

*This opinion is nonprecedential except as provided by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
A24-1569**

State of Minnesota,
Respondent,

vs.

Thomas Jay Shern,
Appellant.

**Filed August 11, 2025
Affirmed
Wheelock, Judge**

Polk County District Court
File Nos. 60-CR-19-2061, 60-CR-20-744

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, First Assistant County Attorney,
Crookston, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Wheelock, Judge; and
Halbrooks, Judge.*

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

NONPRECEDENTIAL OPINION

WHEELLOCK, Judge

In this direct appeal from his judgments of conviction for third-degree possession of a controlled substance within a prohibited zone, fourth-degree driving while impaired, and failure to appear for a court proceeding, appellant seeks to withdraw his guilty pleas, arguing that his plea to the controlled-substance offense lacked an accurate factual basis and that all three of his pleas were not voluntary or intelligent. We affirm.

FACTS

On a dark evening in October 2019, appellant Thomas Jay Shern drove into East Grand Forks on a route that passed within 300 feet of a public park.¹ A law-enforcement officer noticed Shern's vehicle because it did not have functioning taillights. Upon further investigation, the officer discovered that Shern's vehicle registration had expired, and he stopped Shern for these violations.

While speaking with Shern, the officer observed indicia of intoxication. Because he knew that Shern previously had been arrested for a controlled-substance offense, the officer asked Shern whether he was on probation. After the officer confirmed that Shern was on probation, dispatch contacted Shern's probation agent, who authorized a test and search of Shern's person for controlled substances. During this search, the officer found Shern to be in possession of marijuana and methamphetamine. Shern's urine also tested positive for tetrahydrocannabinol (THC) and methamphetamine.

¹ We take the facts from the appellate record, including hearing transcripts and filings with the district court.

Respondent State of Minnesota charged Shern with third-degree possession of a controlled substance within a prohibited zone in violation of Minn. Stat. § 152.023, subd. 2(a)(6) (2018), and fourth-degree driving while impaired in violation of Minn. Stat. § 169A.20, subd. 1(7) (2018), with reference to Minn. Stat. § 169A.27, subd. 2 (2018). Because Shern later failed to attend an omnibus hearing for these charges, the state charged Shern with felony failure to appear for court in violation of Minn. Stat. § 609.49, subd. 1(a) (2018).

In April 2022, Shern pleaded guilty to third-degree possession of a controlled substance within a prohibited zone, fourth-degree driving while impaired, and failure to appear for court. Before Shern submitted his guilty pleas, the district court explained to Shern that, by pleading guilty, he was waiving certain rights. The district court then questioned Shern about his mental state and faculties under oath. In response, Shern affirmed that he was not under the influence of drugs or alcohol, that he was not under the care of a medical doctor or mental-health professional, that there was not “anything that would impair [his] ability to understand what’s going on here today,” that he had not been diagnosed with any medical illness or infirmity that would cause the district court concern about his ability to go forward with his plea, and that he had never “been diagnosed with any mental illness or emotional instability that would cause the Court to be concerned about [his] capacity.” Shern then pleaded guilty to all three charges.

During his plea hearing, Shern affirmed that he had reviewed the plea agreements with his attorney and that he understood the meaning of the proceeding. Shern also verified that he had reviewed the complaint charging him with third-degree controlled-substance

possession and fourth-degree driving while impaired and agreed that “the probable cause portion of that complaint [was] true and accurate to [his] knowledge.” After this, the prosecutor engaged Shern in the following colloquy with respect to charge for possession of a controlled substance:

PROSECUTOR: [O]n October 7th, 2019, were you traveling across Highway 2 from Grand Forks into East Grand Forks?

DEFENDANT: Yes.

....

PROSECUTOR: And were you on probation at that time?

DEFENDANT: Yes, sir.

PROSECUTOR: And do you have any reason to dispute that Officer [A.] contacted your probation agent and received permission to request a search of your vehicle?

DEFENDANT: No, I told him he could.

PROSECUTOR: Okay. And during that search of the vehicle, Officer [A.] discovered a cigarette pack with a small amount of what at the time was suspected to be marijuana, is that correct?

DEFENDANT: Yes, sir.

PROSECUTOR: And was that marijuana in the cigarette packet?

DEFENDANT: Yes, it was.

PROSECUTOR: And did Officer [A.] also discover . . .

....

PROSECUTOR: . . . a plastic bag with crystal chunks in it?

DEFENDANT: Yeah, there's a cellophane off a cigarette pack.

PROSECUTOR: That makes sense.

DEFENDANT: Yeah.

PROSECUTOR: And do you have any reason to dispute that Officer [A.] conducted a field test on the crystal-like chunks in

that bag and that field test came back positive for the presence of methamphetamine?

DEFENDANT: Ah, yeah. It really wasn't chunks though. It was like just dust in the bag. It was—you know.

PROSECUTOR: Okay. But you would agree that there was some amount of substance in there?

DEFENDANT: Yeah, there was residue in there, yes.

The plea colloquy later continued:

PROSECUTOR: Okay. Was the methamphetamine . . . yours?

DEFENDANT: Ah, yes.

PROSECUTOR: And do you have any reason to dispute that the crossing over the Kennedy Bridge would place your vehicle within 300 feet of Sherlock Park in East Grand Forks?

DEFENDANT: Yeah, right. Yeah, it does.

During the colloquy, Shern also provided a factual basis with respect to the driving-while-impaired charge. The district court received the complaint's probable-cause statement as a supplement to the factual basis for Shern's pleas and accepted Shern's pleas. Shern then pleaded guilty to failing to attend a hearing for the charges arising out of the traffic stop, and the district court accepted Shern's plea for that offense.

Having received Shern's guilty pleas, the district court then considered and granted Shern's request for a furlough to attend a family member's funeral. Shern failed to return from the furlough, and the district court issued a warrant for his arrest.

Shern appeared in district court much later, and the district court ordered that Shern remain in custody until his next hearing. In a later hearing, Shern asked the district court to order a competency evaluation pursuant to Minnesota Rule of Criminal Procedure 20.01 because he was "having little mental issues" and wanted "to take care of it" while he was

in court. The district court asked Shern’s attorney about this, who explained that there was “no doubt that [Shern is] competent.” Shern later discharged his attorney and represented himself at sentencing.

During his sentencing hearing, Shern made numerous statements alleging that his former public defender did not effectively represent him, that he has dementia, and that he did not understand the sentencing hearing. The district court found that Shern was “more than able to go forward with [sentencing],” revoked the previous stay of execution of Shern’s sentences, and committed Shern to the commissioner of corrections.

Shern appeals.

DECISION

Shern argues that he is entitled to withdraw his guilty pleas for third-degree possession of a controlled substance, fourth-degree driving while impaired, and failure to appear for a court proceeding because they were not valid. Specifically, Shern contends that his plea to the controlled-substance charge was not accurate and that all three of his pleas were not voluntary or intelligent. We address his arguments in that order.

To be valid, a guilty plea must be accurate, voluntary, and intelligent. *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003). 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). The defendant bears the burden of showing that their plea was not valid. *Id.* “Solemn declarations in open court carry a strong presumption of verity and subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal.” *Davis v. State*, 15 N.W.3d 635, 647 (Minn. 2025) (quotations omitted).

We first consider the accuracy requirement as it relates to Shern’s plea for third-degree possession of a controlled substance. The accuracy requirement “protect[s] a defendant from pleading guilty 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). “To be accurate, a plea must be established on a proper factual basis.” *Raleigh*, 778 N.W.2d at 94. A proper factual basis 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). 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). “[I]n determining the accuracy of a guilty plea, the reviewing court does not consider allegations in the complaint unless the truthfulness and accuracy of the allegations have been expressly admitted to by the defendant.” *Rosendahl v. State*, 955 N.W.2d 294, 302 (Minn. App. 2021); *accord Ibrahim v. State*, 14 N.W.3d 294, 302-03 (Minn. App. 2024).

Shern argues that his guilty plea for third-degree possession of a controlled substance in a prohibited zone was not accurate because it did not establish that he unlawfully possessed one or more mixtures containing methamphetamine or amphetamine in a school zone, park zone, public-housing zone, or a drug-treatment facility. In his brief, Shern challenges the accuracy of his guilty plea with respect to only the “possession of a mixture containing methamphetamine” element of the offense.

We do not find Shern's argument persuasive because, during his plea colloquy, Shern agreed that there was "dust in the bag" or "residue" that tested positive for methamphetamine. Moreover, Shern affirmed that he had "an opportunity to review the complaint in this case" and that it was "true and accurate to [his] knowledge." Because Shern verified the "truthfulness and accuracy" of the complaint, we conclude that the district court properly relied on the complaint's probable-cause statement as a supplement to Shern's plea. *See Rosendahl*, 955 N.W.2d at 296. When considering both Shern's testimony at his plea hearing and the complaint's probable-cause statement, we conclude that Shern's plea to third-degree possession of a controlled substance was accurate.

We next consider whether Shern's pleas were voluntary. "The purpose of the voluntariness requirement is to [ensure] that the defendant is not pleading guilty because of improper pressures." *Trott*, 338 N.W.2d at 251. Here, Shern argues that his guilty pleas were not voluntary because of statements he made at his sentencing hearing.

At his sentencing hearing, Shern stated that he "didn't know probation reinstatement was even an option,"² that his public defender had not adequately represented him, and that his public defender "denied [him] a Rule 20 when [he had] more than enough records . . . that says [he has] a mental illness." Notwithstanding these later statements, at his plea hearing, Shern entered his pleas under oath, verifying that he wanted to proceed with them.

² The record is unclear as to whether Shern's plea agreement included an option for him to be reinstated on probation. Even if this was contemplated in his plea agreement, however, the district court determined that, "due to his conduct after [the] plea hearing," which included failing to return from his furlough for several months, Shern violated the terms of the plea agreement.

Because “[s]olemn declarations in open court carry a strong presumption of verity and subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal,” *Davis*, 15 N.W.3d at 647 (quotation omitted), we do not find Shern’s post-plea hearing statements persuasive as they relate to the voluntariness of his guilty pleas. Moreover, reliance on statements made at a sentencing hearing several months after a plea hearing contravenes our caselaw. *See Erickson v. State*, 702 N.W.2d 892, 898 (Minn. App. 2005) (determining that a guilty plea was valid despite defendant’s later statement that he was under the influence of substances at the time of his plea because he testified at the plea hearing that he understood the ramifications and that he was not under the influence of substances). Therefore, we conclude that Shern’s pleas were voluntary.

Finally, we consider whether Shern’s pleas were intelligent. “To be intelligent, a guilty plea must represent a knowing and intelligent choice among the alternative courses of action available.” *Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017) (quotation omitted). Shern argues that his pleas were not intelligently entered because “the record does not indicate that any plea petition was filed with the court or gone over by Shern and his counsel” and because the statements Shern made at his sentencing hearing in 2024 show that Shern did not know what he was pleading to in 2022. However, Shern stated in his plea colloquy that he had adequate time to discuss his plea agreements with his attorney. Thus, contrary to his assertion at the sentencing hearing, we are persuaded that Shern made “a knowing and intelligent choice among the alternative courses of action available” when he pleaded guilty to these offenses. *Id.* Shern also does not identify any authority to support his argument that a plea petition is essential to determining whether a guilty plea

was intelligent or valid, and we are not aware of any.³ Therefore, we conclude that Shern's pleas were intelligent.

Because the record defeats Shern's contentions that his plea to possession of a controlled substance was not accurate and that he did not voluntarily or intelligently enter any of his pleas, we conclude that he has failed to establish that withdrawal of his pleas is necessary. We therefore affirm the district court's judgments of conviction.

Affirmed.

³ In contrast, this court has affirmed guilty pleas on many occasions when a formal plea petition was not filed. *See, e.g., State v. Kasper*, No. A22-1832, 2023 WL 8178148, at *1 & n.3 (Minn. App. Nov. 27, 2023), *rev. denied* (Minn. Mar. 19, 2024); *State v. Wurtzberger*, No. A23-0387, 2023 WL 7119125, at *1 & n.1 (Minn. App. Oct. 30, 2023), *rev. denied* (Minn. Jan. 16, 2024); *State v. Hyde*, No. A17-0147, 2017 WL 5243531, at *1 (Minn. App. Nov. 13, 2017), *rev. denied* (Minn. Jan. 16, 2018); *Poland v. State*, No. A14-1947, 2015 WL 5664879, at *1 (Minn. App. Sept. 28, 2015), *rev. denied* (Minn. Dec. 15, 2015). Because these opinions are nonprecedential, they do not present a rule of law; we cite them for their persuasive value only. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions . . . are not binding authority . . . but may be cited as persuasive authority.").