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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1093**

Peter Okezie Kalu, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 21, 2014
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-CR-10-4668

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

John J. Choi, Ramsey County Attorney, Kaarin Long, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

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

Considered and decided by Chutich, Presiding Judge; Larkin, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's denial of his motion to withdraw his guilty plea to mail theft, arguing that the plea is inaccurate because it lacks an adequate factual basis. We affirm.

FACTS

Respondent State of Minnesota charged appellant Peter Okezie Kalu with one count of mail theft. On February 23, 2011, Kalu, appearing pro se, pleaded guilty to the charge. The prosecutor questioned Kalu to establish the following factual basis:

PROSECUTOR: Okay. So think back then please to November 7th of 2009, you were driving a motor vehicle; is that right?

KALU: Yes.

PROSECUTOR: You got stopped by a trooper of the Minnesota State Patrol?

KALU: Yes.

....

PROSECUTOR: And you were the only person in the car; is that right?

KALU: Yes.

....

PROSECUTOR: Now, what was in the car? What did the trooper find in the vehicle that you were driving that day?

KALU: Mail.

PROSECUTOR: Okay. It was a bunch of mail that did not belong to you; is that right?

KALU: Yes.

PROSECUTOR: And it was a bunch of mail that was addressed to people that were living in Brooklyn Park; is that right?

KALU: Yes.

PROSECUTOR: And most of that mail was postmarked November 4th of 2009?

KALU: Yes.

PROSECUTOR: Included in that mail were boxes of checks and other pieces of paper; is that right?

KALU: Yes.

PROSECUTOR: Now, you agree today by pleading guilty that you were in possession of stolen mail or —

KALU: Yes.

PROSECUTOR: —excuse me, yes, of mail that has been taken?

KALU: Yes.

The district court imposed a stayed 15-month prison sentence.

On September 7, 2012, Kalu moved the district court to withdraw his guilty plea. On January 3, 2013, an assistant state public defender submitted a supplemental petition for postconviction relief, arguing that Kalu “should be allowed to withdraw his guilty plea because it is not properly supported by a factual basis.” The district court denied Kalu’s motion to withdraw his guilty plea. This appeal follows.

D E C I S I O N

Kalu argues that the district court erred by “denying [his] request to withdraw his plea where a manifest injustice occurred because the plea was not accurately entered when the factual basis for the plea was insufficient to establish that the crime occurred.”

The district court must allow plea withdrawal at any time “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 exists if a guilty plea is not valid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). “A defendant bears the burden of showing his plea was invalid.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). The validity of a plea is a question of law that we review de novo. *Id.*

To be valid, a guilty plea must be “accurate, voluntary and intelligent.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). “The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial.” *Carey v. State*, 765 N.W.2d 396, 400 (Minn. App. 2009) (quotation omitted), *review denied* (Minn. Aug. 11, 2009).

“A proper factual basis must be established for a guilty plea to be accurate.” *Theis*, 742 N.W.2d at 647 (quotation omitted). “The factual basis must establish sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008) (quotations omitted).

The district court should not accept a guilty plea unless the record supports the conclusion that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty. *State v. Goulette*, 258 N.W.2d 758, 762 (Minn. 1977); *State v. Hoaglund*, 307 Minn. 322, 325, 240 N.W.2d 4, 5 (1976). “An appellate court, on appeal, will reject a guilty plea if it concludes the [district court] could not fairly have concluded that the defendant’s plea was accurate.” *State v. Warren*, 419 N.W.2d 795, 798 (Minn. 1988). “Likewise, a guilty plea will be set aside in a petition for post-conviction relief if a factual basis is lacking.” *Id.*

“[A]n adequate factual basis is usually established by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime.” *Ecker*, 524 N.W.2d at 716. “Although there are various ways to present the factual basis for a guilty plea, all of them contemplate the disclosure on the

record of the specific facts that would establish the elements of the crime to which the defendant is pleading guilty.” *State v. Misquadace*, 629 N.W.2d 487, 491-92 (Minn. App. 2001), *aff’d*, 644 N.W.2d 65 (Minn. 2002).

Kalu pleaded guilty to one count of mail theft under Minn. Stat. § 609.529, subd. 2(6) (2008). Section 609.529, subdivision 2, provides that a person is guilty of mail theft if he:

(1) intentionally and without claim of right removes mail from a mail depository;

(2) intentionally and without claim of right takes mail from a mail carrier;

(3) obtains custody of mail by intentionally deceiving a mail carrier, or other person who rightfully possesses or controls the mail, with a false representation which is known to be false, made with intent to deceive and which does deceive a mail carrier or other person who possesses or controls the mail;

(4) intentionally and without claim of right removes the contents of mail addressed to another;

(5) intentionally and without claim of right takes mail, or the contents of mail, that has been left for collection on or near a mail depository; or

(6) receives, possesses, transfers, buys, or conceals mail obtained by acts described in clauses (1) to (5), knowing or having reason to know the mail was obtained illegally.

Kalu argues that “it was not established that he knew or had reason to know at the time of his arrest that there was mail illegally obtained through one of the five methods in the car he was driving.” We disagree. The plea colloquy established that (1) Kalu had “a bunch of mail” in the vehicle he was driving on November 7, 2009; (2) the mail did not belong to him; (3) the mail was addressed to people living in Brooklyn Park and most of it was postmarked November 4, 2009; (4) the mail included boxes of checks and other

pieces of paper; and (5) the mail had been “stolen” or “taken.” Even though Kalu did not specifically admit that the mail was obtained by one of the five statutory methods, the plea is accurate because Kalu admitted that he possessed “stolen” mail.

This court has previously upheld the validity of a guilty plea even though the factual basis did not specifically address an element of the crime. In *State v. Bryant*, Bryant pleaded guilty to fourth-degree criminal sexual conduct. 378 N.W.2d 108, 109 (Minn. App. 1985), *review denied* (Minn. Jan. 23, 1986). Later, the district court denied Bryant’s motion to withdraw his guilty plea. *Id.* On appeal, this court noted that “Bryant admitted to touching D.D.’s ‘private parts’ without her consent, even though he did not admit on the record to doing so in order to satisfy his sexual or aggressive impulses,” which was an element of the crime. *Id.* at 110. We concluded that “[t]his omission [was] not fatal in light of the other overwhelming evidence. Bryant claims he is not guilty of the crime but the record indicates nothing upon which he might base support for his claim of innocence.” *Id.*

The circumstances here are analogous to those in *Bryant*. Kalu did not specifically admit which of the five statutory methods ultimately resulted in his possession of “stolen” or “taken” mail, but he admitted that the mail was in fact “stolen.” And that admission established that he knew or should have known that “the mail was obtained illegally.” Minn. Stat. § 609.529, subd. 2(6). On this record, the omission of a specific admission regarding one of the five statutory methods of obtaining mail illegally is not fatal.

We also disagree with Kalu's contention that the plea is inaccurate because he did not specify that he knew that the mail was stolen when he possessed it in the car. Kalu contends that "[i]t is reasonable that he would have only discovered upon being informed by a police officer or by the complaint against him that he had been in possession of illegally obtained mail." The record refutes that contention. Kalu admitted there was a large amount of stolen mail in the car that he was driving. He was the only occupant of the car when the police stopped him and discovered the mail. The mail was not addressed to Kalu: it was addressed to people in Brooklyn Park. The majority of the mail was postmarked November 4, 2009, which was three days earlier. Kalu's unexplained possession of a large amount of recently postmarked mail that was addressed to other people is sufficient to demonstrate that Kalu knew or at least had reason to know that the mail was stolen when he possessed it in the car. *See State v. Neumann*, 262 N.W.2d 426, 430 (Minn. 1978) ("It is well established that before a plea of guilty can be accepted, the [district court] must make certain that facts exist from which the defendant's guilt of the crime charged can be reasonably inferred."), *abrogated on other grounds by State v. Moore*, 481 N.W.2d 355 (Minn. 1992).

In conclusion, although a more detailed factual basis would have been preferable, the plea colloquy shows that Kalu did not plead guilty to an offense more serious than his conduct warranted or one greater than he could have been convicted of if he had gone to trial. Those are the standards by which we assess the accuracy of Kalu's guilty plea. *See Warren*, 419 N.W.2d at 798 (stating that the factual basis requirement "protects a defendant from pleading guilty to an offense more serious than defendant's conduct

warrants”); *Carey*, 765 N.W.2d at 400 (“The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial.” (quotation omitted)). Kalu’s guilty plea is accurate under those standards. Because the plea is accurate and Kalu does not offer any other basis for plea withdrawal under the manifest-injustice standard, we affirm.

Affirmed.