

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0540**

State of Minnesota,
Respondent,

vs.

Christopher Alan Galardy,
Appellant.

**Filed April 10, 2017
Affirmed
Jesson, Judge**

Dakota County District Court
File No. 19HA-CR-15-1874

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Cassandra Shepherd, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Cleary, Chief Judge; and Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

Appellant Christopher Alan Galardy challenges his conviction of felony domestic assault involving his longtime girlfriend, arguing that his guilty plea was inaccurate

because it was not supported by a sufficient factual basis. He also argues that the district court erred when it denied his presentence motion to withdraw his plea. We affirm.

FACTS

In June 2015, Galardy was charged with felony domestic assault after police responded to a report of a domestic assault.¹ According to the criminal complaint, local police found the victim with bruises on her arm and a red mark under her eye. Galardy and the girlfriend had known each other for nine years, lived together, and have a child in common. Galardy asserted that he was innocent. Three days after charges were filed, the girlfriend recanted; she maintained her denial of the assault throughout the balance of proceedings in this case. Despite her recantation, in July 2015, Galardy pleaded guilty to felony domestic assault. He signed a plea petition, which indicated that he was not pleading guilty just to discharge the criminal matter and that he was in fact guilty. At the hearing on his plea petition, defense counsel and Galardy engaged in the following exchange:

Defense Counsel: Okay. And you're pleading guilty here today because you are, in fact, guilty, correct?

A: Yes.

....

Defense Counsel: Okay. Is it true that on June 7th, 2015, you were in the County of Dakota, State of Minnesota?

A: Yes.

Defense Counsel: And at the time, you were riding in one of your rental cars with your live-in girlfriend, correct, whose initials are A.B.?

A: Yes.

Defense Counsel: And at some point during that ride, you got into a verbal argument, correct?

¹ Galardy was charged with a felony because he was convicted of two prior qualified domestic violence-related offenses within the last ten years. *See* Minn. Stat. § 609.2242, subd. 4 (2014).

A: Yes.

Defense Counsel: And at some point, you stopped the vehicle and you pulled her out of the car, correct?

A: Yes.

Defense Counsel: And you would agree that the things you said and by pulling her out of the vehicle, that could be interpreted by her as—those actions would be interpreted as intent to cause fear of bodily harm, correct?

A: Yes.

Defense Counsel: And like we talked about before, you have a prior violation of harassment restraining order in 2006 and 2007, correct?

A: Yes.

Defense Counsel: And the victim in this case, A.B., lived with you at the time, right?

A: Yes.

....

Prosecutor: Mr. Galardy, do you agree that you did those things with the intent to cause fear in the victim?

A: I—I—yeah. Yes.

....

The Court: And did you do it with intent to cause fear of immediate bodily harm, sir?

A: Yes.

Following this questioning, the district court stated, “I find you understand your rights, Mr. Galardy, you made a knowing and voluntary waiver, and there’s a sufficient factual basis to accept your plea in this matter.”² The district court record reflects that the plea was accepted at the plea hearing on July 17, 2015.

In September 2015, Galardy moved the district court to withdraw his guilty plea. He argued that he was innocent and that he only entered the guilty plea because his

² Just before making this statement, the district court informed Galardy that “this plea agreement is contingent upon you following the conditions of release and complying with the presentence investigation process. If you do not follow through with the presentence investigation, don’t appear for sentencing, or don’t follow conditions of release, you could lose the benefit of this plea agreement”

girlfriend and child were going to be evicted if he remained in jail and unable to support them. He also stated that withdrawal was necessary because his girlfriend recanted. The district court denied his motion. The court observed that Galardy's request for plea withdrawal was not based on a lack of understanding of his rights or the consequences of the plea. Indeed, the court noted that Galardy understood both. The district court held that the financial pressure of being in custody was not a valid or fair reason to withdraw a guilty plea.

Four months later, the district court stayed imposition of Galardy's sentence and ordered him to serve 60 days in jail, with credit for time served.³ This appeal follows.

D E C I S I O N

I. No manifest injustice occurred with the acceptance of Galardy's guilty plea.

Galardy argues that his guilty plea was invalid because it lacked a sufficient factual basis to prove that he was guilty of felony domestic assault. He maintains that because he made a claim of innocence after his plea was entered, there was an insufficient factual basis to support his guilty plea.

While a defendant does not have the absolute right to withdraw a valid guilty plea, a defendant may withdraw his plea after sentencing to correct a manifest injustice. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). A manifest injustice exists if a guilty plea is not valid, and we review the validity of a guilty plea de novo. *State v. Raleigh*, 778 N.W.2d

³ At sentencing, Galardy repeated his arguments for a plea withdrawal. Noting that his motion to withdraw his plea had already been denied, the district court refused to rehear the motion. During the sentencing hearing the court did state "Mr. Galardy, I am going to accept your plea of guilty to . . . the charge of domestic assault as a felony."

90, 94 (Minn. 2010). Minnesota law recognizes three prerequisites to a valid guilty plea: it must be accurate, voluntary, and intelligent. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Here, Galardy argues only that the plea was not accurate.

For a guilty plea to be accurate, it must be established by a proper factual basis. *Id.* at 647. By ensuring that plea agreements are accurate, the defendant is protected against pleading guilty to a more serious charge than he could be convicted of at trial. *State v. Wukawitz*, 662 N.W.2d 517, 521-22 (Minn. 2003). To satisfy this requirement, a defendant must plead guilty on the record to sufficient facts that support a conclusion that he is guilty of the crime charged. *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003). This is usually accomplished by the defendant, who explains the circumstances of the crime. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). We will uphold a guilty plea if “there is credible evidence available which would support a jury verdict that defendant is guilty of at least as great a crime as that to which he pled guilty.” *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (quotation omitted).

For Galardy to be convicted of domestic assault, the state must prove that he, against a family or household member, either (1) committed an act with intent to cause fear of immediate bodily harm or death or (2) intentionally inflicted or attempted to inflict bodily harm. *See* Minn. Stat. § 609.2242, subd. 1. For a felony conviction, the state must also prove that he committed the domestic assault within ten years of two previous qualified domestic violence-related convictions. *Id.*, subd. 4; Minn. Stat. § 609.02, subd. 16 (2014) (defining qualified domestic violence-related offenses, which includes violations of a harassment restraining order).

The record demonstrates that there is a sufficient factual basis for each element of felony domestic assault. Galardy admitted that the girlfriend lived with him at the time of the incident. *See* Minn. Stat. § 518B.01, subd. 2(b)(4) (2014) (defining family or household members). When questioned about the circumstances of the crime during his plea hearing, Galardy agreed that he pulled the girlfriend out of the car with the intent to cause fear of immediate bodily harm to her. He also admitted that he previously violated two harassment restraining orders within the last ten years.

We acknowledge that the factual basis for Galardy's conviction was established through the use of leading questions, which Minnesota appellate courts have consistently discouraged. *See Raleigh*, 778 N.W.2d at 95. As the Minnesota Supreme Court noted in *Raleigh*, we "should be particularly wary of situations in which the factual basis is established by asking a defendant only leading questions." *Id.* at 94. However, the supreme court further explained that a plea may not be withdrawn simply because of the form of the questions if the record contains sufficient evidence to support the conviction. *Id.* Here, although the form of questioning did not conform with best practices, Galardy's answers in light of the record evidence met the statutory elements of felony domestic assault. Therefore, we conclude that the factual basis for Galardy's guilty plea is sufficient.

Galardy contends that the district court did not accept his plea until sentencing in January 2016 and that, because he made a claim of innocence after his guilty plea, the plea was not accurate when accepted, creating a manifest injustice. We are not persuaded.

Here, the district court accepted Galardy's plea in July 2015. Upon our review of the hearing transcript, the district court articulated no intent to postpone its acceptance.

Minn. R. Crim. P. 15.04, subd. 3(1) (requiring district court to articulate its nonacceptance to the parties if it decides to postpone). While the district court warned that Galardy might lose the benefit of his plea if he failed to cooperate with presentence conditions, this is distinct from rejecting the terms of the agreement or reserving a decision as to the appropriateness of the agreement until sentencing. *See id.*; *cf. State v. Thompson*, 754 N.W.2d 352, 356 (Minn. 2008) (determining that the district court did not accept a plea agreement when it expressly “reserve[d] a decision as to the appropriateness of the plea agreement”). Moreover, the district court expressly found a sufficient factual basis to accept his plea. The register of actions also reflects the district court’s acceptance of his plea.

But even if his plea was accepted at sentencing, that does not change our analysis. Under the manifest-injustice standard, a defendant may not withdraw a guilty plea “if the record contains sufficient evidence to support the conviction.” *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012) (quotation omitted). And in applying that standard, under which we review de novo the validity of guilty pleas, we still conclude that there is a sufficient factual basis to support Galardy’s guilty plea.

II. The district court did not abuse its discretion by denying Galardy’s motion to withdraw his plea under the fair-and-just standard.

Galardy next argues that the district court abused its discretion by denying his motion to withdraw his guilty plea. Appellate courts review the district court’s denial of a motion to withdraw a guilty plea for an abuse of discretion, reversing only in the “rare case.” *Raleigh*, 778 N.W.2d at 97 (quotation omitted). Before sentencing, the district court

has discretion to allow the defendant to withdraw a plea if it is fair and just to do so. *Id.* (citing Minn. R. Crim. P. 15.05, subd. 2). The fair-and-just standard requires the district court to consider (1) the reasons to support withdrawal and (2) prejudice to the state based on its reliance on the plea. *Id.* The defendant bears the burden on the first factor, and the state on the second. *Id.*

Galardy moved to withdraw his guilty plea on the principal ground that he only pleaded guilty in order to return home and help pay the rent so that his family was not evicted from their home. The district court denied his motion, concluding that his guilty plea was valid in all respects. We agree. Nowhere does Galardy claim that he was coerced into pleading guilty. And the normal trauma and pressures associated with incarceration are not a basis, by themselves, to establish coercion in order to justify plea withdrawal. *Sykes v. State*, 578 N.W.2d 807, 812-13 (Minn. App. 1998), *review denied* (Minn. July 16, 1998) (being “emotionally distraught” and wanting to be home for Christmas are part of “normal trauma” associated with incarceration). Financial pressures are not an exception to this well-established rule.

Next, Galardy contends that the district court failed to consider the genuineness of the victim’s recantation in its order denying his motion to withdraw his plea. But in cases when the defendant admits his guilt by pleading guilty, the fact that the victim recants does not mandate the withdrawal of a plea. *State v. Tuttle*, 504 N.W.2d 252, 256-57 (Minn. App. 1993); *see State v. Risken*, 331 N.W.2d 489, 490 (Minn. 1983) (holding that the district court did not err in accepting guilty plea despite witness recantation because of

sufficient factual basis for the plea). More fundamentally, the victim here recanted *before* Galardy pleaded guilty.

Finally, Galardy argues that the district court failed to consider prejudice to the state based on his argument that his plea was not voluntary. But the district court need not consider prejudice to the state if, as is the case here, the defendant fails to advance a fair and just reason for plea withdrawal. *State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013), *review denied* (Minn. Dec. 31, 2013). The district court did not abuse its discretion by denying Galardy's motion to withdraw his guilty plea.

Affirmed.