STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1006

State of Minnesota,
Respondent,

vs.

Chadrick Richard Peterson,
Appellant.

Filed April 1, 2013
Reversed and remanded
Hooten, Judge

Jackson County District Court
File No. 32-CR-11-163

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

Robert C. O'Connor, Jackson County Attorney, Sherry E. Haley, Assistant County Attorney, Jackson, Minnesota (for respondent)

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

Considered and decided by Cleary, Presiding Judge; Hooten, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

HOOTEN, Judge

Appellant challenges the district court's acceptance of his *Alford* plea, arguing that his plea was not accurate because there was insufficient evidence to establish a factual basis for the charge that he changed his primary address without registering as required by law. Because the evidence in the record does not show that the plea was accurate and based on a sufficient factual basis, we reverse and remand.

FACTS

Appellant Chadrick Peterson was convicted of second-degree criminal sexual conduct in 2005. As a result, appellant was required to register as a sexual offender. On Thursday, July 7, 2011, during a period of supervised release from prison, Elizabeth Donkers, appellant's "corrections agent,"[1] met with appellant, appellant's therapist, Donkers' supervisor, some of appellant's "community support people," and appellant's girlfriend. The meeting was held to discuss information that appellant had contact with minors on several occasions, in violation of his supervised release conditions. Donkers told appellant that she would talk to a department of corrections release officer, who would determine if a warrant would be issued or if they would be able to "restructure" appellant's release conditions. That evening, appellant told his mother that there might be a warrant out for his arrest.

[1] Donkers is alternatively referred to as appellant's "probation agent," "parole agent," and "corrections agent" in the record and briefing of the parties.

The next day, Friday, July 8, 2011, appellant went to work. Appellant's mother indicated that, at about 9 or 10 p.m. that night, appellant stated that he was going camping and would be back on Sunday. Appellant did not say where he was going or that he would be living anywhere else. Appellant had a tent with him when he left, but he did not "pack up everything or take his clothes" from his mother's home, which was his registered address at the time.

A warrant for appellant was issued after the meeting on July 7, but appellant was not informed of the warrant until Monday, July 11, when appellant called Donkers by telephone. Donkers advised appellant that he should try to get some time off of work so that he could turn himself in for the warrant. Donkers had been in frequent contact with appellant until July 11, but after that conversation, appellant did not turn himself in or contact Donkers. Appellant had not indicated that he was changing his primary address or that he would be anywhere other than his mother's home.

Because appellant had not turned himself in by July 14, Donkers asked the Jackson County Sheriff's Office to see if he was at his mother's home. Two officers went to the address and spoke with appellant's mother, who stated that, despite appellant's statement to her that he would return on July 10, she had not seen or heard from appellant since he left on July 8. The officers next contacted appellant's employer, who told them that appellant was last at work on July 8. Appellant's employer also stated that appellant had been expected to be back at work on July 11, but had not shown up, taken vacation time, or called in since July 8. The officers also ascertained that appellant's secondary address was abandoned.

Later on July 14, the officers received messages indicating that appellant's girlfriend sent a text message to appellant's community support person stating that she and appellant were at a homeless shelter in Santa Rosa, California. One of the officers contacted the shelter and was told that appellant and his girlfriend stayed there on July 12 and 13. The officer contacted police in Santa Rosa and arranged for appellant's arrest.

Appellant was ultimately charged with "fail[ing] to give written notice to the assigned corrections agent . . . that the person is no longer living or staying at an address, immediately after the person is no longer living or staying at that address." *See* Minn. Stat. § 243.166, subds. 3(b) & 5(a) (2010).[2] At an omnibus hearing, appellant's attorney moved for dismissal of the charge, while the prosecutor asked the district court to find probable cause. The district court took testimony from the corrections agent, the officers involved in the investigation, and appellant's mother. Following the hearing, the district court concluded that "[t]here is probable cause to believe that the offense of Failure to Register as a Predatory Offender . . . was committed" by appellant.

On March 14, 2012, a plea hearing was held before the same judge that presided over the omnibus hearing. At the outset of the hearing, appellant's attorney indicated that appellant would be entering an *Alford* plea for an executed 14-month commit, concurrent with any sentence for his release violation and with credit for time served since his arrest on July 14, 2011. It was noted that, based on appellant's criminal history score, the presumptive sentence was 16 months, which was within the Sentencing Guidelines range

[2] The complaint also initially charged appellant with violating Minn. Stat. § 243.166, subd. 4(e)(4) (2010), which requires the return of registration verification documents within ten days. That charge was subsequently dismissed and is not at issue on appeal.

of 14 to 19 months. Appellant agreed that, among other things, he had been fully advised of the facts and potential defenses, he understood the charges against him, he understood and was waiving his rights—including the right to trial and confrontation of witnesses, he "would be presumed innocent at trial and the state would be required to prove its case beyond a reasonable doubt," and he was ready to proceed with "admitting the factual basis could be proved and [he] could be found guilty." The district court then asked the prosecutor to question appellant "on the factual matters."

> [Prosecutor]: Mr. Peterson, do you understand if we were to proceed to trial that the state would call the following witnesses: [the Sheriff's investigator], [the other Sheriff's deputy involved in investigating], [a] Sergeant . . . [with the] Windom Police Department, a representative from the Bureau of Criminal Apprehension; . . . [the] probation agent; two officers from Santa Rosa Police Department that arrested him in California; your mother . . . ; and your employer, and [appellant's girlfriend]. Do you understand that?
> [Appellant]: Yes.
> Q: And that through those witnesses and through the records of your prior registration we would present you have been a registered sex offender since July 14, 2005, and in July 2011, that you left your residence, your primary residence that you lived in with your parents on July 8, 2011, and that you were found on Thursday, July 1[4], 2011 in Santa Rosa, California, and by doing that you also did not or prior to doing that you did not inform your probation agent or Jackson County Sheriff's Office that you were going to California during that time period and thus you change[d] your residence during that time. Do you understand the jury may believe you in fact violated your registration requirement?
> A: Yes.
> . . . .
> Q: And that with all this information the jury could find and convict you of failing to register as a predatory offender?
> A: Yes.

The district court accepted the plea and sentenced appellant according to the plea agreement. This appeal follows.

D E C I S I O N

Appellant argues that the district court did not ensure that an adequate factual basis was established for the district court to accept his guilty plea. Appellant offered an *Alford* plea, which allows a defendant to plead guilty while maintaining innocence. *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007) (citing *North Carolina v. Alford*, 400 U.S. 25, 37–38, 91 S. Ct. 160, 167–68 (1970)); *see also State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977) (allowing *Alford* pleas in Minnesota). A plea is invalid unless it is "accurate, voluntary, and intelligent." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "To be accurate, a plea must be established on a proper factual basis." *Id.* We review the validity of a plea de novo. *Id.*

An accurate plea requires that a proper factual basis establish on the record that the defendant's conduct met all elements of the charge to which he is pleading guilty. *See Theis*, 742 N.W.2d at 647. District courts must carefully scrutinize the factual basis of an "*Alford* plea because of the inherent conflict in pleading guilty while maintaining innocence." *Id.* at 648–49 (emphasizing the importance of this scrutiny); *see also State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994) ("It is the responsibility of the trial judge . . . to ensure that an adequate factual basis has been established in the record."); *Goulette*, 258 N.W.2d at 761 (emphasizing district court's responsibility to determine if *Alford* plea is valid and whether a sufficient factual basis exists to support it). The factual basis of an *Alford* plea is adequate when sufficient facts are "on the record to support a conclusion

that defendant's conduct falls within the charge to which he desires to plead guilty." *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (quotation omitted).

The record of an *Alford* plea must present "a strong factual basis." *Theis*, 742 N.W.2d at 649; *see also Alford*, 400 U.S. at 38, 91 S. Ct. at 168 (noting the "strong factual basis for the plea demonstrated by the State" and the defendant's "clearly expressed desire to enter" the plea in holding that the district court did not err in accepting defendant's plea). The Minnesota Supreme Court has stated a preference for

> the factual basis to be based on evidence discussed with the defendant on the record at the plea hearing . . . . This discussion may occur through an interrogation of the defendant about the underlying conduct and the evidence that would likely be presented at trial; the introduction at the plea hearing of witness statements or other documents, or the presentation of abbreviated testimony from witnesses likely to testify at trial; or a stipulation by both parties to a factual statement in one or more documents submitted to the court at the plea hearing.

Theis, 742 N.W.2d at 649 (internal citations omitted).

"The 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.* "[I]t is absolutely crucial that when an *Alford*-type plea is offered the trial court should 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." *Goulette*, 258 N.W.2d at 761.

The only factual basis offered during the plea hearing consisted of the prosecutor's statements that the state would call certain witnesses, including appellant's corrections agent, a police investigator, and appellant's mother; and that these witnesses, along with "the records of [his] prior registration," would show that appellant was required to register his address, that appellant "left . . . [his] primary residence that [he] lived in with [his] parents on July 8, 2011, and that [he was] found on Thursday, July 1[4], 2011 in Santa Rosa, California." The prosecutor continued to say that this evidence would show that appellant "did not inform [his] probation agent or Jackson County Sheriff's Office that [he was] going to California during that time period and thus [he] did change [his] residence during that time." The parties dispute whether these statements establish a sufficient factual basis on which the district court could have been satisfied of the accuracy of appellant's *Alford* plea.

Appellant was charged with violating Minn. Stat. § 243.166, subd. 3(b) and 5(a). Subdivision 5(a) is the criminal penalty provision and requires that the violation of the registration statute be done knowingly. Subdivision 3(b) states, in pertinent part, that:

> Except as provided in subdivision 3a, at least five days before the person starts living at a new primary address, including living in another state, the person shall give written notice of the new primary address to the assigned corrections agent or to the law enforcement authority with which the person currently is registered. If the person will be living in a new state and that state has a registration requirement, the person shall also give written notice of the new address to the designated registration agency in the new state. A person required to register under this section shall also give written notice to the assigned corrections agent or to the law enforcement authority that has jurisdiction in the area of the person's primary address that the person is no longer living or

> staying at an address, immediately after the person is no longer living or staying at that address.

As defined in the statute, the term "'[p]rimary address' means the mailing address of the person's dwelling." Minn. Stat. § 243.166, subd. 1a(g) (2010). "Dwelling," in turn, "means the building where the person lives under a formal or informal agreement to do so," but homeless shelters are specifically excluded. *Id.*, subd. 1a(c) (2010).

The prosecutor's statement that the state would use the records of appellant's prior registration to show that this statute applied to him is satisfactory, as that is all that would be offered on the issue at trial. But the reference to the names and titles of witnesses is not sufficient to provide a factual basis for the other elements of the crime. The prosecutor did not describe the witnesses' expected testimony. There was no introduction or offer of documentary evidence that might have supported the prosecution's version of the events. There was no stipulation to the facts on which the district court could rely in accepting this factual basis for the plea. Rather, the prosecutor only listed the witnesses that could be called and stated that, through these witnesses, the state would show that appellant had violated the statute.

The state argues that considering only the statements of the prosecutor during the plea hearing impermissibly limits the record for review. In determining whether the factual basis for the *Alford* plea was sufficient, the state argues, this court should consider not only appellant's statements at the plea hearing, but also the testimony presented at the omnibus hearing by the witnesses identified at the plea hearing. In fact, the state argues that this court is not restricted to only considering the plea hearing transcript itself, but

may consider any information in the criminal file or testimony at any time during the criminal proceedings.

The state cites two cases for the idea that the district court may consider information not specifically admitted or referred to at the plea hearing. *See State v. Trott*, 338 N.W.2d 248 (Minn. 1983); *State v. Johnson*, 279 Minn. 209, 156 N.W.2d 218 (1968). In *Trott*, the supreme court noted that the defendant's own testimony at the plea hearing supported the plea, and that the "record also contains a copy of the complaint and . . . pictures of the victim's injuries." 338 N.W.2d at 252. In *Johnson*, the supreme court stated that "[t]he relevant record in this case consists of the indictment, information, and a transcript of the interrogation of defendant by court and counsel when defendant entered his plea of guilty." 279 Minn. at 210–11, 156 N.W.2d at 220. But neither of these statements are holdings of law that may establish a rule or principle. Rather, both statements are made in review of the facts—in *Johnson*, in the factual background, and in *Trott*, in a paragraph applying the law to the facts. Neither case indicates whether the documents the appellate court noted were offered to the district court during the plea hearing or through some other mechanism. Finally, neither case involved an *Alford* plea, for which district courts must carefully scrutinize the factual basis. Thus, these cases do not compel the result favored by the state, and we find no logical basis for considering evidence that was not "discussed with the defendant on the record at the plea hearing." *Theis*, 742 N.W.2d at 649.

The state also argues that, because the same district court judge presided over both the omnibus and plea hearings, the district court would have considered the actual

testimony of witnesses who testified at the omnibus hearing and were identified by the prosecutor at the plea hearing in deciding whether there was an adequate factual basis. At the omnibus hearing, three witnesses—the corrections agent, a police investigator, and appellant's mother—offered testimony regarding the events. But the prosecutor did not reference that testimony during the plea hearing. So despite the possibility that this testimony could have supported the factual basis, appellant, in making his plea, did not acknowledge that such testimony was a part of the factual basis.

The state's argument that this court should consider other evidence in the file and testimony from the omnibus hearing in determining whether there is an adequate factual basis for the plea, only highlights the sparseness of the record: if a sufficient factual basis had properly been established, there would be no need to argue about what was or was not to be considered. The clear direction of *Theis* and other cases is that the district court has a duty to ensure that a strong factual basis is entered into the record at the plea hearing. And while the state argues that the prosecutor's statements summarize the evidence presented at the omnibus hearing, the prosecutor's statements are conclusory and do not reference or incorporate any evidence.

The need for a strong factual basis in support of an *Alford* plea is necessary for the district court 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.* But, just as importantly, a strong factual basis is necessary for the district court to determine if the defendant's plea is accurate. *Id.* That determination is necessarily dependent upon the district court's assessment of the defendant's understanding of the state's evidence and

his agreement that the evidence is sufficient for a jury to find him guilty beyond a reasonable doubt. *Id.* An insufficient factual basis at the plea hearing will not satisfy the primary objections for an *Alford* plea, particularly where, as in the instant case, the parties dispute even what evidence and testimony should be included as part of the plea.

Because the factual basis offered at the plea hearing was limited and because no other evidence was offered, referred to, or otherwise incorporated for the district court's consideration in determining whether appellant was accurately pleading guilty, we conclude that the district court failed to ensure that a sufficient factual basis was entered into the record. Therefore, we conclude that appellant's plea was not accurate and is invalid.[3]

Reversed and remanded.

[3] Because we hold that appellant's plea is invalid, we decline to address appellant's argument that the evidence in this case does not meet each element of the crime he was charged with. However, we note that our opinion in *State v. Nelson*, 812 N.W.2d 184, 190 (Minn. App. 2012), which interprets the subdivision that appellant was charged with violating, may control this case.