsel. When questioned by his counsel, appellant admitted that he (1) was required to register as a predatory offender; (2) had stayed at an address different from the primary address that he had previously registered from May 2021 to June 2021; and (3) knew that he was required to register that secondary address.

The district court accepted appellant's guilty plea. The district court ordered a presentence investigation and placed appellant on conditional release. It also required appellant to remain in the state, make his court appearances, and keep his counsel apprised of his whereabouts at all times. Appellant assured the district court that he would comply with the conditions of release, despite him being bound to a wheelchair.

Appellant failed to appear at his sentencing hearing in October 2022. Appellant's counsel at the time requested a continuance on behalf of appellant and conveyed that appellant had told his counsel that "he cut himself and needs a continuance." Appellant's counsel also told the district court that appellant missed multiple appointments at his counsel's office to review the presentence investigation report and that it was "unfortunate" because the state "offered [appellant] an opportunity to get on with his life and that hasn't happened." *Id*. The district court issued a body-only warrant at the state's request.

After being taken into custody on the warrant, appellant appeared for his sentencing hearing in May 2024. Appellant's newly appointed counsel asked the district court to allow him to withdraw his guilty plea due to ineffective assistance of counsel because appellant believed his counsel had been sanctioned by the board of professional responsibility for practicing law without a license. The district court denied appellant's motion because his counsel was licensed to practice at the time the district court accepted his guilty plea, and it found that his counsel "adequately advised" appellant at the plea hearing.

This appeal follows.

## DECISION

### I. The district court did not abuse its discretion by denying appellant's request to withdraw his guilty plea under the manifest-injustice standard because he entered an accurate plea.

Appellant challenges the accuracy of his plea because he contends that the factual basis did not establish that he "understood the law regarding registering secondary addresses at the time of the violation or whether he knowingly failed to follow the law." We disagree.

Once a defendant enters a guilty plea, they do not have an absolute right to withdraw it. *Shorter v. State*, 511 N.W.2d 743, 746 (Minn. 1994). But a defendant may withdraw a guilty plea when it "is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. "Manifest injustice occurs when a guilty plea is not accurate, voluntary, or intelligent." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). The accuracy requirement protects the defendant from pleading guilty to a charge more serious than one they could have been convicted of at trial. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn.

1994). For a guilty plea to be accurate, a "proper factual basis must be established." *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007).

A defendant may also withdraw a guilty plea before sentencing under the fair-and-just standard. *State v. Townsend*, 872 N.W.2d 758, 761 (Minn. App. 2015) (citing Minn. R. Crim. P. 15.05, subd. 1). "The fair and just standard requires district courts to give due consideration to two factors: (1) the reasons a defendant advances to support withdrawal and (2) prejudice granting the motion would cause the state given its reliance on the plea." *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010) (quotations omitted). Under either standard, the defendant "bears the burden of establishing the facts that support his claim that the guilty plea is invalid and advancing reasons to support withdrawal." *Id.* at 97. Appellate courts review the validity of a guilty plea de novo. *Barrow v. State*, 862 N.W.2d 686, 689 (Minn. 2015).

To be convicted under Minn. Stat. § 243.166, subd. 5(a), the state must show that a person who is required to register as a predatory offender and has been given notice "knows, or reasonably should know they are required to register" and "knowingly commits an act or fails to fulfill a requirement that violates any provision of this section." Minn. Stat. § 243.166, subd. 5(a). The requirements include providing law enforcement with their primary address and any secondary addresses. Minn. Stat. § 243.166, subd. 4(a) (2020). "Knowingly" is an adverb that modifies "violates." *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017). Under the plain language of the statute, the defendant must know that they had to register a secondary address, and the state must prove that the defendant knowingly failed to do so. *Id*. at 603-04.

At his plea hearing, appellant admitted that he knew that he had to register as a predatory offender and that he had to register a secondary address because he had lived there for more than five days. Although the state did not explicitly ask appellant if he knew that he had to register the secondary address within five days, *see* Minn. Stat. §243.166, subd. 4a(b) (2020), the state did ask appellant if he lived at another address from May 31 to June 16, 2021, which appellant admitted. Based on appellant's admissions, the district court could infer that he regularly stayed at a secondary address for more than five days and that he knew that he had to register his secondary address but failed to do so. *See Rosendahl v. State*, 955 N.W.2d 294, 299 (Minn. App. 2021) (stating that district court can draw inferences from facts admitted by defendant even if defendant does not verbalize an element of offense.).

Appellant attempts to analogize his case to *State v. Mikulak*, 903 N.W.2d at 600. In that case, the supreme court held that Mikulak, a predatory offender, did not knowingly violate the predatory-offender statute because he did not know that he was required to register within twenty-four hours of relocating. *Id.* at 605. At his plea hearing, Mikulak stated that he "assumed he had a week" to register. *Id.* The supreme court concluded that Mikulak's statement negated the knowledge requirement of Minn. Stat. § 243.166, subd. 5(a) (2017). "[A] 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) (quotation omitted). This case is distinguishable from *Mikulak*. Here, appellant never made a statement negating either knowledge requirement.

We conclude that appellant is not entitled to withdraw his guilty plea under the manifest-injustice standard because his plea is accurate.

**II. Appellant is not entitled to withdraw his guilty plea under the fair-and-just standard based on his claim of ineffective assistance of counsel.**

Appellant argues that the district court erred by denying his oral motion to withdraw his guilty plea because he received ineffective assistance of counsel. We are not persuaded.

To prove ineffective assistance of counsel, a defendant must demonstrate that "(1) his counsel's performance fell below an objective standard of reasonableness, and (2) that a reasonable probability exists that the outcome would have been different but for counsel's errors." *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013) (referencing two-part test articulated in *Strickland v. Washington*, 466 U.S. 668, 687 (1984) when analyzing ineffective-assistance-of-counsel claim.). We assume reasonable representation by counsel. *State v. Vang*, 847 N.W.2d 248, 266 (Minn. 2014). In reviewing the prejudice prong of the test, this court considers the totality of the evidence the parties presented to the fact-finder. *Andersen*, 830 N.W.2d at 10. Appellate courts review a claim of ineffective assistance of counsel de novo because it is a mixed question of fact and law. *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

First, appellant claims that his counsel's representation to the district court about his missed court appearances due to him cutting himself and him having car trouble "cast him in a bad light to the court" because his release was predicated in part on whether he advised his counsel of his whereabouts. However, his counsel, as an officer of the court, had a continuing duty of candor to the court. This obligation existed whether the district court required his counsel to disclose if appellant stayed in contact with him as a condition of his release. Moreover, his counsel's disclosure of appellant's inability to appear at the hearing and discuss the presentence investigation likely cast him in a positive light because it showed that appellant had been communicating with his attorney in compliance with the district court's order and helped justify his nonappearances due to his ambulatory and medical issues. Because appellant's counsel had an obligation to inform the district court about his compliance with the order, appellant has failed to show that his counsel's performance fell below the standard to warrant relief under *Strickland*.

Second, appellant appears to argue that his counsel's failure to ensure that his plea was accurate prejudiced him. The record shows that his first counsel asked appellant several questions to clarify some of his responses to ensure that his plea was accurate. Notably, appellant's counsel asked appellant several times during the timeframe referenced by the state whether he lived at another residence, and appellant admitted that he did not identify the other residence, despite having an affirmative duty to do so. Accordingly, the district court did not abuse its discretion by denying appellant's presentence plea-withdrawal motion because appellant did not meet his burden to establish a fair-and-just reason for withdrawal.

**Affirmed.**