

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1215**

State of Minnesota,
Respondent,

vs.

Dustin Joseph Kenda,
Appellant.

Filed May 19, 2025
Affirmed in part, reversed in part and remanded
Schmidt, Judge

Chisago County District Court
File No. 13-CR-23-536

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

Janet Reiter, Chisago County Attorney, Jillian Skaar, Assistant County Attorney, Center City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Cochran, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Dustin Joseph Kenda argues the district court erred by (1) accepting an insufficient factual basis for a guilty plea, (2) imposing a lifetime conditional-release term, and (3) denying Kenda's motion for a downward dispositional departure. Because the

district court did not err in accepting Kenda's guilty plea and did not abuse its discretion in denying his motion for a downward dispositional departure, we affirm Kenda's convictions and sentence for second-degree criminal sexual conduct. But we reverse the district court's imposition of a lifetime conditional-release term and remand for the court to impose a ten-year conditional-release term.

FACTS

Kenda was born on March 10, 1988. Around August to October 2022—when Kenda was 34 years old—he stayed with his sister's family. In December 2022, Kenda's eight-year-old nephew reported that Kenda had touched his private parts. The nephew had previously told another adult that Kenda had also touched another child's private parts when that child was three years old.

Respondent State of Minnesota charged Kenda with two counts of second-degree criminal sexual conduct. Kenda agreed to plead guilty in exchange for a stay of execution of his sentence and 270 days of probationary jail. But if Kenda did “not cooperate with the pre-sentence investigation and psychosexual evaluation, fail[ed] to appear for any scheduled hearing, or [was] arrested for or charged with a new offense, then his plea would be considered a straight plea.”¹ Kenda filed a plea petition before the plea hearing, which included Kenda's age and date of birth.

After establishing that Kenda understood his rights, the state elicited the following factual basis from him in support of his guilty plea:

¹ A “straight plea” involves pleading guilty to the charged offense without “any agreement regarding sentencing.” *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 327 (Minn. 2016).

STATE: did you touch the anus area and the penis and/or groin area of an individual who at the time was 7 or 8 years old?

KENDA: Correct.

STATE: And did you have sexual contact insofar as you touched the anus and/or penis and groin area of another individual who at the time was 3 or 4 years old?

KENDA: Correct.

. . . .

STATE: And your touching of those two individuals, who were both under the age of 14, that was intentional on your part, correct?

KENDA: Correct.

STATE: And it was—you would agree that it was of those individuals' intimate parts?

KENDA: Yeah.

STATE: Okay. And you didn't have any other legitimate reason to be touching them there, correct?

KENDA: No.

STATE: And you did so with sexual or aggressive intent?

. . . .

KENDA: It wasn't aggressive or anything like that, but I guess that would be correct.

STATE: Was it—was it sexual?

KENDA: Yes.

The district court accepted Kenda's plea.

Before the sentencing hearing, Kenda participated in finishing the presentence investigation report, but did not complete a psychosexual evaluation. Kenda failed to appear for sentencing. Given Kenda's failure to abide by the plea agreement terms, the state informed the district court that the parties would be proceeding under a straight plea rather than the agreed-upon dispositional departure.

Kenda filed a motion for a dispositional downward departure. At the rescheduled sentencing hearing, the district court denied Kenda's motion and imposed concurrent sentences of 48 months and 60 months. The court also imposed a ten-year conditional-release term for the first count and a lifetime conditional-release term for the second count.

Kenda appeals.

DECISION

I. The factual basis for Kenda's guilty plea is sufficient.

Kenda argues he should be allowed to withdraw his plea because the factual basis did not "establish that he was more than 36 months older than the victims" and because "the factual basis consisted mostly of leading questions." The validity of a guilty plea is a question of law that appellate courts review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). After a defendant is sentenced, a defendant may withdraw a guilty plea "to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs when a plea was not "accurate, voluntary, and intelligent." *Raleigh*, 778 N.W.2d at 94. Kenda does not dispute that the plea was voluntary or intelligent.

A. The plea was accurate.

“To be accurate, a plea must be established on a proper factual basis.” *Id.* “[A] defendant may not withdraw his plea simply because the court failed to elicit proper responses if the record contains sufficient evidence to support the conviction.” *Id.* And “[e]ven if an element to an offense is not verbalized by the defendant, a district court may nevertheless draw inferences *from the facts admitted to by the defendant.*” *Rosendahl v. State*, 955 N.W.2d 294, 299 (Minn. App. 2021) (emphasis in original).

The state charged Kenda with two counts of second-degree criminal sexual conduct. The statute under which Kenda was charged states that “[a] person who engages in sexual contact with anyone under 18 years of age is guilty of criminal sexual conduct in the second degree if . . . the complainant is under 14 years of age and the actor is more than 36 months older than the complainant.” Minn. Stat. § 609.343, subd. 1a(e) (2022).

Kenda argues that his plea was not accurate because the plea colloquy included no evidence of Kenda’s “age” or facts about “the age difference” between Kenda and the victims. But Kenda signed a plea petition that noted his age and date of birth.

Kenda contends the plea petition should not be considered because the Minnesota Supreme Court has not held that a plea petition can be used to establish the accuracy factor. *See State v. Jones*, 7 N.W.3d 391, 399 n.6 (Minn. 2024). But, unlike in *Jones*, Kenda did not deny committing an element of the offense at the plea hearing by effectively asserting his innocence of the crime. *Id.* at 397. And the supreme court has previously held that “the plea petition and colloquy may be supplemented by other evidence to establish the factual basis for a plea.” *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012).

Kenda expressly admitted at the plea hearing that both victims were under the age of 14 as required by the statute. Thus, Kenda's argument boils down to the supposed lack of a factual basis about his own age. But Kenda's age was established by the signed and filed plea petition in which he acknowledged the petition's accuracy. Plus, there can be no credible argument that Kenda—who was 34 years old at the time of the offenses and charged as an adult—was not at least 36 months older than the eldest victim—who was seven or eight years old at the time of the offense. *See* Minn. Stat. § 609.343, subd. 1a(e).

B. The use of leading questions does not invalidate the plea.

Kenda also argues that his plea was not accurate because of the use of leading questions to establish the factual basis. “The defendant must state the factual basis for the plea.” Minn. R. Crim. P. 15.01, subd. 1(8). Although the use of leading questions is discouraged, *Raleigh*, 778 N.W.2d at 94, the Minnesota Supreme Court has never held that “the use of leading questions on its own invalidates a guilty plea,” *Jones*, 7 N.W.3d at 396.

The cases that Kenda cites to support his leading-questions argument are distinguishable. Although the supreme court discouraged the use of leading questions to establish a factual basis in *State v. Ecker*, the supreme court still concluded that an “adequate factual basis was established” even with the prosecutor asking leading questions. 524 N.W.2d 712, 717 (Minn. 1994). And in *Shorter v. State*, the supreme court reversed to allow a defendant to withdraw a plea because the district court asked no questions, the state committed possible discovery violations, and the district court refused to hold an evidentiary hearing after the defendant collected evidence of inadequate assistance, fear, and investigation deficiencies. 511 N.W.2d 743, 746-47 (Minn. 1994).

Here, the plea petition signed by Kenda clearly established a factual basis related to his age. In addition, both the prosecutor and the district court asked Kenda clarifying questions. Thus, the use of leading questions in this plea colloquy, standing alone, is not enough to conclude that the factual basis was inadequate.

II. The district court erred in imposing a lifetime conditional-release term.

Kenda argues the district court improperly imposed a lifetime conditional-release term because he does not have a prior sex-offense conviction. The state agrees, as do we.

Whether a sentence conforms to the requirements of a statute is a question of law that appellate courts review de novo. *State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009). A person convicted of second-degree criminal sexual conduct is subject to a ten-year conditional-release term. Minn. Stat. § 609.3455, subd. 6 (2022). If “the offender has a previous or prior sex offense conviction,” the district court must impose a lifetime conditional-release term. Minn. Stat. § 609.3455, subd. 7(b) (2022).

At sentencing, the district court stated: “I hereby adjudicate you guilty of the *offenses* of criminal sexual conduct in the second degree by virtue of your plea of guilty[.]” (emphasis added). Because Kenda’s guilty pleas were entered simultaneously, with no temporal gap between adjudication of the offenses, he had no prior sex offenses. *State v. Brown*, 937 N.W.2d 146, 156 (Minn. App. 2019); *State v. Nodes*, 863 N.W.2d 77, 81 (Minn. 2015). We therefore reverse the imposition of a lifetime conditional release and remand to the district court to resentence Kenda with a ten-year conditional-release term.

III. The district court did not abuse its discretion when it denied Kenda's motion for a downward dispositional departure.

Kenda argues the district court abused its discretion because “substantial and compelling circumstances existed to support the departure.” Kenda argues his amenability to probation is shown by “his willingness to reform and the demonstrated motivation to do so.” Finally, Kenda argues his limited criminal history, community support, cooperation/attitude in court, and remorse all weigh in favor of a dispositional departure. The state argues that the district court’s decision “is supported by the record and is consistent with the wide discretion afforded to district courts.”

The district court must impose a presumptive sentence unless “aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence[.]” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotations and citation omitted). Appellate courts afford the district court “great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion.” *Id.* at 307-08 (quotation omitted). “[T]he presence of mitigating factors does not obligate the court to place a defendant on probation or impose a shorter term than the presumptive term.” *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Feb. 18, 2014). Instead, the district court retains broad discretion in deciding whether to grant a motion for a downward departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). Only in a “rare” case will we reverse a district court’s imposition of the presumptive sentence. *Id.*

The district court reviewed the complaint, plea petition, presentence investigation, and the motion. The district court denied the motion for dispositional departure and told Kenda: “because you failed to adhere to the agreement with the State, it is a straight plea. As such, the onus is on you to show substantial and compelling reason to depart. I did not make that finding of substantial and compelling reason to depart.” Although some evidence supports Kenda’s argument that he is amenable to probation, this is not the “rare” case in which the district court’s imposition of the presumptive sentence must be reversed. *Kindem*, 313 N.W.2d at 7.

Affirmed in part, reversed in part, and remanded.