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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2010**

State of Minnesota,
Respondent,

vs.

Rickey Maddox,
Appellant.

**Filed August 31, 2010
Affirmed
Collins, Judge***

Olmsted County District Court
File No. 55-CR-09-4232

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

Mark. A. Ostrem, Olmsted County Attorney, Laurie L. Anderson, Associate County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Kalitowski, Judge; and
Collins, Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

COLLINS, Judge

Contending his guilty plea to third-degree assault was inaccurate, appellant seeks “an opportunity to withdraw this plea in order to correct a manifest injustice.” Because we conclude that the record supports the accuracy of the plea and appellant’s pro se arguments are without merit, we affirm.

DECISION

I.

Appellant Rickey Maddox was charged with third- and fifth-degree assault for an altercation with C.D.F. C.D.F. alleged appellant “hit her as hard as he could across the head” and then threw her down the steps onto the concrete walkway, causing hair-line fractures in her arm and elbow. Appellant pleaded guilty to third-degree assault. The fifth-degree assault charge was dismissed. Appellant was sentenced to 21 months’ imprisonment, the presumptive sentence for an offender with two prior violent felonies under Minn. Stat. § 609.1095 (2008). Appellant argues that he is entitled to withdraw his guilty plea because there was an insufficient factual basis to support the conclusion that he caused the reported injuries.

A defendant may withdraw a guilty plea after sentencing if withdrawal is “necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists if a plea is invalid, meaning the plea does not comply with constitutional due process requirements that the plea be accurate, voluntary, and intelligent. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). “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.” *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). In order for a plea to be accurate there must be a proper factual basis supporting the guilty plea. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). In a direct appeal from a judgment of conviction challenging the accuracy of a plea, this court reviews the record de novo to determine whether the plea had a sufficient factual basis. *See, e.g., State v. Hoaglund*, 307 Minn. 322, 326-27, 240 N.W.2d 4, 6 (1976) (evaluating validity of plea on challenge to sufficiency of factual basis).

Prior to entering his plea, appellant completed a four-page plea petition and was questioned on the record as to his trial rights. Appellant stated that he struck C.D.F. Appellant’s attorney inquired:

Q. And you—With that anger, you struck her?

A. True.

Q. And she fell to the—to the floor?

A. To the concrete sidewalk, true.

Q. Right. And as she was falling she tried to break her fall with—and so used her wrist to support her weight, correct?

A. Correct.

Q. And we have—we have talked about it and we agreed that on the—with that fall there was the likelihood for her to have hairline fractures in her arm, correct?

A. Strong possibility, yes.

Q. Right. And that’s—that’s why this qualifies as an assault in the third degree per statute, correct?

A. That’s correct.

Q. And that's why we—you are pleading guilty to this today?

A. That's right.

The prosecutor inquired further:

Q. Mr. Maddox, you then agree that your assault on [C.D.F.] caused the fractures on her left arm, correct?

A. Well, with the way the assault went down it's a strong possibility that I did. And when I—when [I] assaulted her I left myself open for all kinds of possibilities for almost anything to happen to her.

Q. And while you may not have intended that she suffer those kinds of injuries, you did intentional[ly] assault her and you understand that the outcome of that assault is that she did suffer a fracture?

A. I understand but my intent—Well, I guess like you're saying—Yeah, I agree. Okay. Yes. No excuse.

Appellant argues that this questioning did not establish a sufficient factual basis to support the plea of guilty to third-degree assault because he had no personal knowledge of whether his actions caused the victim's injuries. In order to be guilty of third-degree assault, a defendant must have "assault[ed] another and inflict[ed] substantial bodily harm." Minn. Stat. § 609.223, subd. 1 (2008). Substantial bodily harm means "bodily injury . . . which causes a fracture of any bodily member." Minn. Stat. § 609.02, subd. 7a (2008). There is no personal knowledge requirement in the third-degree assault statute. Appellant's argument that his plea was inaccurate because he did not have personal knowledge of the exact extent of C.D.F.'s injury is without merit.

Appellant argues that the district court had an obligation to ensure that there was a factual basis for all elements and that appellant's mere admission was an insufficient

basis on which to determine the element of causation. In order to be satisfied that there is a factual basis for all essential elements of the crime, the district court may look to other parts of the record, including a sworn complaint. *See State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (relying on allegations in criminal complaint to establish factual basis for plea); *Williams v. State*, 760 N.W.2d 8, 13 (Minn. App. 2009) (relying in part on complaint to establish factual-basis component). The probable-cause section of the sworn complaint contains information, independent of appellant's plea admissions, going to the nature and extent of C.D.F.'s injuries and that the injuries were caused by the assault. There, it is stated that (1) appellant "hit [C.D.F.] as hard as he could across the head ... [C.D.F.] got up and tried to get inside the apartment and [appellant] grabbed her and pulled her off the steps and threw her to the ground," (2) interviewed by police at the emergency room two days later, C.D.F. described her diagnosed injuries as including a broken hand and elbow, and (3) C.D.F. "[thought] she got the . . . fracture to her left hand from trying to break the fall to the cement sidewalk." When asked to describe the injury suffered as a result of the assault in the victim-impact statement, C.D.F. responded "hand fracture." In the victim-impact statement, C.D.F. reiterated her account of the assault and stated she went to the hospital the next day because she was suffering from pain in her chest and arm due to the assault.

Because appellant pleaded guilty and admitted all elements of third-degree assault and the record provides additional factual support that allowed the district court to assess the accuracy of the plea, we conclude appellant's plea was amply factually supported and accurate.

II.

Appellant raises additional issues by way of his pro se supplemental brief. First, appellant challenges the admissibility of evidence. But his right to a pretrial hearing challenging the admissibility of evidence was explained in the plea petition and was reviewed on the record with appellant. By validly waiving such a hearing, appellant knowingly relinquished his right to challenge the admissibility of evidence. Two other issues are premised on appellant's misunderstanding that he was convicted of both third-degree and fifth-degree assault. But appellant's guilty plea addressed only the charge of third-degree assault and the district court dismissed the fifth-degree assault charge as part of the plea agreement. Appellant's pro se arguments on these issues are without merit.

Next, appellant seeks leave to withdraw his plea supported by pro se assertions that his counsel was ineffective. In order to prove an ineffective-assistance-of-counsel claim a defendant must affirmatively show "that his counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quotations omitted). A guilty plea may be rendered invalid by ineffective assistance of counsel. *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994).

First, in asserting his counsel was ineffective, appellant again makes arguments alluding to the admissibility of evidence and multiple convictions. As discussed above, these arguments are without merit. Moreover, it is shown in the record that appellant and his attorney discussed the strengths and weaknesses of the state's case before accepting

the plea offer. In these regards, there is nothing that suggests appellant's counsel's representation fell below an objective standard of reasonableness.

Finally, appellant alleges several instances in which his counsel "deceived" him about the state's plea offer and failed to prepare for trial. But there is nothing in the record to support such allegations. Instead, the record supports a conclusion that appellant knowingly and voluntarily waived his rights to a trial and entered an accurate plea. A direct appeal challenging the validity of a plea is only 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). Without support in the record these assertions are only argumentative statements and are an insufficient basis to review appellant's counsel's conduct. *State v. Feather*, 288 Minn. 556, 557, 181 N.W.2d 478, 480 (1970).

Affirmed.