STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2065

Andrew Albert Comeaux, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 7, 2008
Reversed and remanded
Kalitowski, Judge

Le Sueur County District Court
File No. 40-CR-05-370

Lawrence Hammerling, Chief Appellate Public Defender, Cathyrn Middlebrook, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

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Brent Christian, Le Sueur County Attorney, 88 South Park Avenue, Le Center, MN 56057; and

Jason L. Moran, Assistant County Attorney, 65 South Park Avenue, P.O. Box 156, Le Center, MN 56057 (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Hudson, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving 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

KALITOWSKI, Judge

On appeal from the district court's denial of his postconviction petition challenging his conviction of second-degree assault, appellant Andrew Albert Comeaux argues that his *Alford* plea was invalid because the district court failed to establish a sufficient factual basis for his plea. Because appellant's *Alford* plea was not accurate and thus invalid, we reverse and remand.

D E C I S I O N

When reviewing postconviction proceedings, we apply an abuse-of-discretion standard to determine whether the evidence is sufficient to sustain the district court's findings. *Scruggs v. State*, 484 N.W.2d 21, 25 (Minn. 1992); *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). But the interpretation and enforcement of a plea agreement presents an issue of law that we review de novo. *See State v. Rhodes*, 675 NW.2d 323, 326 (Minn. 2004).

Appellant argues that his plea must be vacated because the district court failed to establish an adequate factual basis for his *Alford* plea. We agree.

The rules of criminal procedure permit a defendant to 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 A manifest injustice occurs, and a guilty plea may be withdrawn, if the plea is not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). A plea is accurately made if it is supported by a factual basis. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). "A guilty plea may

not be accepted unless there exists a factual basis for concluding that the defendant actually committed an offense at least as serious as that to which he is pleading guilty." *State v. Misquadace*, 629 N.W.2d 487, 491 (Minn. App. 2001). The purpose of requiring an accurate factual basis for accepting a guilty plea is to ensure that the defendant does not plead guilty to a greater charge than he could be convicted of at trial. *Ecker*, 524 N.W.2d at 716. The district court is responsible for establishing a sufficient factual basis in the record. *Id.*

An *Alford* plea allows a defendant to plead guilty to an offense without expressly admitting the factual basis for the plea. *North Carolina v. Alford*, 400 U.S. 25 (1970); *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977). When a defendant reasonably believes, and the record establishes, that the state has sufficient evidence to obtain a conviction, a defendant may elect to enter an *Alford* plea to take advantage of an offered plea bargain. *Goulette*, 258 N.W.2d at 761. But because the inherent conflict between simultaneously pleading guilty and denying guilt calls into question the rationality of a defendant's decision, the factual-basis requirement is "absolutely crucial" to determining the validity of an *Alford* plea. *Id.* Accordingly, an *Alford* plea may be accepted as valid only "if the court, on the basis of its interrogatories of the accused and its analysis of the factual basis offered in support of the plea, concludes that the evidence would support a jury verdict of guilty, and that the plea is voluntarily, knowingly, and understandingly entered." *Id.*

A proper record of the requisite factual basis for an *Alford* plea may be developed by various means. *See Ecker*, 524 N.W.2d at 717 (concluding that the defendant's

testimony at the plea hearing was sufficient to establish an adequate factual basis); *Goulette*, 258 N.W.2d at 761 (stating that witness statements and testimony may be used to develop an adequate factual basis). But the supreme court recently noted that the "better practice" of establishing the factual basis for an *Alford* plea is for the court to discuss the evidence with the defendant on 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.

State v. Theis, 742 N.W.2d 643, 649 (Minn. 2007) (citations omitted). Additionally, the district court must establish in the record that the defendant, despite maintaining his innocence, believes that the state's evidence is sufficient to convict him. *Id.*; *Ecker*, 524 N.W.2d at 717.

We recognize that the district court did not have *Theis* for guidance at the time of appellant's plea hearing. But *Theis* did not alter existing law; rather, *Theis* provided a synthesis of precedents that established the accuracy requirements of a valid *Alford* plea. *See Theis*, 742 N.W.2d at 648-49.

Here, the record shows that the district court failed to conduct an independent analysis of the facts and establish that appellant himself believed that the state's evidence was sufficient to convict him. Although the district court alluded generally to the evidence it expected to be offered by the state at trial, it did not specify the facts drawn

from the evidence that would satisfy the essential elements of the second-degree assault charge to which appellant was pleading guilty. Moreover, the record indicates that the judge stated, "I'm telling you there is sufficient evidence based on the complaint and police reports from which a fact finder or Judge could determine that you are guilty of the charge, you are not pleading guilty but you are not challenging that evidence," and then asked appellant to note whether he understood this statement. But there is nothing in the record to show that appellant himself believed that the evidence likely to be offered by the state at trial was sufficient to convict him of second-degree assault.

Relying on *State v. Trott*, the state contends that the factual-basis requirement is nonetheless satisfied because the complaint and police report were part of the record at appellant's plea hearing. 338 N.W.2d 248 (Minn. 1983). But *Trott* is distinguishable. In *Trott*, the district court "carefully interrogated" the defendant about the details of the crime at the plea hearing and the defendant admitted to committing the criminal acts. 338 N.W.2d at 252. Furthermore, *Trott* involved a standard guilty plea, not an *Alford* plea, and thus failed to trigger a heightened duty on the part of the district court to establish an adequate factual basis. *Id*.; *Ecker*, 524 N.W.2d at 716.

The state further argues that on-the-record discussions at the plea hearing regarding jury instructions, a *Brady* motion, motions in limine, and the testimony of a witness provided ample opportunity for the district court and counsel to establish the facts underlying appellant's plea. But these discussions failed to elicit facts sufficient to support the necessary elements of second-degree assault, the charge to which appellant pleaded guilty. Moreover, the evidentiary rulings that resulted from these discussions

were largely favorable to appellant's case, and thus, if anything, called further into question the sufficiency of state's evidence.

In sum, because there is an insufficient factual basis for appellant's *Alford* plea, the plea was not accurate and thus invalid. "Manifest injustice occurs if a guilty plea is not accurate, voluntary, and intelligent." *Perkins*, 559 N.W.2d at 688. Accordingly, we reverse the district court's denial of appellant's postconviction petition to withdraw his guilty plea and remand for further proceedings.

Reversed and remanded.