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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1634**

Jordan Michael Metoxen, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed May 26, 2009  
Affirmed  
Larkin, Judge**

St. Louis County District Court  
File No. 69DU-CR-06-5541

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and

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respondent)

Considered and decided by Stauber, Presiding Judge; Minge, Judge; and Larkin,  
Judge.

## UNPUBLISHED OPINION

**LARKIN**, Judge

Appellant challenges the district court's denial of his postconviction petition to withdraw his guilty plea. Appellant argues that the district court abused its discretion by concluding that there was a sufficient factual basis for appellant's plea. Because there was a sufficient factual basis for appellant's guilty plea, we affirm.

### FACTS

Appellant Jordan Michael Metoxen pleaded guilty to aiding and abetting intentional murder in the second degree in violation of Minn. Stat. § 609.19, subd. 1(1) (2004), with reference to Minn. Stat. § 609.05 (2004), pursuant to a plea agreement. At Metoxen's plea hearing, he testified that he was at a liquor store in Duluth on June 9, 2006 with Sequoyah Bosto. Metoxen saw the victim come out of the store with a 12-pack of beer. Metoxen agreed that he was "involved in an attack on [the victim] in an alley across the street from the liquor store." Metoxen stated that Bosto hit the victim, and the victim fell to the ground. Metoxen affirmed that he and Bosto kicked and stomped on the victim while the victim was on the ground and that the victim was hit more than a dozen times. Metoxen agreed that he helped Bosto cause the victim's injuries, at some point realized that an assault of this gravity could kill someone, and "intended what happened to happen." Metoxen admitted that he did not remain at the scene to help the victim after the assault. Metoxen testified that he did not doubt the medical findings and did not object to the district court's receipt of the autopsy report and four photographs of the victim's injuries into evidence.

The district court accepted Metoxen's plea "with the understanding that I have reviewed the reports and believe that there is a sufficient factual basis for this plea." Metoxen waived his right to a jury trial on aggravated-sentencing factors. The district court made aggravated-offense findings and sentenced Metoxen to 40 years in the custody of the Minnesota Commissioner of Corrections in accordance with the plea agreement.

Metoxen petitioned for postconviction relief, requesting that the district court vacate his guilty plea. Metoxen claimed that his plea was not accurate because the record did not support a conclusion that Bosto intended to cause the death of the victim or that Metoxen could foresee that Bosto would cause the death of the victim. The district court denied Metoxen's petition, concluding that "[g]iven the totality of circumstances . . . an adequate factual record exists upon which the Court could correctly infer Mr. Bosto intended to kill [the victim]" and that the victim's death was a reasonably foreseeable consequence of the assault. This appeal follows.

## **D E C I S I O N**

We review a district court's decision to deny postconviction relief for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004) (reviewing a petition for postconviction relief seeking to withdraw a guilty plea). The scope of our review is limited to determining whether there is sufficient evidence to sustain the findings of the postconviction court. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

A court must allow a defendant to withdraw a guilty plea "upon a timely motion" and upon a showing that the "withdrawal is necessary to correct a manifest injustice."

Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists when a guilty plea is not “accurate, voluntary, and intelligent.” *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). “A proper factual basis must be established for a guilty plea to be accurate.” *Ecker*, 524 N.W.2d at 716. An adequate factual basis exists where “there [are] sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *Kelsey v. State*, 298 Minn. 531, 532, 214 N.W.2d 236, 237 (1974).

The district court is responsible for ensuring that a sufficient factual basis has been established for a guilty plea. *Ecker*, 524 N.W.2d at 716. “[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.” *Id.* But an adequate factual basis can be established in other ways. *Holscher v. State*, 282 N.W.2d 866, 867 (Minn. 1979) (holding that a factual basis was sufficient where it consisted of omnibus hearing testimony and the prosecution’s unchallenged summary of its evidence).

A person is guilty of second-degree intentional murder if the person “causes the death of a human being with intent to effect the death of that person or another, but without premeditation.” Minn. Stat. § 609.19, subd. 1(1). Criminal intent is generally proven by inferences drawn from the totality of the circumstances. *State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996); see *Smith v. State*, 596 N.W.2d 661, 665 (Minn. App. 1999) (holding that facts elicited during plea colloquy may suffice to infer guilt), *review denied* (Minn. Aug. 27, 1999). It may also be inferred that “a person intends the natural and probable consequences of their actions.” *State v. Johnson*, 616 N.W.2d 720, 726

(Minn. 2000) (concluding premeditation and intent to kill can be inferred from the facts). And intent to cause death can “be inferred from the nature and extent of the [victim’s] wounds” and the offender’s failure to aid the victim after an assault. *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989) (holding that intent to cause death could be inferred from defendant’s infliction of 10 or 11 stab wounds and the fact that defendant left the victim to bleed to death).

A person is guilty of aiding and abetting an offense “if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” Minn. Stat. § 609.05, subd. 1. A person is also liable for “any other crime committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended.” Minn. Stat. § 609.05, subd. 2. “Under Minnesota law, a defendant charged as an accomplice to . . . murder is not required to have predicted that a companion would murder the victim.” *State v. Richardson*, 670 N.W.2d 267, 281 (Minn. 2003). “Rather, the question is whether the murder was reasonably foreseeable as a probable consequence of the intended crime . . . .” *Id.*

Metoxen argues that there was an insufficient factual basis for his plea because there was no direct evidence that Bosto intended to kill the victim and because an intentional murder was not reasonably foreseeable to Metoxen as a probable consequence of the assault. We disagree.

The record from Metoxen’s plea hearing included photographs of the victim’s injuries and the victim’s autopsy report. Metoxen did not object to the introduction of

this evidence and testified that he did not dispute the medical findings. And the district court referenced its review of this evidence and thereby effectively incorporated the evidence into the plea-taking process. The autopsy report described “massive traumatic injuries,” including multiple fractures in the victim’s face and ribs, and hemorrhages in the victim’s head and brain stem. The “massive traumatic injuries” are evident from the photographs of the victim’s wounds. The record also included Metoxen’s description of Bosto repeatedly kicking and stomping the victim and Metoxen’s acknowledgment that these actions could result in death. Thus, we conclude that the record is sufficient to infer Bosto’s intent to cause the death of the victim from the totality of the circumstances. *See Raymond*, 440 N.W.2d at 426.

Likewise, we conclude that the record was sufficient for the district court to find that the intentional murder of the victim was reasonably foreseeable as a probable consequence of the assault. Metoxen’s contention that the victim’s death was an unforeseeable consequence is belied by the facts that the victim incurred “massive traumatic injuries” during the assault and Metoxen’s admission that at some point he realized that an assault of this gravity could kill someone. Moreover, Metoxen’s description of the assault, which included kicking and stomping the victim repeatedly, supports the conclusion that an intentional murder was reasonably foreseeable given the extended nature of the assault.

Metoxen’s guilty plea was supported by an adequate factual basis. There are sufficient facts in the record, referenced at the time of the plea, to support a conclusion that Metoxen’s conduct constituted aiding and abetting second-degree intentional murder.

Accordingly, the district court did not abuse its discretion by denying Metoxen's postconviction petition to withdraw his plea.

**Affirmed.**

Dated: \_\_\_\_\_

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The Honorable Michelle A. Larkin