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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-449**

Casey Craig Schueneman, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 21, 2010
Affirmed
Kalitowski, Judge**

Steele County District Court
File No. 74-CR-08-25

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

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

Daniel A. McIntosh, Steele County Attorney, Owatonna, Minnesota (for respondent)

Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and Minge, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

In this postconviction appeal, appellant Casey Craig Schueneman challenges the district court's order denying his request to withdraw his guilty plea, arguing that his plea is invalid because (1) the factual basis failed to establish the element of great bodily harm

to support a first-degree assault conviction; and (2) he received ineffective assistance of counsel. We affirm.

DECISION

I.

On September 16, 2008, appellant pleaded guilty to first-degree assault for intentionally crashing into the victim's car on December 7, 2007, while both were driving on the highway. At the plea hearing, appellant acknowledged that, as a result of the car crash, the victim was still suffering from a back injury that causes neuropathy, a tingling in the nerves that affects the victim's ability to use her legs.

Appellant argues that the district court erred in denying his postconviction motion to withdraw his guilty plea because the factual basis of the plea failed to establish the element of great bodily harm to support his first-degree assault conviction. We disagree.

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 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 defendant must present a factual basis sufficient to establish that the elements of the offense to which he is pleading have been met. Minn. R. Crim. P. 15.02, subd. 2; *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). “[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.” *Ecker*, 524 N.W.2d at 716. “The factual basis of a plea is inadequate when the defendant makes

statements that negate an essential element of the charged crime because such statements are inconsistent with a plea of guilty.” *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003).

A conviction of first-degree assault requires that a person assault another and inflict great bodily harm. Minn. Stat. § 609.221, subd. 1 (2006). The term “great bodily harm” is defined as

bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

Minn. Stat. § 609.02, subd. 8 (2006). “Bodily harm” includes “physical pain or injury . . . or any impairment of physical condition.” *Id.*, subd. 7 (2006). Thus, the statute focuses on the extent of the injury rather than the actions of the assailant. *State v. Gerald*, 486 N.W.2d 799, 802-03 (Minn. App. 1992).

Appellant contends that the victim’s injury does not meet the definition of great bodily harm. Appellant argues that because the state failed to provide “any victim testimony, any medical reports or documents with a diagnosis of neuropathy, or any specific information on how the victim is unable to use her legs,” his plea was insufficient to establish the element of great bodily harm. He asserts that because he “simply agreed” when defense counsel asked him if neuropathy constituted great bodily harm, neither his attorney’s description of the victim’s injury, nor his agreement, was sufficient to establish that the victim suffered great bodily harm.

Appellant relies on *State v. Ecker* to support his contention that “medical reports regarding a victim’s injuries” are required to “supplement the record where the element of the offense is critical to the plea.” But *Ecker* does not support this proposition. Although *Ecker* emphasizes that the use of leading questions to establish the factual basis for a guilty plea is discouraged, it says nothing about requiring anything other than the admission of the defendant to provide a factual basis for a guilty plea. 524 N.W.2d at 717. And the use of leading questions to establish a factual basis, though disfavored, does not invalidate a guilty plea. *Id.*

In its order denying appellant’s postconviction motion, the district court found that appellant provided a sufficient factual basis to support his guilty plea because the victim suffered protracted loss or impairment of the function of a bodily member under the definition of “great bodily harm.” There is sufficient evidence in the record of the plea hearing to support this finding: (1) nine months after the car crash, appellant acknowledged that the victim was still suffering from a back injury that causes neuropathy; (2) appellant indicated on the record that he had an opportunity to discuss this element of first-degree assault with counsel, and that he had “received information” that the victim suffered great bodily harm; and (3) appellant admitted that the victim’s injury was affecting her ability to use her legs and agreed that “neuropathy” means a “tingling in [the victim’s] nerves.”

Moreover, the victim’s injury here—numbness affecting the ability to use a body part for at least nine months—is consistent with the supreme court’s determination as to what constitutes “great bodily harm” or “permanent or protracted loss or impairment of

the function of a bodily member or organ.” See *State v. Jones*, 266 N.W.2d 706, 710 (Minn. 1978) (holding that leg numbness for several weeks, dizziness and headaches for almost one month, and teeth numbness for at least one month was sufficient evidence of “great bodily harm”).

Although the factual basis for appellant’s plea was established through leading questions, there was sufficient factual support in the record to support his guilty plea. See *Ecker*, 524 N.W.2d at 717 (stating that guilty pleas established through leading questions are disfavored, but do not amount to manifest injustice to invalidate the plea). Appellant’s answers to the questions did not indicate that he disagreed with what was said. And his answers were consistent with his plea of guilty. See *Iverson*, 664 N.W.2d at 350 (stating that a defendant’s statements that negate an essential element of a crime are inconsistent with a plea of guilty). Thus, the district court did not abuse its discretion in denying appellant’s postconviction petition to withdraw his guilty plea.

II.

Appellant argues in a one-page, pro se supplemental brief, that his guilty plea was invalid because he received ineffective assistance of counsel. Appellant contends that his guilty plea was invalid because his attorney “failed to conduct an investigation as to the claims of permanent injuries sustained by the victim.” He argues that “there were no medical records to provide a diagnosis or specific information of permanent injuries suffered by the victim” and that there was no victim testimony. But appellant offers no explanation in his brief as to how the actions that he argues his counsel should have taken would have affected the outcome of his guilty plea.

Appellant's ineffective-assistance-of-counsel claim is without merit. And because he provides no legal support for his assertion, we need not analyze it further. See *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (noting that assignment of error in brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection). Moreover, appellant did not raise the issue of ineffective assistance of counsel in his postconviction petition, nor did he request an evidentiary hearing at the time of his postconviction petition. This court will not consider matters not argued to and considered by the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

Affirmed.