STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0740

State of Minnesota,
Respondent,

vs.

Darrius Davantae Parkman,
Appellant.

Filed March 10, 2014
Affirmed
Chutich, Judge

Hennepin County District Court
File No. 27-CR-12-32021

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Chutich, Judge; and Smith, Judge.

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

CHUTICH, Judge

Appellant Darrius Davantae Parkman appeals his second-degree murder conviction, arguing that his guilty plea should be withdrawn and his sentence decreased

to 295 months. Because Parkman's guilty plea is valid and the district court properly sentenced him to the presumptive sentence, we affirm.

FACTS

On August 18, 2012, appellant Darrius Davantae Parkman met with M.J. in Minneapolis. During the meeting, Parkman pulled out his gun that he was carrying and fired it at M.J., killing him. Parkman intended to shoot the gun and intended to kill M.J.

The state charged Parkman with second-degree intentional murder. *See* Minn. Stat. § 609.19, subd. 1(1) (2012). In January 2013, Parkman pleaded guilty as charged. The district court sentenced him to 346 months in prison in accordance with the parties' plea agreement. This appeal followed.

D E C I S I O N

I. Accuracy of Guilty Plea

Parkman asserts that withdrawal of his plea is necessary to correct a manifest injustice. He contends his plea was inaccurate because "all of the questions posed by the prosecutor and defense counsel were leading and did not elicit a description from [Parkman] of facts relating to the alleged criminal conduct."

"A defendant does not have an absolute right to withdraw a valid guilty plea." *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Even though Parkman has not moved to withdraw the guilty plea in the district court, he "has a right to challenge his guilty plea on direct appeal." *State v. Anyanwu*, 681 N.W.2d 411, 413 (Minn. App. 2004). We review de novo the validity of a plea. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

A guilty plea is valid if it is "accurate, voluntary, and intelligent." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). "To be accurate, a plea must be established on a proper factual basis." *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012) (quotation omitted). The factual basis must show that the defendant's actions satisfy all of the elements of the crime to which he is pleading guilty. *State v. Iverson*, 664 N.W.2d 346, 349–50 (Minn. 2003). The accuracy requirement protects a defendant from pleading guilty to a more serious offense than he could be convicted of at trial. *Lussier*, 821 N.W.2d at 588.

"[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." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). The Minnesota Supreme Court has "long discouraged" district courts from establishing a factual basis by allowing a defendant's attorney to ask leading questions. *Raleigh*, 778 N.W.2d at 95. But plea withdrawal is not required, despite this "disfavored format," when sufficient evidence in the record supports the conviction. *Id.* at 94–96. In evaluating the accuracy of a plea, we may consider the plea petition, the plea colloquy, and any other evidence in the record. *Lussier*, 821 N.W.2d at 588–89.

Here, Parkman pleaded guilty to second-degree intentional murder. A person is guilty of second-degree intentional murder if he "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).

The plea colloquy between Parkman and his attorney sufficiently establishes the elements of second-degree murder. Parkman admitted that, during a meeting with the victim, he intentionally shot and killed him. During further inquiry by the prosecutor, Parkman gave affirmative responses to the questions "you would agree that you fired that gun intentionally" and "you would agree that at the time you fired those guns you had the intent to kill [the victim]."

Parkman does not argue that the plea failed to establish an element of the crime, but complains only about the format of the questioning. Although we do not condone the use of leading questions alone to establish a factual basis, the plea colloquy here sets forth the elements of second-degree intentional murder. Thus, the factual basis is sufficient to support Parkman's conviction. *See Raleigh*, 778 N.W.2d at 94–96 (concluding that, because the plea colloquy between defendant and his attorney established the elements of the offense, the factual basis was sufficient, even though only leading questions used).

Parkman cites *Shorter v. State* for support, but the circumstances of *Shorter* are distinguishable from Parkman's case. *See* 511 N.W.2d 743, 746–47 (Minn. 1994). In *Shorter*, the supreme court allowed the appellant to withdraw his guilty plea not only because the factual basis was established through leading questions, but also because (1) the police department was prepared to testify that the investigation in Shorter's case was incomplete; (2) Shorter did not have access to certain witnesses; and (3) Shorter's postconviction petition included factual allegations sufficient to require a hearing

concerning new evidence, yet he had been denied a hearing. *Id.* No such "highly unusual facts" exist here. *See id.*

In sum, Parkman has not pleaded guilty to a more serious offense than he could be convicted of had he gone to trial. The record establishes that his plea is accurate, and, therefore, Parkman may not withdraw it.

II. Modification of Sentence

Parkman requests that we reduce his sentence to 295 months, the bottom of the presumptive range, because he pleaded guilty and accepted responsibility for his actions. We review a district court's sentencing decision for abuse of discretion. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010). A district court "must pronounce a sentence within the applicable range" of the sentencing guidelines "unless there exist identifiable, substantial, and compelling circumstances to support" a departure from the presumptive sentence. Minn. Sent. Guidelines 2.D.1 (2012). When the sentence imposed is within the presumptive guidelines range, we generally will not modify such sentences "absent compelling circumstances." *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982).

Parkman accepted the state's offer to plead guilty to second-degree murder for a presumptive sentence of 346 months in prison, which is the middle of the presumptive range when a defendant has two criminal history points. *See* Minn. Sent. Guidelines 4.A (2012). As part of the negotiation, the state dropped an aggravated-robbery charge and agreed not to charge Parkman with assault for an incident that occurred while he was in custody. The district court sentenced Parkman consistently with the agreement.

Parkman did not argue to the district court that he should receive a bottom-of-the-box sentence. We "generally will not decide issues which were not raised before the district court." *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Regardless, the record shows that the district court acted within its broad discretion in imposing the presumptive sentence, and no compelling circumstances exist to warrant modifying that sentence.

Affirmed.