STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0397

Glenford Henry Williamson, II, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 23, 2013
Affirmed
Chutich, Judge

Pine County District Court
File No. 58-CR-09-357

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

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

John K. Carlson, Pine County Attorney, Michelle R. Skubitz, Assistant County Attorney, Pine City, Minnesota (for respondent)

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

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

CHUTICH, Judge

Appealing denial of his petition for postconviction relief, appellant Glenford Henry Williamson II argues that he is entitled to withdraw his guilty plea to criminal

sexual conduct in the third degree because the court failed to establish an adequate factual basis for the plea. Because an adequate factual basis was established by Williamson's admission at the plea hearing, the signed plea petition, and the probable cause statement that was incorporated into the record, we affirm.

FACTS

According to the criminal complaint, in August 2008, Investigator Tom Pitzen began an investigation of Williamson for unrelated allegations of a criminal sexual assault. During this investigation, Investigator Pitzen reviewed police records from the St. Cloud Police Department that described an encounter with Williamson in 2004. While intoxicated and hospitalized for suicidal threats, Williamson admitted to forcibly raping his ex-girlfriend. The report led Investigator Pitzen to interview Williamson's ex-girlfriend, A.L.C.

On August 26, 2008, A.L.C. provided a statement to Investigator Pitzen, with the following recollection of facts. On February 14, 2003, Williamson and his then girlfriend, A.L.C., were at his cabin in Duxbury, Minnesota. After having consensual sexual intercourse, A.L.C. fell asleep. Williamson stayed awake, consumed alcohol, and then woke A.L.C., insisting they have sexual intercourse again. A.L.C. refused numerous times. Williamson choked her and then forcibly penetrated her. After the assault, A.L.C. attempted to leave the cabin but Williamson brought her back inside and attempted anal sexual intercourse. A.L.C. ultimately fought Williamson off her. Williamson then pointed a shotgun at her and threatened to kill A.L.C. and her family to keep her from

reporting the sexual assault. A.L.C. remained frightened of Williamson and ended their relationship in March 2004.

The state brought charges against Williamson for two separate allegations of criminal sexual conduct against two victims. The state charged Williamson with one count of first-degree criminal sexual conduct and one count of third-degree criminal sexual conduct for his assault against A.L.C. *See* Minn. Stat. §§ 609.342, subd. 1(e)(i) (2002); 609.344, subd. 1(c) (2002). At the plea hearing, Williamson pleaded guilty to two counts; one count of third-degree criminal sexual conduct related to the attack of A.L.C. and one count of third-degree criminal sexual conduct related to a different victim in the other case. In exchange for the plea, the state agreed to dismiss all other charges.

After Williamson and his counsel reviewed in open court the written plea petition that Williamson signed, a plea colloquy concerning the charge involving A.L.C. occurred. The pertinent part of the plea colloquy included this exchange:

> COURT: Mr. Williamson, to count two of the complaint in CR-09-357 that charges you with criminal sexual conduct in the third degree . . . this offense occurring on or about February 14, 2003 in Pine County, to that charge how do you plead?
> . . . .
> WILLIAMSON: Guilty.
> COURT: You are still under oath. . . . [D]uring that time period . . . on or about February 14, 2003, you were again here in Pine County, true?
> WILLIAMSON: True.
> COURT: And you were with an individual identified by the initials A.L.C., isn't that true?
> WILLIAMSON: That's true.
> COURT: And you were at a cabin that your family has outside of Sandstone; isn't that true?
> WILLIAMSON: Duxbury, yes.

> COURT: Duxbury. And during—while you were at the cabin that your family has outside of Duxbury you were with A.L.C.; is that true?
> WILLIAMSON: That's true.
> COURT: And you wanted A.L.C. to engage in sexual intercourse; isn't that true?
> WILLIAMSON: That's true.
> COURT: And she refused to engage in sexual intercourse and that after she refused you became upset and you did sexually assault A.L.C. and in so doing you choked her and held her down on the bed to accomplish the sexual penetration; isn't that true?
> WILLIAMSON: I believe so. I don't remember that much of that night, Your Honor.
> COURT: Is that because of your drinking or using other –
> WILLIAMSON: We were both really drunk that night so –
> COURT: Okay. So you don't have a present recollection but you do understand that that was the allegation and indeed you were hospitalized and during the hospitalization you made some admissions about that; isn't that true?
> WILLIAMSON: Yes, sir.
> COURT: The Court again will incorporate the probable cause portion of the complaint to buttress the factual basis for Mr. Williamson's plea. [Prosecutor], do you have any questions of Mr. Williamson on that file?
> PROSECUTOR: No, Your Honor.
> COURT: [Defense counsel?]
> DEFENSE COUNSEL: No, Your Honor.

The court accepted Williamson's plea of guilty and imposed a 58-month sentence on this count. Williamson petitioned for postconviction relief, arguing that the factual basis was inadequate to support his guilty plea. After the district court denied postconviction relief, this appeal followed.

D E C I S I O N

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007). But a defendant may withdraw a guilty

plea at any time, even after sentencing, if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists when a guilty plea is invalid, which occurs when a guilty plea is not accurate, voluntary, and intelligent. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007).

A plea is accurate if a proper factual basis has been established. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). The main purpose of requiring an adequate factual basis is to ensure that "the defendant actually committed a crime at least as serious as the one to which he is willing to plead." *State v. Gustafson*, 298 Minn. 200, 201–02, 214 N.W.2d 341, 342 (1974) (quotation omitted). On appeal from a postconviction court's decision, we review "only whether the postconviction court's findings are supported by sufficient evidence." *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). When a defendant asserts that he must be allowed to withdraw his plea to correct a manifest injustice, we assess the validity of a plea de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

The record, taken as a whole, establishes an adequate factual basis. Before the guilty plea colloquy occurred, Williamson, with the aid of his attorney, completed and signed a written plea petition. The plea petition includes Williamson's agreement to the statements "I do not make the claim that I was so drunk or so under the influence of drugs or medicines that I did not know what I was doing at the time of the crime" and "I now make no claim that I am innocent."

At the hearing, when the district court asked whether Williamson used force to sexually assault A.L.C., Williamson admitted the crime, stating, "I believe so." While

Williamson then commented that he did not "remember that much of that evening," at no time did he deny committing the assault against A.L.C. or state that he was uncertain whether he assaulted A.L.C. that night.

In fact, Williamson's admission of "I believe so" was then supported by his agreement, on the record, that he had previously admitted to the St. Cloud police that he had sexually assaulted A.L.C. The district court properly admitted the probable cause statement of the complaint containing Williamson's previous admissions, along with a detailed report by A.L.C. of the sexual assault, to support the factual basis of the guilty plea. *See Raleigh*, 778 N.W.2d at 94 ("[A] defendant may not withdraw his plea simply because the court failed to elicit proper responses if the record contains sufficient evidence to support the conviction."); *State v. Stewart*, 360 N.W.2d 463, 465 (Minn. App. 1985) ("To put a factual basis on the record for accepting a guilty plea, a trial court can make use of law enforcement investigation reports."). Williamson's admissions and A.L.C.'s detailed description of Williamson's sexual assault alleviate concern that Williamson pleaded guilty to a more serious charge than one for which he could be convicted.

Moreover, Williamson did not object to the court's incorporation of the probable cause statement, and his plea in this case was his second plea to criminal sexual assault at the plea hearing. The district court previously went through the same methods for establishing the factual basis for the other crime, including incorporating the probable cause statement of the complaint. Williamson was thus informed of the process for

entering a plea and made no objection to supplementing the record by introduction of investigatory materials.

Williamson now contends that the district court transformed his guilty plea into a *Norgaard* plea when it admitted the complaint as the basis for the plea. If a defendant states that he does not remember the facts of the alleged crime because he was intoxicated, he can enter a *Norgaard* plea if he reasonably believes the state would obtain a conviction given the weight of evidence against him. *State ex rel. Norgaard v. Tahash*, 261 Minn. 106, 114, 110 N.W.2d 867, 872 (1961). We disagree with Williamson's characterization of the plea colloquy. Although not a model for entering a plea of guilty, the district court did not transform Williamson's guilty plea into a *Norgaard* plea when it admitted further factual support for Williamson's statement that he believed he committed the sexual assault. Williamson did not claim a complete lack of memory of the assault and said he believed that he had committed the crime.

In sum, under the totality of the circumstances here, the district court established an adequate factual basis for Williamson's guilty plea. No manifest injustice occurred by the district court's acceptance of Williamson's plea of guilty for criminal sexual conduct in the third degree.

Affirmed.