STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1080

Ernesto Reyes-Alcazar, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed May 3, 2021
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CR-15-11414

Charles F. Clippert, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Ernesto Reyes-Alcazar was convicted of first-degree arson following his guilty plea. In this appeal, he challenges the district court's summary denial of his second petition for postconviction relief. He argues that the district court erred by rejecting his

claim that he received ineffective assistance of appellate counsel in his first, unsuccessful petition for postconviction relief. Reyes-Alcazar's ineffective-assistance-of-counsel claim ultimately turns on the accuracy of his guilty plea. He contends that his plea was inaccurate because the record does not support two findings: (1) that he had the specific intent to damage or destroy a building when he set fire to it and (2) that the building that he burned was not a dwelling.

We conclude that Reyes-Alcazar's guilty plea was accurate because the record supports the fact that he had the requisite specific intent and because it is not an element of the crime that the building burned was a non-dwelling. Because Reyes-Alcazar's plea was supported by a proper factual basis, his previous counsel did not unreasonably fail to raise an accuracy challenge to his plea. The district court therefore did not abuse its discretion by summarily denying Reyes-Alcazar's second petition for postconviction relief. We affirm.

FACTS

The facts underlying this case are recited at length in our previous decision affirming the denial of Reyes-Alcazar's first petition for postconviction relief. *See Reyes-Alcazar v. State*, No. A18-0531, 2019 WL 1510835 (Minn. App. Apr. 8, 2019), *review denied* (Minn. June 18, 2019). We draw the following facts from that opinion as well as from Reyes-Alcazar's plea hearing.

In 2015, respondent State of Minnesota charged Reyes-Alcazar with first-degree arson in violation of Minn. Stat. § 609.561, subd. 2(b) (2014), for intentionally setting two fires between the screen and storm doors at the front and back of his ex-partner's house.

Reyes-Alcazar, 2019 WL 1510835, at *1. Reyes-Alcazar, represented by counsel, entered into a plea agreement. *Id.*

At the plea hearing, the state questioned Reyes-Alcazar to establish the factual basis for his guilty plea. Responding "yes" to the prosecutor's questions, Reyes-Alcazar admitted the following. On November 10, 2014, he went to his ex-partner's home. He had been in a relationship with her and they were "having some relationship difficulties" at the time. He "communicat[ed] into the house where she was," "demanding to come in or threatening to start a fire." He "reasonably could anticipate that there would be people" inside the home. He "start[ed] a fire in that dwelling by lighting materials by the door." "And the result of lighting those materials by the door is that the fire damaged a part of the dwelling, namely the door jamb and the door." The district court accepted Reyes-Alcazar's guilty plea and sentenced him in accordance with the plea agreement.

In 2017, through new counsel, Reyes-Alcazar petitioned for postconviction relief, requesting that the court allow him to withdraw his guilty plea. *Id.* at *2. He argued that his plea counsel was ineffective for failing to advise him of the immigration consequences of his guilty plea and for failing to challenge the admissibility of his confession.[1] *Id.* The district court denied the petition, and Reyes-Alcazar appealed. He argued for the first time on appeal that his guilty plea was inaccurate. *Id.* at *1. We affirmed the district court's

[1] While serving his sentence, Reyes-Alcazar learned that his Deferred Action for Childhood Arrivals (DACA) status had been revoked. *Reyes-Alcazar*, 2019 WL 1510835, at *2. Immigration and Customs Enforcement had previously started removal proceedings against Reyes-Alcazar, but the proceedings were administratively closed when Reyes-Alcazar qualified for DACA. *Id.* After his felony-arson conviction, Reyes-Alcazar no longer qualified for DACA, and the removal proceedings against him were reopened. *Id.*

order denying postconviction relief, and we declined to consider the accuracy of his guilty plea. *Id.* at *4-5. We noted, though, that Reyes-Alcazar was "not precluded from pursuing a claim of ineffective assistance of appellate counsel for failing to raise a claim that postconviction counsel was ineffective for failing to challenge the accuracy of [his] guilty plea." *Id.* at *5.

Reyes-Alcazar then filed a second petition for postconviction relief, asserting ineffective assistance of appellate counsel. The district court summarily denied relief, ruling that Reyes-Alcazar's guilty plea was accurate and that, therefore, his postconviction counsel and appellate counsel in his first petition were not ineffective for failing to make an accuracy challenge.

Reyes-Alcazar appeals.

DECISION

An appellate court reviews the summary denial of a petition for postconviction relief for an abuse of discretion. *Colbert v. State*, 870 N.W.2d 616, 621 (Minn. 2015). Reyes-Alcazar claims he is entitled to postconviction relief because his appellate counsel on his first petition for postconviction relief was ineffective for failing to raise the issue of the effectiveness of his first postconviction counsel. To establish ineffective assistance of counsel, a petitioner must establish that (1) the petitioner's counsel's representation fell below an "objective standard of reasonableness" and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Nissalke v. State*, 861 N.W.2d 88, 94 (Minn. 2015) (quoting *Strickland v. Washington*, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 2064, 2068 (1984)). Reyes-

Alcazar asserts that his first postconviction counsel provided objectively unreasonable representation by failing to challenge the accuracy of his guilty plea.

To be valid, a guilty plea must be accurate, voluntary, and intelligent. *Nelson v. State*, 880 N.W.2d 852, 858 (Minn. 2016). To be accurate, a plea must be supported by a proper factual basis. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012). A proper factual basis exists "if the record contains a showing that there is credible evidence available which would support a jury verdict that [a] defendant is guilty of at least as great a crime as that to which he pled guilty." *Nelson*, 880 N.W.2d at 859 (quotation omitted). The validity of a plea is a question of law, which is reviewed de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

Reyes-Alcazar contends that his plea was not supported by a proper factual basis because his admissions at his plea hearing did not establish what he asserts are two elements of the first-degree-arson offense to which he pleaded guilty: (1) that he had specific intent to cause damage to or destroy his ex-partner's home and (2) that the building that he burned was a not a dwelling.

As background, section 609.561 of Minnesota Statutes identifies in several subdivisions the ways in which a person commits first-degree arson. *See* Minn. Stat. § 609.561, subds. 1-3 (2014). Two subdivisions are relevant here. Subdivision 1 applies when a person "unlawfully by means of fire or explosives, intentionally destroys or damages any building that is used as a dwelling at the time the act is committed," regardless of "whether the inhabitant is present." *Id.*, subd. 1. Subdivision 2 applies when a person "unlawfully by means of fire or explosives, intentionally destroys or damages any building

not included in subdivision 1" and the person knows that "another person who is not a participant in the crime is present in the building" or "the circumstances are such as to render the presence of such a person therein a reasonable possibility." *Id.*, subd. 2(a), (b). Reyes-Alcazar was convicted under subdivision 2.

With that background, we turn to Reyes-Alcazar's first issue—intent.

A. The record supports a finding of the requisite intent.

First-degree arson is a specific-intent crime. *State v. Battin*, 474 N.W.2d 427, 431 (Minn. App. 1991), *review denied* (Minn. Oct. 23, 1991). The defendant must have "intentionally destroy[ed] or damage[ed]" the building. Minn. Stat. § 609.561, subd. 2; *see also* 10A *Minnesota Practice*, CRIMJIG 18.02 (2020) (describing the requisite intent as when "the defendant acted with the purpose of destroying or damaging the building, or with the belief that the act would cause the building to be destroyed or damaged"). Intent may be proved by circumstantial evidence. *See State v. Jacobson*, 326 N.W.2d 663, 665 (Minn. 1982); *see also Nelson*, 880 N.W.2d at 860 ("Intent is generally proved by inferences drawn from a person's words or actions in light of all the surrounding circumstances." (quotation omitted)).

Reyes-Alcazar argues that the record supports a finding only that he intended to light a fire, not that he intended "to do anything in particular to the building." He supports his argument with our unpublished opinion in *State v. Bellecourt*, No. A17-0625, 2018 WL 700186 (Minn. App. Feb. 5, 2018). In *Bellecourt*, we reversed the defendant's second-degree-arson conviction because the factual basis provided for his guilty plea failed to establish his specific intent. *Id.* at *2. We explained that, while Bellecourt admitted that he

entered a garage and started a fire with a lighter, he did not admit that he intended to destroy or damage the building and "admitted to no facts that would directly or circumstantially establish that he intended to damage or destroy the garage." *Id.*

Bellecourt is not persuasive here. *Cf. Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993) (observing that unpublished decisions are not precedential but may be persuasive). In contrast to Bellecourt, Reyes-Alcazar admitted at his plea hearing to facts that circumstantially establish that he intended to damage or destroy his ex-partner's home. Reyes-Alcazar admitted that his ex-partner lived in the building and that they were having relationship difficulties. He acknowledged threatening to start a fire if she did not let him inside. He admitted that he started the fire by lighting materials by the door of the home and that the fire damaged the door jamb and the door. Reyes-Alcazar's admitted threat and actions provide strong circumstantial evidence that he started the fire with the intent to damage or destroy the building. *See Nelson*, 880 N.W.2d at 860. Reyes-Alcazar's challenge to the factual basis for the intent element fails.

B. It is not an element of the offense that the burned building was not a dwelling.

Reyes-Alcazar also argues that his guilty plea is inaccurate because the record does not establish that the building that he burned was not a dwelling; in fact, he observes, it establishes that it *was* a dwelling. He argues that it is an element of the crime of which he was convicted that the building that he burned was *not* a dwelling. The district court concluded that that is not an element of the offense, and we agree.

As explained above, under subdivision 1 of section 609.561, a person commits first-degree arson when they intentionally burn a dwelling, whether or not the inhabitant of a dwelling is present. Minn. Stat. § 609.561, subd. 1. Under subdivision 2 of the statute—the subdivision under which Reyes-Alcazar was convicted—a person commits first-degree arson by intentionally burning "any building not included in subdivision 1" if the defendant knows or has reason to believe that there is a person in the building. *Id.*, subd. 2.

Reyes-Alcazar argues that, under the "plain language" of the two subdivisions, the legislature intended to require the state to prove that a building was not a dwelling when a person charged with setting fire to a building that he knew or had reason to know was occupied under subdivision 2. The argument is unconvincing.

"The purpose of statutory interpretation is to ascertain the intent of the Legislature." *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). "If a statute is unambiguous, then we must apply the statute's plain meaning." *Id.* (quotation omitted). "A statute is ambiguous only if it is subject to more than one reasonable interpretation." *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017) (quotation omitted).

Reyes-Alcazar's interpretation is not reasonable. Subdivision 1 prohibits the burning of a "building that is used as a dwelling at the time the act is committed," whether or not "the inhabitant is present." Minn. Stat. § 609.561, subd. 1. Subdivision 2 applies to setting fire to "any building not included in subdivision 1" when the defendant knows or has reason to know that "a person" is present. *Id.*, subd. 2. Thus, subdivision 2 punishes persons who intentionally set fire to buildings that they know or have reason to believe are occupied, whereas subdivision 1 punishes setting fire to even unoccupied buildings if the

buildings are dwellings. Reyes-Alcazar presents no explanation for why it would be a reasonable interpretation of the statute to require that the state prove that a building is not a "dwelling" when it has proved that the defendant set fire to a building that the defendant knew or had reason to believe was occupied. The gravamen of the first-degree crime under subdivision 2 is the presence of another person, not the nature of the building. The statute cannot reasonably be read to defeat a finding of guilt under subdivision 2 for burning a building known to be occupied because the evidence shows that, in addition to being occupied at the time of the crime, the building was also a dwelling.

Reyes-Alcazar argues that his reading of the statute is supported by the fact that the two subdivisions establish a different maximum fine. *See* Minn. Stat. § 609.561., subd. 1 (setting a maximum fine of $20,000); *Id.*, subd. 2 (setting a maximum fine of $35,000). We agree with the state that the statutory difference in maximum fines is not a persuasive indicator that proof of a non-dwelling is required under subdivision 2. Offenses under subdivision 1 and subdivision 2 are both first-degree crimes. Minn. Stat. § 609.561. They carry the same maximum sentence. *Id.* They are both level 8 felony offenses and carry the same presumptive prison sentence. *See* Minn. Sent. Guidelines 5.A (2014). It is true that subdivision 2 of section 609.561 establishes a higher maximum fine. But subdivision 2 involves cases where the defendant knew or had reason to believe that he was putting a person inside the building at risk. The difference in maximum fine does not persuade us that an essential element of the crime under subdivision 2 is that the building was a non-dwelling.

In sum, because it is not an element of the crime under subdivision 2 that the building burned was not a dwelling, Reyes-Alcazar's challenge to the factual basis for his plea on that ground fails.

Because Reyes-Alcazar's plea was supported by a proper factual basis, Reyes-Alcazar's postconviction counsel and, by extension, his appellate counsel were not ineffective for not challenging the accuracy of his plea. Because his counsel were not ineffective, the district court did not abuse its discretion by denying Reyes-Alcazar's petition for postconviction relief.

Affirmed.