STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2138
A11-1119

LC Wesley Armstrong, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed April 9, 2012
Affirmed
Stauber, Judge

Cass County District Court
File No. 11CR071937

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

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

Christopher J. Strandlie, Cass County Attorney, Walker, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and

Stauber, Judge.

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

STAUBER, Judge

In these consolidated appeals, appellant argues that the district court erred when it denied his motion to withdraw his guilty pleas to second-degree manslaughter and first-degree burglary because his pleas were not accurate and voluntary. We affirm.

FACTS

In August 2007, Cass County emergency personnel responded to a report of a traffic accident and found a vehicle on its left side in the woods adjacent to the highway. Three persons were inside the vehicle: appellant LC Wesley Armstrong, LaToya Burks, who was pregnant, and Burks' five-year-old daughter, A.C. Burks and her unborn child did not survive. At the accident scene, A.C. told an investigator that appellant and Burks had been arguing in the vehicle when appellant let go of the steering wheel and grabbed Burks with both of his hands, and the vehicle left the road. Appellant's version, as reported to a state trooper, was that, while driving, he grabbed Burks' wig off her head and threw it into the backseat. Burks then grabbed the steering wheel, causing appellant to lose control of the vehicle. Appellant was charged with third-degree murder, second-degree manslaughter, and two counts of criminal vehicular homicide.

In September 2008, in an unrelated matter, appellant was charged with kidnapping, two counts of first-degree burglary, terroristic threats, and fifth-degree assault. According to the complaint, appellant entered his girlfriend's parents' home, pulled her out of the home against her will, and pushed her into a vehicle. The complaint further alleged that appellant threatened to kill the occupants of his girlfriend's home.

In October 2008, appellant agreed to enter an *Alford* plea[1] to second-degree manslaughter related to the August 2007 death of Burks. At the plea hearing, appellant's counsel, Richard Kenly, questioned appellant about his understanding of an *Alford* plea and the factual basis for his plea:

> [APPELLANT'S COUNSEL]: Okay. Now what we're going to do today is enter an *Alford* Plea that's where you agree that the State has evidence which would tend to prove your guilt at this point if we went to trial, do you agree with that?
> [APELLANT]: Yes.
> [APPELLANT'S COUNSEL]: All right. On August 1st of 2007, [appellant], you were in Cass County, Minnesota, correct?
> [APELLANT]: Yes.
> [APPELLANT'S COUNSEL]: Just south of Backus?
> [APELLANT]: Yes.
> [APPELLANT'S COUNSEL]: And you were riding with Latoya [Burks], is that correct?
> [APELLANT]: Yes.
> [APPELLANT'S COUNSEL]: Okay. Now you guys had an argument while you were driving, is that correct?
> [APELLANT]: Yes.
> [APPELLANT'S COUNSEL]: All right. Now would you agree that the evidence the State has would tend to prove or might tend to prove you were culpably negligent in contributing to the accident that occurred that day?
> [APELLANT]: Yes.

In addition, the prosecutor questioned appellant about his reasons for entering a plea:

> [PROSECUTOR]: Okay. And is part of the reason why you are making this decision today to proceed in this fashion—is part of your decision based upon not wanting to run the risk

[1] *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970) (holding that the court did not commit constitutional error by accepting a guilty plea despite the defendant's stated belief in his innocence when there was a "strong factual basis for the plea").

> of going to trial and being convicted and having to serve that additional prison time?
> [APELLANT]: In this county, yes.

The prosecutor further questioned appellant about his understanding of the trial rights he was giving up by entering a plea and concluded by asking appellant, "You're basically agreeing that if this went to trial that a jury could find you guilty of this crime of Manslaughter in the Second Degree?" Appellant responded, "Here, yes." The district court accepted appellant's plea. Shortly after the plea hearing, appellant retained a new attorney, Tim Aldrich, and filed a motion to withdraw his plea.

In January 2009, appellant entered an *Alford* plea to an amended count of first-degree burglary related to the September 2008 charges involving his girlfriend and her family. As part of the plea agreement relating to both cases, appellant also agreed to rescind his motion to withdraw his plea in the manslaughter case. Attorney Aldrich questioned appellant about the rights he was giving up and his reasons for entering a guilty plea. He specifically questioned appellant about his desire to enter a plea so that he could avoid going to prison and receiving a felony on his record. Aldrich further questioned appellant about the factual basis for his plea:

> [APPELLANT'S COUNSEL]: And you understand that for that purpose then that when you're in a house or home or a dwelling, that when you do those types of actions that falls under a burglary and it becomes a burglary, you understand that?
> [APELLANT]: Yes.
> [APPELLANT'S COUNSEL]: So you would agree if they were to testify to that, and if a jury would believe them that you would be found guilty of that burglary charge?
> [APELLANT]: Yes.
> . . . .

> [APPELLANT'S COUNSEL]: Okay. You also would agree that as part of what the Court could use is findings of fact in this because as we argued in the motion to withdraw to make sure that you understand what happens is the Court needs a proper basis to make sure that you understand that you are guilty so you would allow them to use the Complaint and any probable cause documents to find you guilty, you understand that as well?
> [APELLANT]: Yes.

In addition, the prosecutor questioned appellant:

> [PROSECUTOR]: And—but you would agree that if all four of those people came in and testified that you did say those things that there is a strong possibility that you would get—that a jury would believe that you had said those things and that they were—that you had said those things?
> [APELLANT]: I suppose they could.

Appellant was sentenced in both cases pursuant to the plea agreement. In March 2010, appellant filed a petition for postconviction relief challenging both convictions, and the district court denied the petition. Appellant filed a notice of appeal, but then filed a motion to stay the appeal and remand for postconviction proceedings. We granted the motion.

In January 2011, appellant filed a petition for postconviction relief requesting to withdraw both guilty pleas. At an evidentiary hearing, appellant testified that he "always maintained that [he] wasn't going to accept any plea bargain and that [he] wanted to go to trial." He testified that his first attorney, Kenly, pressured him to accept the plea agreement and arranged for appellant to see his mother, which he thought was "unusual because it wasn't a visiting day or visiting hours." Appellant testified that his mother told him "to take the plea bargain and that [he] should just take it because that's what the

family wants me to do." Appellant also testified that Kenly told his family that he would not receive a fair trial and would be found guilty and that "they should [do] what they could [do to] get me to cooperate and take the plea bargain." Appellant testified that he "didn't feel like [he] had any choice" but to plead guilty because his family did not support him and he was no longer confident in Kenly's representation.

Appellant further testified that his next attorney, Aldrich, also pressured him to plead guilty in the burglary case and he again received pressure from his family to enter a plea.

Appellant's mother testified at the postconviction hearing that Kenly met with her and other family members on the day of the plea hearing regarding the manslaughter case and told them that appellant "ought to take this plea agreement because he's not going to win at trial. [Kenly] said [appellant] will go to prison. And we needed to convince [appellant] to take that plea."

Kenly testified at the postconviction hearing that he "very strongly suggested that [the plea agreement] was a good deal and [he] thought [appellant] should take it." Kenly also testified that he and appellant "talk[ed] at length about the racial aspect" because Kenly thought that "there was a danger that [they] could get a jury that wouldn't give [appellant] a fair trial."

The district court denied appellant's petition for postconviction relief. This appeal followed.

D E C I S I O N

A district court's decision to deny postconviction relief is reviewed for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). Generally, the "scope of review is limited to the question of whether sufficient evidence exists to support the postconviction court's findings." *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). When considering a district court's denial of postconviction relief, an appellate court reviews issues of law de novo and findings of fact for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

Appellant argues that the district court abused its discretion when it denied his motion to withdraw his guilty pleas to second-degree manslaughter and first-degree burglary. A defendant does not have an absolute right to withdraw a guilty plea. *Perkins*, 559 N.W.2d at 685. But a defendant may withdraw a guilty plea at any time, even after sentencing, if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a guilty plea is invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A guilty plea is valid if it is voluntary, accurate, and intelligent. *Perkins*, 559 N.W.2d at 688.

I. Accuracy

Appellant first challenges the accuracy of his *Alford* pleas. "A proper factual basis must be established for a guilty plea to be accurate." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). The purpose of the requirement that a guilty plea be accurate is to "protect[] the defendant from pleading guilty to a charge more serious than he or she could be convicted of were the defendant to go to trial." *Id.* A sufficient factual basis is

ordinarily "established by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime." *Id.* But a unique situation is presented when a defendant enters an *Alford* plea and pleads guilty without admitting guilt. *Id.*

In the context of an *Alford* plea, it is particularly important that the district court "not cavalierly accept the plea but should assume its responsibility to determine whether the plea is voluntarily, knowingly, and understandingly made, and whether there is a sufficient factual basis to support it." *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977). The district court must "determine that the defendant, despite maintaining his innocence, agrees that evidence the State is likely to offer at trial is sufficient to convict." *Theis*, 742 N.W.2d at 649. Together, "[t]he strong factual basis and the defendant's agreement that the evidence is sufficient to support his conviction provide the court with a basis to independently conclude that there is a *strong* probability that the defendant would be found guilty of the charge to which he pleaded guilty." *Id.* In *Theis*, the Minnesota Supreme Court observed that the "better practice is for the factual basis to be based on evidence discussed with the defendant on the record at the plea hearing." *Id.* The supreme court noted that the discussion could include questioning on the record about the "underlying conduct and the evidence that would likely be presented at trial," as well as by introducing witness statements, brief witness testimony, or a stipulated factual statement at the plea hearing. *Id.*

Here, appellant argues that the record is inadequate to support a factual basis for either of his guilty pleas. The record reveals that before appellant entered a guilty plea to

second-degree manslaughter his attorney questioned him only briefly on the record about the underlying facts of the case. Neither of the attorneys nor the district court questioned appellant about the evidence that would be presented at trial, and no witness testimony was taken. But appellant was asked twice—once by the prosecutor and once by his attorney—if he agreed that the state had evidence that would tend to prove him guilty of the crime, and he responded that he did. As the Minnesota Supreme Court observed in *Goulette*, it is very important for the district court to ensure that a sufficient factual basis is established before it accepts an *Alford* plea. *See* 258 N.W.2d at 761. The factual basis that was established on the record was not strong. It would have been strengthened if appellant was questioned more extensively or if a witness statement or witness testimony was introduced into the record. But we conclude that the factual basis was sufficient because appellant understood that he was entering an *Alford* plea and he agreed that the state had sufficient evidence to convict him. Appellant was also questioned by counsel about his reason for entering a plea, and he agreed that he was entering a plea partially to avoid going to trial and likely receiving more prison time. This satisfies the purpose of the accuracy requirement because it protected appellant from pleading guilty to a charge that was more serious than he could be convicted of at trial. Most importantly, the plea bargain struck by appellant's counsel allowed *Alford* pleas to both charges as part of a global plea and sentencing deal which his counsel strongly suggested was a "good deal" and in appellant's best interests.

The record more clearly establishes a sufficient factual basis to support appellant's guilty plea to first-degree burglary. Appellant was questioned more extensively on the

record about the underlying facts of that case and his reasons for entering a guilty plea. In addition, he stated on the record that he understood that the complaint and probable cause documents could be used by the district court to find him guilty. Appellant also agreed that a jury could find him guilty based on the evidence. We conclude that there was a sufficient factual basis to support the district court's finding in its order denying postconviction relief that both of appellant's *Alford* pleas were accurate.

Appellant further argues that the district court failed to make findings regarding the evidence and that it did not conclude on the record that an adequate factual basis was established in each case. In the manslaughter case, the district court did not question appellant during the hearing or make any findings about the adequacy of the factual basis, but simply stated that it accepted appellant's plea. In the burglary case, the district court similarly did not make any findings on the record about the accuracy of appellant's plea and did not state on the record that it accepted his plea. The better practice is for the district court to make findings on the record that appellant was entering an *Alford* plea and that there was a sufficient factual basis to support his plea. But the district court is not required to question a defendant if it is "reasonably satisfied defense counsel and the prosecution have established an adequate factual basis." *Ecker*, 524 N.W.2d at 717. We conclude that the district court was not required to question appellant on the record because there was a sufficient factual basis to support both guilty pleas.

II. Voluntariness

Appellant next challenges the voluntariness of his *Alford* pleas. In its order denying postconviction relief, the district court found that appellant's pleas were

voluntary and were not "the product of undue pressure." But appellant contends that his guilty pleas were not voluntary because he pleaded guilty only after receiving an enormous amount of pressure from his family members and attorneys to accept the plea offers. To be valid, a guilty plea must be made voluntarily. *Ecker*, 524 N.W.2d at 718. This "requirement insures the defendant is not pleading guilty because of improper pressures." *Id.* Whether or not a plea is voluntary is determined by "considering all of the relevant circumstances surrounding it." *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994) (quotation omitted).

Appellant testified that he maintained throughout the manslaughter case that he would not plead guilty, but he entered a guilty plea only after he met with his mother and she told him to accept the plea agreement. Appellant's mother testified that she told appellant to accept the plea agreement after his attorney expressed concern that he would not receive a fair trial and because she did not want appellant to go to prison. In addition, appellant testified that he received pressure from both of his attorneys to enter guilty pleas in both cases. While the record establishes that appellant received pressure from his attorney and his family before entering a plea in the manslaughter case, it does not rise to the level of "improper pressures." The advice that Kenly gave appellant prior to appellant's entry of his guilty plea was his best analysis and legal advice. Kenly testified that he recommended that appellant accept the plea because he thought it was a "good deal." Appellant and his mother also testified that Kenly told them that appellant might not get a fair trial in the county, and Kenly acknowledged that they discussed the "racial

aspect" of the case. Kenly's advice to appellant and his mother was his frank assessment of appellant's case, and not "improper pressure[]."

Similarly, appellant alleges that his second attorney pressured him into entering a guilty plea to first-degree burglary. But there is no evidence in the record that appellant's second attorney did anything but give him accurate information and advice about whether or not to enter a guilty plea. We conclude that there is sufficient evidence to support the district court's finding that appellant's *Alford* pleas were voluntary.

Because there is sufficient evidence to support the district court's findings that appellant's *Alford* pleas were both accurate and voluntary, we conclude that the district court did not abuse its discretion when it denied appellant's petition for postconviction relief.

Affirmed.