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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0131**

State of Minnesota,
Respondent,

vs.

Shane Larry Minnick,
Appellant.

**Filed November 5, 2012
Affirmed
Connolly, Judge**

Washington County District Court
File No. 82-CR-10-1290

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

Peter Orput, Washington County Attorney, Karin L. McCarthy, Assistant County
Attorney, Stillwater, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Brian Wambach, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and
Ross, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

On appeal from his conviction of felony domestic abuse by strangulation following an *Alford* plea, appellant argues: (1) his *Alford* plea was invalid because the factual basis in the record failed to establish the elements of the crime, including that appellant strangled or had any intent to strangle the complainant and that appellant was in a significant romantic relationship with the complainant at the time of the offense and (2) appellant's rights to procedural and substantive due process were violated by the district court's arbitrary issuance of a domestic-abuse no-contact order (DANCO). Because appellant's guilty plea was valid and because the DANCO statute is constitutional, we affirm.

FACTS

Appellant Shane Minnick was charged with felony-level false imprisonment and misdemeanor domestic assault on March 26, 2010 following an incident involving appellant and his girlfriend W.L.C. At his first appearance, the district court issued a DANCO prohibiting appellant from contacting W.L.C. and appellant did not object.

On July 25, 2011, appellant entered an *Alford* plea to an amended charge of domestic assault by strangulation, Minn. Stat. § 609.2247, subd. 2 (2008). In return for his plea, appellant would receive a stay of imposition and a 90-day cap on jail time, and the state agreed to dismiss the false-imprisonment charge. During the plea hearing, appellant agreed that there was "a substantial risk" and a "substantial likelihood" of

conviction on both charges if the case proceeded to trial. To establish the factual basis for the plea, Mr. Minnick and his attorney engaged in the following discussion:

Q: [W.L.C.] had been your girlfriend, true?

A: Had been, yes.

Q: So, you had a romantic relationship with her?

A: Prior.

Q: Prior to this event, right?

A: Yes.

....

Q: [W.L.C.] would testify that you, in fact, went back after this phone call, pushed her to the ground, and actually squeezed her in her neck area; do you understand that?

A: Yes.

Before sentencing, appellant moved to withdraw his guilty plea, arguing that “he did not fully understand the terms of the plea agreement, and . . . did not have sufficient time to consider the plea agreement before entering his plea.” The district court denied the motion, finding that appellant understood the terms of the agreement and had sufficient time to consider the plea and to discuss the plea with his attorney. The district court then sentenced appellant according to the plea agreement, ordered that appellant did not need to register as a predatory offender, and issued a DANCO pursuant to Minn. Stat. § 629.75 (2010), prohibiting appellant from having any contact with W.L.C. This appeal follows.

D E C I S I O N

I. Withdrawal of Guilty Plea

Appellant argues that his *Alford* plea was invalid because the factual basis in the record failed to establish the elements of domestic assault by strangulation, including that appellant strangled or had any intent to strangle the complainant or that appellant was in a

significant romantic relationship with the complainant at the time of the offense. Although appellant raises this issue for the first time on appeal, “a direct appeal [from a judgment of conviction based on a guilty plea] is appropriate when the record contains factual support for the defendant’s claim and when no disputes of material fact must be resolved to evaluate the claim on the merits.” *State v. Anyanwu*, 681 N.W.2d 411, 413 n.1 (Minn. App. 2004). Here the record is sufficient to consider appellant’s challenge to his guilty plea.

The validity of a guilty plea is a question of law which is reviewed de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A guilty plea is not valid if it is not accurate, voluntary, and intelligent. *Id.* “A proper factual basis must be established for a guilty plea to be accurate.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). “[T]he main purpose of the accuracy requirement of a valid plea is to protect 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. Theis*, 742 N.W.2d 643, 649 (Minn. 2007) (quotation omitted).

Appellant entered an *Alford* plea to domestic abuse by strangulation, which required a showing that (1) appellant assaulted; (2) a family or household member; (3) by strangulation. Minn. Stat. § 609.2247, subd. 2. “Strangulation” is defined as “intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.” *Id.*, subd. 1(c) (2008). “A family or household member” is defined, in part, as “persons involved in a significant romantic or sexual relationship.” Minn. Stat. § 518B.01, subd. 2(b)(7)

(2008). Factors considered when determining the significance of a relationship include “the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, length of time since the termination.” *Id.*, subd. 2(b) (2008).

Appellant argues that the factual basis for his plea was not properly established, and the plea was therefore inaccurate. Specifically, appellant argues that the factual basis failed to establish that strangulation occurred or that a significant romantic relationship existed.

During the plea hearing, Mr. Minnick responded “Yes” to the following questions from his attorney:

[W.L.C.] would testify that you, in fact, went back after this phone call, pushed her to the ground, and actually squeezed her in her neck area; do you understand that?

And that she was quite upset, and in fact crying, and during that action, her air flow was impeded to some degree; do you understand that?

Appellant argues that these facts are insufficient to establish strangulation because appellant did not admit to intending to impede W.L.C.’s airflow, but simply intended to push her to the ground. A defendant, however, may plead guilty without expressing the requisite intent so long as he believes the state’s evidence is sufficient to convict him. *Ecker*, 524 N.W.2d at 717. During the plea hearing, appellant agreed that there was a “substantial likelihood” of conviction if he demanded a trial:

Q: You can admit that there was an assault that happened, but just not exactly the strangulation; is that true?

A: That’s correct.

Q: Again, you agree that if all of that testimony were to come out at trial, there is that substantial likelihood that you would be convicted?

A: Yes.

Therefore, even though appellant did not admit to intending to impede W.L.C.'s breathing, the factual basis for his domestic-abuse-by-strangulation plea was properly established and consistent with an *Alford* plea because he agreed that there was a substantial likelihood that he would be convicted based on the state's evidence.

Next, appellant argues that the factual basis for the plea failed to establish that appellant had been in a significant relationship with W.L.C. at the time of the incident. The court determines whether the factors indicating a "significant romantic or sexual relationship" are sufficient to establish that a person is a "family or household member." Minn. Stat. § 518B.01, subd. 2(b)(7). Appellant agreed to the following facts at his plea hearing:

Q: [W.L.C.] had been your girlfriend, true?

A: Had been, yes.

Q: So, you had a romantic relationship with her?

A: Prior.

Q: Prior to this event, right?

A: Yes.

Moreover, the complaint states that W.L.C. referred to appellant as her "boyfriend" and that she and appellant were "romantically involved." The information in the complaint and appellant's admission that he had a romantic relationship with W.L.C. were sufficient for the district court to determine that appellant and W.L.C. were involved in a "significant romantic or sexual relationship."

II. Due Process

The district court issued a pretrial DANCO protecting W.L.C. and reissued the DANCO at appellant's sentencing as a probationary condition. Appellant did not object to the issuance of the DANCO at either hearing. Appellant now argues that his rights to procedural and substantive due process were necessarily violated by the district court's issuance of the DANCO because the DANCO statute is unconstitutional. This argument fails. This court recently held that "Minn. Stat. § 629.75 provides a defendant with notice and an opportunity to be heard, and is not void for vagueness" and therefore does not violate the due-process requirements of the United States and Minnesota State Constitutions. *State v. Ness*, 819 N.W.2d 219, 230 (Minn. App. 2012), *petition for review filed* (Minn. Sept. 20, 2012). At oral argument, appellant argued that *Ness* does not address substantive due process. Appellant's substantive-due-process argument, however, centered on "arbitrary application," arguing that, because the statute "fails to identify any procedural requirements or guidelines that could prevent its arbitrary application [it violates substantive due process]." But in *Ness* we held that "a judge's discretion in issuing a DANCO is sufficiently limited . . ." *Id.* at 229.

Because appellant's guilty plea was accurate, and therefore valid, and because the issuance of a DANCO does not violate a defendant's due-process rights, we affirm.

Affirmed.