MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Paul J. Podlejski
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Caroline G. Templeton
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

John M. Thompson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 17, 2024

Court of Appeals Case No. 23A-CR-786

Appeal from the Madison Circuit Court

The Honorable Mark K. Dudley, Judge

Trial Court Cause No. 48C06-2102-F1-424

Memorandum Decision by Judge Foley
Judges Pyle and Tavitas concur.

Foley, Judge.

[1] John M. Thompson ("Thompson") appeals following his plea of guilty to Level 1 felony attempted rape[1] and Level 3 felony criminal confinement while armed with a deadly weapon.[2] He presents the following two restated issues:

I. Whether the trial court abused its discretion by denying Thompson's motion to withdraw the plea of guilty; and

II. Whether an adequate factual basis supported the plea.

[2] We affirm the trial court. However, because the Sentencing Order and the Abstract of Judgment reflect a conviction for Level 1 felony rape rather than for attempted rape, we remand this case to the trial court with instructions to correct the Sentencing Order and the Abstract of Judgment to reflect a conviction for attempted rape. *See* Appellant's App. Vol. 2 pp. 161–163.

Facts and Procedural History

[3] In early 2021, the State charged Thompson with several criminal offenses. Certain charges were dismissed, and a jury trial was scheduled for the two remaining counts: (1) Level 1 felony attempted rape and (2) Level 3 felony criminal confinement while armed with a deadly weapon. When the parties appeared for the jury trial, counsel for Thompson informed the trial court that

[1] Ind. Code §§ 35-41-5-1, 35-42-4-1.

[2] I.C. § 35-42-3-3(a).

Thompson wished to enter a plea of guilty without a plea agreement. The trial court asked Thompson if that was true, and he said: "Yes sir." Tr. Vol. 2 p. 16.

[4] The trial court then placed Thompson under oath and confirmed that Thompson understood the nature of the proceedings, including the roles of the different people in the courtroom. The trial court asked Thompson why everyone was present in the courtroom, and he responded: "Uh, a plea, plea agreement." *Id.* at 17. The trial court then advised Thompson of his rights, at one point informing him that "by pleading guilty [he would be] admitting that charges, the two (2) [charges] that are remaining are true[.]" *Id.* at 19. The trial court asked Thompson whether he had been treated for any mental illness, and Thompson answered affirmatively. At that point, the trial court asked Thompson whether that diagnosis or treatment affected his ability "to know what [he was] doing" that day as he "enter[ed] into an open plea[.]" *Id.* at 23. Thompson said: "No, no sir." *Id.* The trial court then said that it wanted "to be clear and transparent," and went on to explain that it had received "several letters" from Thompson about his "mental condition[.]" *Id.* The trial court noted that, because Thompson was represented, it could not "do anything" with those letters, but was "aware that [Thompson] ha[s] a diagnosis" that he "feel[s] . . . affects [him]." *Id.* at 24. The court said the letters did not relate to the "[d]efense of insanity," but "really just had to do with competency[.]" *Id.* The trial court characterized the colloquy it had conducted with Thompson as a "competency evaluation," indicating it found Thompson competent to plead guilty. *Id.* Thompson then confirmed he wished to "go forward." *Id.* at 25.

[5] The court said the State would lay a factual basis. After the State summarized the evidence it anticipated presenting at trial, the court asked Thompson: "[I]s this in fact what happened?" *Id.* at 27. He replied: "Uh, I can't answer it, cuz [sic] . . . I really don't remember that incident." *Id.* at 27–28. An exchange ensued during which Thompson said he was pleading guilty "[b]ecause I was told it's the best option for me, at this moment." *Id.* at 28. The court said: "Explain to m[e] why you don't know what happened that day or at least why you claim you don't know what happened that day." *Id.* Thompson replied:

> I said I don't remember that full date in question, because after the alleged incident, officers had slammed me on my head, giving me a head injury that I was never treated for, and ever since then I would. My memory has been fading and blurry here and there, somedays it[']s good and somedays it[']s bad.

Id. at 28–29. At that point, Thompson's counsel asked to speak with him. The court granted the request and, when back on the record, Thompson's counsel questioned Thompson about his encounter with G.W., who the State alleged worked at the correctional facility where Thompson had been incarcerated:

> Q Alright, [November 19] of 2020, uh, you went to G.W.[']s office, is that correct?
>
> A Yes.
>
> Q Okay. Uh, and on that day, that same day and while in [the] office you had a sharpened piece of metal. Is that correct?

A Yes.

Q Okay, and you'll, during that time that you were in her office, um, you grabbed G.W.[,] took her to the ground[,] and you asked her to take off her pants, that's correct. Correct?

A Yeah.

Q And obviously you are having a hard time remember[ing] some of this stuff, correct?

A Yeah

Q Um, but to the best of your ability those are the allegation[s], and they are correct, is that correct?

A Yeah

. . . .

Q So, when you were on the ground with G.W.[,] you had a hold of her, correct?

A Yeah.

Q And she couldn't get up and leave at that point because you w[ere] holding on to her, is that correct?

Q Yes.

Id. at 30–31. At that point, the trial court asked Thompson how he was pleading to Level 1 felony attempted rape. Thompson said: "Guilty." *Id.* at 31. When asked the same question as to Level 3 felony criminal confinement, Thompson said: "Guilty." *Id.* The court took the matter under advisement, ordered a presentence investigation report, and scheduled a sentencing hearing.

[6] Before the sentencing hearing, Thompson personally filed a verified motion to withdraw his plea. Therein, Thompson alleged that he had been "coerced by counsel" and that counsel had "refused to look into mental health" issues. App. Vol. 2 p. 125. Thompson sent other letters with similar allegations. At the outset of the sentencing hearing, the trial court acknowledged its receipt of the correspondence and said it "want[ed] to give [Thompson] the opportunity to present any other argument or any other evidence to support [his] request to withdraw [his] plea." Tr. Vol. 2 p. 37. Thompson provided the following testimony: "I think I already put it in the letter I sent you but, uh, my counsel just, I feel like he . . . didn't look into my [m]ental [h]ealth like he was supposed to." *Id.* at 38. Thompson ultimately did not present evidence about a specific mental health diagnosis, nor did Thompson explain how his mental health affected him. As to Thompson's allegation that he was coerced into pleading guilty, Thompson testified that he "felt like [he] was pressured" to plead guilty because "that was all [counsel] was trying to get [him] to do[.]" *Id.* Thompson claimed that when he spoke with counsel off the record, counsel "got a little bit . . . aggressive," was "loud with [him]," and he "didn't know what else to do."

Id. Thompson said he "just shut down and then put words in [his] mouth that [he] didn't say" because he "never admitted to any crime" to counsel. *Id.*

[7] The trial court gave Thompson's counsel the opportunity to provide "input" on the allegations. *Id.* at 40. Counsel said that he did not coerce Thompson into pleading guilty. Rather, counsel represented that he and Thompson "had a conversation" during which counsel "told [Thompson] his options," and Thompson "decided to [plead guilty] rather than go to trial." *Id.* As to the allegations regarding Thompson's competency to stand trial, counsel said that he "looked into" Thompson's mental health records, but did not believe there was "any reason" to claim Thompson was incompetent to stand trial. *Id.* at 41.

[8] The trial court denied Thompson's motion to withdraw the plea, explaining that he failed to meet his burden of proving by a preponderance of the evidence that a manifest injustice would occur if the court did not withdraw the plea. The trial court stated: "[I]n short[,] your allegation is that you [were] insane at the time of the crime and that you shouldn't be entering into a plea, because that defense wasn't raised." *Id.* at 41. The court explained: "I don't show any evidence other than your self-serving statement that you have a [m]ental [h]ealth diagnosis, and that does not rise to the level of insanity and that is the core basis for my ruling[.]" *Id.* The court added that it would "stand by what . . . occurred in court while [Thompson] w[as] under [o]ath," which was "a painful lengthy process" to accept his plea of guilty. *Id.* at 42. The court noted it "even paused to allow [Thompson] time to talk to [counsel]," and Thompson had "multipl[e] opportunities" to tell everyone that he changed his mind. *Id.*

[9] The court proceeded to sentencing, imposing an aggregate sentence of thirty-five years in the DOC.[3] Thompson now appeals, focusing on his plea of guilty.

Discussion and Decision

I. Denial of Motion to Withdraw Plea of Guilty

[10] Thompson argues the trial court erred by denying his motion to withdraw the plea of guilty.[4] He claims that the withdrawal of the plea was necessary to correct a manifest injustice because his plea was not knowing or voluntary.

[11] Under Indiana Code Section 35-35-1-4(b), "the court shall allow the defendant to withdraw his plea of guilty . . . whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice." Withdrawal of the plea is necessary to correct a manifest injustice whenever the plea was not knowingly and voluntarily made. *See* Ind. Code § 35-35-1-4(c)(3) (providing examples of "manifest injustice" in the post-conviction context); *Gillespie v. State*, 736 N.E.2d 770, 775–76 (Ind. Ct. App. 2000) (listing the examples from the foregoing statute in explaining when "[w]ithdrawal of a guilty plea is appropriate"), *trans. denied*. The trial court must allow withdrawal of the plea of guilty if the defendant "establish[es] his grounds for relief by a preponderance of

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[3] The presentence investigation report states that Thompson "was diagnosed with ADHD, Bipolar Disorder, Depression, PTSD, and Schizophrenia" in 2011. Appellant's App. Vol. 2 p. 134. When the report was prepared in early 2023, Thompson was "meeting with a counselor once a month for his mental health." *Id.*

[4] To the extent Thompson claims a manifest injustice resulted because his plea was not supported by an adequate factual basis, we address the adequacy of the factual basis in a separate section of this opinion.

the evidence." I.C. § 35-35-1-4(e). The trial court's ruling on the motion is "reviewable on appeal only for an abuse of discretion." I.C. § 35-35-1-4(b).

[12] A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Rhoades v. State*, 675 N.E.2d 698, 702 (Ind. 1996). Moreover, a "ruling on a motion to withdraw a guilty plea arrives [on appeal] with a presumption in favor of the ruling." *Smallwood v. State*, 773 N.E.2d 259, 264 (Ind. 2002) (quoting *Johnson v. State*, 734 N.E.2d 242, 245 (Ind. 2000)). "In determining whether a trial court has abused its discretion in denying a motion to withdraw a guilty plea, we examine the statements made by the defendant at his guilty plea hearing to decide whether his plea was offered 'freely and knowingly.'" *Brightman v. State*, 758 N.E.2d 41, 44 (Ind. 2001) (quoting *Coomer v. State*, 652 N.E.2d 60, 62 (Ind. 1995)). "We will not disturb the court's ruling where it was based on conflicting evidence." *Smallwood*, 773 N.E.2d at 264 (quoting *Johnson*, 734 N.E.2d at 245).

[13] Generally, for a plea to be knowing and voluntary, the record must show the defendant was adequately advised of "[s]everal federal constitutional rights" before the trial court accepted the plea. *Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (referring to "the privilege against compulsory self-incrimination," "the right to trial by jury," and "the right to confront one's accusers"); *see generally, e.g.*, *Ponce v. State*, 9 N.E.3d 1265, 1270 (Ind. 2014). Of course, even if a defendant was adequately advised of his constitutional rights, a plea is not knowing or voluntary if "agents of the State . . . produce[d] [the] plea by actual

or threatened physical harm or by mental coercion overbearing the will of the defendant." *Brady v. U.S.*, 397 U.S. 742, 750 (1970); *see also*, *e.g.*, *Gullett v. State*, 299 N.E.2d 190, 123 (Ind. Ct. App. 1973). All in all, it is "the trial court's duty to make a reasonable inquiry into the facts to discover whether a plea of guilty was entered voluntarily and understandingly." *Gullett*, 299 N.E.2d at 123.

[14] Thompson claims his plea was not knowing or voluntary because "he had severe documented mental health issues that had not been looked into by his attorney[.]" Appellant's Br. p. 10. In focusing on mental health issues, Thompson appears to argue that the plea led to a manifest injustice because he lacked comprehension to stand trial or had a potential insanity defense.[5] Yet, as the Indiana Supreme Court explained, "to show that the trial court abused its discretion in denying a motion to withdraw a guilty plea," it is "not enough merely to assert that . . . possible defenses exist[.]" *Hunter v. State*, 676 N.E.2d 14, 18 (Ind. 1996). Further, our Supreme Court identified "no manifest injustice" where, as here, the record was not "replete with evidence that [the prospective] defense[] w[as] valid." *Id.* Ultimately, in seeking to withdraw the plea of guilty due to mental health issues, Thompson failed to specifically identify the nature and extent of his mental health issues or how they relate to his proposed defenses. Additionally, Thompson's counsel informed the court

[5] Thompson baldly asserts that he "would suffer a manifest injustice if he were not permitted to withdraw from the plea." Appellant's Br. p. 11. Because Thompson fails to identify a specific injustice, we are left to speculate on whether his claim focuses on the prospective insanity defense or the lack of comprehension to stand trial.

that he had reviewed Thompson's mental health records and determined there was no support to challenge Thompson's comprehension to stand trial.

[15] Next, Thompson claims his plea was involuntary because "his attorney took an aggressive stance and as a result he felt pressured by his attorney to enter into the guilty plea." Appellant's Br. p. 10. Yet, at the hearing on Thompson's motion, counsel denied coercing Thompson, instead representing that—while two guards were present—he and Thompson merely "had a conversation" during which he informed Thompson of his options and Thompson "decided to [plead guilty] rather than go to trial." Tr. Vol. 2 p. 40. Furthermore, at the plea hearing, Thompson testified that he had not been coerced. And, as the trial court noted, Thompson had "multipl[e] opportunities" to inform the court that he did not want to plead guilty, *id.* at 42—not only when the trial court engaged in a colloquy with Thompson as he first attempted to plead guilty, *see id.* pp. 17–26, but also when the court again spoke with Thompson after counsel elicited a factual basis, *see id.* at 31. Ultimately, the evidence of coercion was limited to Thompson's self-serving statement, which the court was free to reject.

[16] Under the circumstances, the trial court was well within its discretion to conclude Thompson failed to prove, by a preponderance of the evidence, that a manifest injustice would result in denying the motion to withdraw the plea.

II. Adequacy of Factual Basis

[17] Thompson argues the guilty plea cannot stand because there was an inadequate factual basis. A trial court "cannot accept a guilty plea unless there is an

adequate factual basis for the plea." *State v. Cooper*, 935 N.E.2d 146, 150 (citing I.C. § 35-35-1-3(b)). "The purpose of the factual basis requirement is to ensure that a person who pleads guilty is truly guilty." *Id.* Notably, in obtaining a factual basis, the evidentiary presentation "need not prove guilt beyond a reasonable doubt." *Id.* Rather, there is an adequate factual basis so long as "there is evidence about the elements of the crime from which a court could [reasonably] conclude that the defendant is guilty." *Id.* (quoting *Butler v. State*, 658 N.E.2d 72, 77 (Ind. 1995)). In short, the trial court "should satisfy itself that 'the defendant could be convicted if he or she elected to stand trial.'" *Id.* (quoting *ABA Standards for Criminal Justice Pleas of Guilty* 65 (3d ed. 1999)).

[18] The "trial court's determination that the factual basis was adequate is clothed with the presumption of correctness," and "we will only set aside the trial court's acceptance of a guilty plea for an abuse of discretion." *Id.* Furthermore, "claims about omissions in the factual basis have been unavailing when the omissions do not seem to demonstrate doubt about actual guilt." *Id.*

[19] Here, Thompson argues the factual basis for his attempted rape conviction is inadequate because there is no evidence that he acted with the requisite mens rea. Thompson points out that a person has committed Level 1 felony attempted rape only if the person knowingly or intentionally engaged in conduct that constituted a substantial step toward the commission of rape. *See* Appellant's Br. p. 12 (citing I.C. §§ 35-41-5-1, 35-42-4-1). He argues that "[t]he factual basis . . . did not establish the knowingly or intentionally element[.]" *Id.*

[20] "[T]here is a difference between cases where the defendant actually denies guilt as to some necessary element of the offense and cases where the defendant merely fails to admit the existence of such an element." *Wingham v. State*, 780 N.E.2d 1164, 1165 (Ind. Ct. App. 2002) (citing *Bates v. State*, 517 N.E.2d 379, 381 (Ind. 1988)). We have explained that the factual basis is not necessarily deficient "[i]n the latter scenario," where the defendant merely failed to admit the existence of an element. *Id.* That is because "other evidence produced at the plea hearing and/or the defendant's advised acknowledgment that by pleading guilty he understands that he is admitting all the elements of the charged offense may supply an adequate factual basis." *Id.*

[21] Our review of the evidentiary presentation indicates that Thompson was not specifically asked whether he knowingly or intentionally engaged in the conduct at issue. However, Thompson does not challenge the adequacy of the advisements he received, which included an advisement that "by pleading guilty [he would be] admitting that charges, the two (2) [charges] that are remaining are true[.]" Tr. Vol. 2 p. 19. The trial court also provided a separate advisement about the factual basis:

> So, I am looking at you because again if we move forward, the State is going to lay a factual bas[i]s, you did A, B, C[,] and D on [a] particular day, that constitute a crime in Indiana[,] and I am going to look at you and say are you guilty of that, period. And . . . my understanding is you're going to answer that yes, and that is where we are headed. I am not asking you to do it quit[e] yet, [but] you understand that is what we are doing right now[?]

Id. at 25. Thompson responded: "Yes sir." The court then asked whether Thompson "still want[ed] to go forward," and he answered affirmatively. *Id.* Furthermore, Thompson, in response to questions from his attorney, specifically admitted to entering the victim's office with a sharpened piece of metal, physically holding the victim against her will, and directing the victim to remove her pants, all of which reflect knowing or intentional conduct by Thompson.

[22] As noted above, even if an element is omitted when establishing the factual basis, the factual basis is not inadequate where—as here—(1) the defendant was not denying culpability for the offense and (2) the defendant was advised that, by pleading guilty, he was admitting to committing the charged offense. *See Wingham*, 780 N.E.2d at 1165 (applying *Bates*, 517 N.E.2d at 381). Having reviewed the factual basis along with the provided advisements—and bearing in mind that the trial court's determination that there was an adequate factual basis comes to us clothed with the presumption of correctness—we are not persuaded the trial court abused its discretion in accepting the factual basis.

Conclusion

[23] The trial court did not abuse its discretion in denying the motion to withdraw the plea of guilty or in accepting the plea based upon the provided factual basis. However, because the Sentencing Order and the Abstract of Judgment reflect a conviction for Level 1 felony rape rather than attempted rape, we remand to the trial court for the limited purpose of correcting the record regarding the attempt.

[24] Affirmed and remanded.

Pyle, J., and Tavitas, J., concur.