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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2060**

Shane Larry Minnick, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 30, 2014
Affirmed
Connolly, Judge**

Washington County District Court
File No. 82-CR-10-906

Cathryn Middlebrook, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael A. Welch, Forest Lake City Attorney, Forest Lake, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Schellhas, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the district court's denial of his petition for postconviction relief arguing that he should be entitled to withdraw his guilty plea because (1) the plea

was not accurate and (2) venue was not established in the county prosecuting the offense. We affirm.

FACTS

On February 17, 2010, the district court filed an ex parte order for protection (OFP), prohibiting appellant Shane Larry Minnick from having any contact with W.C. On March 7, W.C. called appellant on the telephone. Appellant answered the phone and had a conversation with her. Based on this contact, the state charged appellant with a misdemeanor violation of an OFP in violation of Minn. Stat. § 518B.01, subd. 14(a) (2008). At the same time, appellant faced three other pending charges: one count of misdemeanor fifth-degree assault and two misdemeanor counts of violating a domestic abuse no contact order.

On August 8, 2011, appellant reached the following plea agreement: he would plead guilty to the March 7 OFP violation and would be sentenced to 90 days in jail with credit for 90 days served and pay a \$300 fine. In exchange, the state would dismiss the three remaining charges. At the plea hearing, appellant indicated on the record that he understood the plea petition, that he signed it, and that he understood that he was pleading guilty. The district court sentenced him in accordance with the plea agreement.

On July 25, 2013, appellant filed a petition for postconviction relief in district court to withdraw his plea because it was not accurate. On August 30, the district court denied the petition, determining that “there is no case law to support [appellant’s] claimed interpretation of the statute,” and that “[appellant] specifically admitted that he knowingly violated the terms of the OFP.” This appeal follows.

DECISION

We review postconviction proceedings to determine whether there is sufficient evidence to sustain the postconviction court's findings. *Scruggs v. State*, 484 N.W.2d 21, 25 (Minn. 1992). We will not disturb a postconviction court's decision absent an abuse of discretion. *Id.*

This court will reverse the district court's determination of whether to allow withdrawal of a guilty plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). "At any time the [district] court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs when a plea is not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). To be accurate, a plea must be supported by a sufficient factual basis. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). "The accuracy requirement . . . is meant to protect the defendant from pleading guilty to a charge more serious than he could be convicted of if the case went to trial." *Bolinger v. State*, 647 N.W.2d 16, 21 (Minn. App. 2002).

I.

Appellant first argues that "[t]he district court erred in denying [his] postconviction motion to withdraw his guilty plea where his plea was not accurate to the offense of conviction," because he "had no criminal intent in answering a call from the subject of the [OFP]." We disagree. Whenever an OFP is granted, and the person to be restrained knows about the OFP, then a violation of its conditions is a misdemeanor.

Minn. Stat. § 518B.01, subd. 14(b) (2008). The elements of a misdemeanor OFP violation are: (1) there was an existing OFP, (2) the defendant knew of the existence of the OFP, (3) the defendant violated a term or condition of the OFP, and (4) the act took place in the charging county. *Id.*; see also 10 *Minnesota Practice*, CRIMJIG 13.54 (2008).

At his plea hearing, appellant provided the factual basis for his guilty plea. The following exchange occurred on the record:

PROSECUTOR: And [W.C.] called you that morning?

APPELLANT: Yes.

PROSECUTOR: And you answered the phone?

APPELLANT: Yes.

PROSECUTOR: And that was contact?

APPELLANT: Yes.

...

PROSECUTOR: Did you know it was her calling?

APPELLANT: Basically, yes.

PROSECUTOR: You had a conversation with her?

APPELLANT: Yes.

PROSECUTOR: So you did know it was her?

APPELLANT: Yes.

...

THE COURT: Even if the contact was initiated by [W.C.], you can't have contact with her, can you Mr. Minnick?

APPELLANT: That's correct.

THE COURT: And by doing so you understand you did violate the [OFP] and you understand that at the time that you engaged in that conversation with her, is that a true statement?

APPELLANT: Yes, Your Honor.

But appellant argues that his guilty plea is inaccurate because he did not know it was W.C. on the phone when he answered the call, so he did not know or intend to have the initial contact with W.C. in violation of the OFP. We disagree. Appellant knew that

the OFP existed and that his contact with W.C. was a violation of the OFP. Appellant stated at his plea hearing that he “basically” knew it was W.C. calling and that he continued to have a conversation with her after knowing that he was speaking to her. Moreover, the crime charged does not require the state to prove that the defendant acted with the specific intent to cause an OFP violation. *See* Minn. Stat. § 518B.01. subd. 14(b); CRIMJIG 13.54. Instead, the state must only prove that appellant intended to do an act, and that the act caused a violation. Minn. Stat. § 518B.01. subd. 14(b).

Because appellant admitted that he knew he was subject to an OFP and that he did an act that he knew violated the OFP, we conclude that the district court did not abuse its discretion by denying appellant’s petition for postconviction relief because his plea was accurate.

II.

Appellant next argues that he “is entitled to plea withdrawal where venue has not been established in the county prosecuting the offense.” As a preliminary matter, appellant did not raise the issue in his petition for postconviction relief. Generally, an appellate court will not consider matters not argued to and considered by the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

Even so, we conclude that appellant is not entitled to relief on this basis. A criminal offense must be charged in the county where the alleged crime was committed. Minn. Const. art. 1, § 6; Minn. Stat. § 627.01, subd. 1 (2012). “[T]he state must prove beyond a reasonable doubt that the charged offense was committed in the county where the case is being tried.” *State v. Pierce*, 792 N.W.2d 83, 85 (Minn. App. 2010) (quotation

omitted). Whether the state has met its burden to prove venue is a legal question subject to de novo review. *Id.* at 86.

In OFP violation cases, the county where the crime is committed includes the county where the defendant made a call to the victim or the county where the victim received a call from the defendant. *See id.* (explaining that in OFP violation cases dealing with electronic mail, venue is proper in the county from which the sender mailed the message or the county where the recipient opened it); CRIMJIG 13.54 (stating that venue is appropriate in OFP violation cases in the location where the defendant made the call to the victim or where the victim received the call from the defendant).

Appellant claims that venue in Washington County was not established when the prosecutor set forth the factual basis for the crime. The following exchange occurred on the record:

PROSECUTOR: Mr. Minnick, calling your attention to March 7th, 2010, at roughly 5:12 p.m., were you in the City of Forest Lake, Washington County?

APPELLANT: Yes.

PROSECUTOR: And were you driving a flatbed owned by Dan's Towing?

APPELLANT: Yes, I was.

PROSECUTOR: And did you go to an address . . . in the City of Forest Lake?

APPELLANT: I went down the road, yes.

PROSECUTOR: Did you get out of the truck and go knock on the door at that address?

APPELLANT: No, I did not.

PROSECUTOR: You went down the road [that the residence is located on]?

APPELLANT: Yes, that's correct, on the road.

PROSECUTOR: And you were aware that [W.C.] was at the residence on [that road]?

APPELLANT: No, I wasn't.

The prosecutor was discussing one of appellant's dismissed charges when he established venue in Washington County. When he realized that he was discussing the wrong offense, he deferred to appellant's attorney to establish the factual basis. During the exchange between appellant and his attorney, neither party mentioned where appellant or W.C. were located when the OFP violation occurred.

But, when the prosecutor offered the plea petition, the district court asked appellant if he understood that he was charged with a misdemeanor violation of an OFP and asked if this violation "is with respect to an event alleged to have occurred on March 7, 2010, in the City of Forest Lake?" Appellant confirmed that it was. We conclude that the district court established that the offense occurred on March 7, 2010, in the City of Forest Lake, which is in Washington County. *See e.g., State v. Bahri*, 514 N.W.2d 580, 583 (Minn. App. 1994) (explaining that an appellate court may find that venue was proved where the offense is placed in a particular area in the charging county), *review denied* (Minn. June 15, 1994). Consequently, the district court established that Washington County was the proper venue for this case and appellant is not entitled to withdraw his plea on this basis.

III.

We have carefully reviewed appellant's pro se supplemental brief. Appellant does not make any legal arguments supported by authority or citation. We therefore conclude that appellant's pro se arguments are waived. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997) (explaining that issues not

briefed on appeal are waived); *see also McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (applying this rule where appellant “alluded[d] to” issues but “fail[ed] to address them in the argument portion of his brief.”).

Affirmed.