STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1073

State of Minnesota,
Respondent,

vs.

Alexander Kotlov,
Appellant.

Filed May 28, 2013
Affirmed
Rodenberg, Judge

Washington County District Court
File No. 82-CR-11-673

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

Pete Orput, Washington County Attorney, Kari A. Lindstrom, Assistant County Attorney, Stillwater, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

Appellant, a predatory offender required to register, argues that his conviction for violating predatory offender registration requirements must be reversed because the factual basis he provided in support of his guilty plea was insufficient. We affirm.

FACTS

In 2003, appellant Alexander Kotlov was convicted in Wisconsin of third-degree criminal sexual conduct. As a result, he was required to register as a predatory offender in Wisconsin. He moved to Minnesota and registered in 2010 with the Minnesota Bureau of Criminal Apprehension (BCA) as a resident of Washington County.

In 2011, appellant was charged with two counts of knowingly violating a provision of Minnesota's predatory offender registration statute in contravention of Minn. Stat. § 243.166, subd. 5(a) (2010). *See generally* Minn. Stat. § 243.166 (2010) (Minnesota's predatory offender registration statute). Count 1 of the complaint alleged that appellant, "having left a primary address and lacking a new primary address, fail[ed] to register with the law enforcement authority that has jurisdiction in the area where the person is staying within 24 hours of the time the person no longer has a primary address." The language in Count 1 is drawn from the registration requirement found in Minn. Stat. § 243.166, subd. 3a(a). Pursuant to a plea agreement, appellant pleaded guilty to count 1 of the complaint, and the remaining count of the complaint was dismissed.

During the plea hearing, appellant admitted that he had been previously convicted of a criminal offense that required him to register his address and to reregister when he

changed addresses. He also admitted that he had registered a Washington County, Minnesota address with the BCA in 2010, that he later returned to Wisconsin and became homeless and that, when law enforcement officers sought to find him at the Washington County, Minnesota, address, they would not have found him there. He admitted that he did not register with the law enforcement agencies having jurisdiction over the areas in which he stayed while homeless in Wisconsin after he had departed Washington County.

Based on these admissions, the district court accepted the plea of guilty to Count 1 of the complaint. This appeal followed.

D E C I S I O N

I

As a preliminary matter, we note that this case arises from a Wisconsin convict's failure to notify Wisconsin law enforcement officers of his presence in their jurisdiction in accordance with the procedures set forth in Minnesota law. While neither party has addressed whether a Minnesota district court may exercise subject matter jurisdiction under such circumstances, we have considered this question based on our authority to raise it on our own motion and at any time. *See In re Welfare of M.J.M.*, 766 N.W.2d 360, 364 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009).

The criminal jurisdiction of Minnesota extends to any person who "commits an offense in whole or in part within this state." Minn. Stat. § 609.025 (2010). Section 609.025 is constitutionally limited and requires that "some operative event, a triggering event, for the crime occurred in Minnesota," meaning that some part of the crime charged

must be committed in Minnesota. *State v. Simion*, 745 N.W.2d 830, 838 (Minn. 2008) (quotation omitted).

Appellant was convicted of violating Minn. Stat. § 243.166, subd. 3a(a), which requires that a person, upon "leav[ing] a primary address and . . . not hav[ing] a new primary address, . . . register with the law enforcement authority that has jurisdiction in the area where [he] is staying within 24 hours of the time [he] no longer ha[d] a primary address."[1]

Generally, a predatory offender registration violation is committed in the location where appellant is required to register but fails to do so. *See State v. Jones*, 729 N.W.2d 1, 4 n.4 (Minn. 2007) (stating that the jurisdiction issue was properly raised because the offender was a Native American residing on a reservation and "his failure to maintain a current address registration was necessarily an offense that was committed on his reservation"). In this case, appellant's failure to register with the law enforcement agency with jurisdiction over the area in which he was staying occurred in Wisconsin.

However, appellant left a primary address in Minnesota. The notification requirement, and the criminal liability for failing to comply with it, would not have arisen had appellant not left his primary address in Minnesota. Therefore, an "operative event" occurred in Minnesota, and we may exercise jurisdiction under section 609.025. *See Simion*, 745 N.W.2d at 838.

[1] For purposes of this provision, "the area where the person is staying" means the area where the person is staying after leaving his primary address, not the area where the former primary address is located. *Cf.* Minn. Stat. § 243.166, subd. 3a(c), (e) (2010) (using the phrase in that sense).

We note that our exercise of jurisdiction in this case is consistent with the public policy goal of "promot[ing] public safety and protect[ing] the rights of victims through the control and regulation of the interstate movement of offenders in the community." Minn. Stat. § 243.1605, art. I (Interstate Compact for Adult Offender Supervision). Were Minnesota not to exercise jurisdiction in cases such as this, out-of-state predatory offenders might be able to frustrate supervision efforts by briefly residing and registering in Minnesota and then moving back to their home state.

II

Appellant did not move the district court for permission to withdraw his guilty plea prior to this appeal. Although this procedural posture is unusual, it is not impermissible. This court has held that "[a] defendant has a right to challenge his guilty plea on direct appeal even though he has not moved to withdraw the guilty plea in the district court." *State v. Anyanwu*, 681 N.W.2d 411, 413 (Minn. App. 2004).

III

Appellant argues both that his guilty plea did not include a sufficient factual basis to show that he *knowingly* violated Minn. Stat. § 246.166 and that the plea colloquy failed to include proof that he intentionally provided false information to a corrections agent, law enforcement authority, or the BCA. However, appellant's specific arguments are fatally flawed. We first address appellant's specific arguments and then consider appellant's general argument.

Appellant was not convicted under the provisions he argues were not proven

The language in count 1 of the complaint clearly alleged that appellant had knowingly violated Minn. Stat. § 243.166, subd. 3a(a). *Cf. State v. Levie*, 695 N.W.2d 619, 628–29 (Minn. App. 2005) (holding that a crime is sufficiently charged in a complaint that puts the defendant on notice of "what the state basically contend[s] . . . happened"). Appellant argues that the plea colloquy did not provide a factual basis to establish that he knowingly violated Minn. Stat. § 243.166, subds. 3(a), (b), 3a(e), 4a(a), or (b), or that he intentionally provided false information in violation of Minn. Stat. § 243.166, subd. 5(a). However, appellant was not convicted of knowingly violating any of these provisions.[2] Appellant's contention that the factual basis he provided would not support convictions under those provisions, even if accurate, does not provide a basis for granting the relief he requests. Appellant pleaded guilty to and was convicted of violating Minn. Stat. § 243.166, subd. 3a(a).

Appellant provided a sufficient factual basis to establish that he knowingly violated Minn. Stat. § 243.166, subd. 3a(a)

Appellant's brief does not address whether he provided a sufficient factual basis to support a conviction of knowingly violating Minn. Stat. § 243.166, subd. 3a(a), the statute under which he pleaded guilty. We now consider whether the record contains a sufficient factual basis for the offense of conviction.

[2] While Count 2 of the complaint originally charged appellant with violating Minn. Stat. § 246.166, subd. 3a(e), that charge was dismissed as part of the plea agreement. Thus, the attorneys and the district court were not required to develop a factual basis for that charge at the plea hearing.

A

After a defendant has been sentenced, he is permitted to withdraw a guilty plea only to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. The validity of a guilty plea is a question of law, which we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A manifest injustice sufficient to permit a plea withdrawal exists when the guilty plea is not valid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). To be valid, a plea must be accurate, intelligent, and voluntary. *Raleigh*, 778 N.W.2d at 94. For a plea to be accurate, it must establish a proper factual basis. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). A proper factual basis must develop sufficient facts to establish that the defendant's conduct met the elements of the charge admitted. Minn. R. Crim. P. 15.01, subd. 1(8), 15.02, subd. 2; *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008).

B

Appellant pleaded guilty to knowingly violating Minn. Stat. § 243.166, subd. 3a(a), which requires registration with "law enforcement" in enumerated circumstances. He argues that he did not knowingly violate the statute because he was in contact with his probation supervisor in Wisconsin. Section 243.166, subd. 3a(a), does not contain an exception for good faith attempts to comply with registration requirements. Therefore, even if appellant contacted his Wisconsin probation officer, his having done so does not negate the sufficiency of the factual basis he provided at the plea hearing.

Appellant also argues that he did not knowingly violate the statute because he did not know the requirements of the statute. However, "[c]riminal intent does not require

proof of knowledge of the existence or constitutionality of the statute under which the actor is prosecuted or the scope or meaning of the terms used in the statute." Minn. Stat. § 609.02, subd. 9(5) (2010). Appellant's ignorance of the statute would not excuse him from complying with its provisions.

The question before us is whether appellant "knowingly" violated Minn. Stat. § 243.166, subd. 3a(a), which required him, upon "leav[ing] a primary address and . . . not hav[ing] a new primary address, . . . [to] register with the law enforcement authority that has jurisdiction in the area where [he] is staying within 24 hours of the time [he] no longer ha[d] a primary address."

When a criminal statute includes "some form of the verb[] 'know,'" intent becomes an element of the crime and is demonstrated by proving "that the actor *believes* that the *specified fact* exists." Minn. Stat. § 609.02, subd. 9(1), (2) (2010) (emphasis added). However, this court has recently stated that "'[k]nowingly' is not defined in Minnesota's criminal code."[3] *State v. Gunderson*, 812 N.W.2d 156, 160 (Minn. App. 2012). *Gunderson* stated that a criminal defendant acts knowingly

> (i) if the element involves the nature of his conduct or the attendant circumstances, he *is aware that his conduct is of that nature or that such circumstances exist*; and
>
> (ii) if the element involves a result of his conduct, he *is aware* that it is practically certain that his conduct will cause such a result.

812 N.W.2d at 160 (quoting Model Penal Code § 2.02(2)(b) (1985)) (emphasis added).

[3] This may be because, although "knowingly" is etymologically related to the verb "to know," it is in fact an adverbial form of the adjective "knowing." *See Random House Dictionary of the American Language* 1064 (2d ed. 1987). Thus, it is arguably not a "form of the verb[] 'know.'" Minn. Stat. § 609.02, subd. 9(1).

Thus, appellant would have knowingly violated Minn. Stat. § 243.166, subd. 3a(a), if, 24 hours after he became homeless and moved back to Wisconsin, he "belie[ved]" or was "aware" that (1) he had left a primary address; (2) he did not have a new primary address; and (3) he had not registered with the law enforcement agency with jurisdiction over the area in which he was staying within 24 hours after leaving his primary address. *See* Minn. Stat. §§ 243.166, subd. 3a(a), 609.02, subd. 9(2); *Gunderson*, 812 N.W.2d at 160.

Appellant admitted each of these three facts at the plea hearing. The nature of these facts is such that appellant was aware of their existence at the time they came to pass. Because appellant provided a sufficient factual basis for the intent element of the offense, he is not entitled to relief on this ground.

Affirmed.