STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1998

State of Minnesota,
Respondent,

vs.

Aaron Jude Schnagl,
Appellant.

Filed August 28, 2017
Affirmed
Klaphake, Judge[*]

Chisago County District Court
File No. 13-CR-12-919

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

Janet Reiter, Chisago County Attorney, Jacob Fischmann, David Hemming, Assistant County Attorneys, Center City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Klaphake, 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

KLAPHAKE, Judge

Appellant Aaron Jude Schnagl challenges an order denying his petition for postconviction relief, arguing that the district court erred in refusing to allow him to withdraw his *Alford* plea. Because appellant's guilty plea was accurate and voluntary, appellant was not entitled to withdraw his plea. We affirm.

D E C I S I O N

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007). After sentencing, "the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. "A manifest injustice exists if a guilty plea is not valid." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Id.* Whether a plea is valid is a question of law subject to de novo review. *Id.*

On February 12, 2013, appellant pleaded guilty via an *Alford* plea,[1] and the district court convicted him of aiding-and-abetting second-degree possession of a controlled substance – cocaine. The record indicates that on December 9, 2012, law enforcement

[1] An *Alford* plea allows a defendant to plead guilty, while maintaining his innocence, in order to take advantage of a plea bargain because the defendant agrees that there is sufficient evidence for a jury to find him guilty at trial. *See North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970); *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977).

executed a search warrant at appellant's home. That same day, appellant asked J.J. to retrieve a duffle bag from appellant's garage, which appellant admitted contained marijuana. J.J. retrieved the bag and brought it to the home of C.B., who later transported it to another residence where law enforcement recovered it on December 14. The duffle bag contained marijuana, 23 grams of cocaine, a scale, and baggies containing pills.

J.J. and C.B. provided statements to law enforcement on December 14. Based on those statements, it was anticipated that J.J. and C.B. would testify at a trial that the duffle bag contained cocaine, in addition to marijuana and pills, when it was initially removed from appellant's garage. Appellant maintained that he did not know that there was cocaine in the duffle bag but conceded that, given the anticipated testimony of J.J. and C.B., the evidence against him would be sufficient for a jury to find him guilty of possessing cocaine.

I. Appellant's plea was voluntary.

Appellant now argues that his *Alford* plea was involuntary because the package-deal plea agreement included a provision of leniency for his mother. A plea is voluntary when it is made without improper pressure or inducement. *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). "The purpose of the voluntariness requirement is to [make certain] that the defendant is not pleading guilty because of improper pressures." *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). Whether a plea is voluntary presents a question of fact, which this court reviews for clear error. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994).

The district court record shows that a thorough inquiry, as required by Minn. R. Crim. P. 15.01, occurred. When questioned under oath at the plea hearing, appellant indicated that he knew and understood his rights. Appellant agreed, and the record reflects,

that he had several conversations with counsel and had enough time to discuss the issues and the evidence against him prior to his plea. Counsel advised appellant that his case had "pretty good issues" and the state's case was "pretty weak." But appellant chose to take the benefit of the plea agreement and entered an *Alford* plea. Appellant indicated that he went over the plea petition line-by-line with counsel and that he understood the nature of the plea and what he was doing. Appellant signed the plea agreement, agreeing that no one made promises to or threatened him, his family, or his friends in order to obtain a guilty plea from him.

Appellant's plea agreement stated that if he pleaded guilty to aiding-and-abetting second-degree possession of a controlled substance and gave a statement to law enforcement, the state would: (1) recommend a 78-month prison sentence to run concurrently with the 86-month prison sentence appellant was already serving; (2) dismiss the other counts against appellant; (3) not charge appellant with other controlled-substance offenses predating this case; and (4) not charge appellant's mother, P.N., with a controlled-substance crime. At the time of the plea hearing, the district court was not fully informed of the nature of the plea agreement, as it did not know that P.N. is appellant's mother. Appellant argues on appeal that his plea was induced by the offer of leniency for P.N.

To support his argument, appellant cites to *Danh*, in which the Minnesota Supreme Court held that package-deal plea agreements granting leniency to third-party relatives are not per se invalid but must be scrutinized more closely because they pose a greater risk of coercion. 516 N.W.2d at 542-43. The plea agreement in *Danh* was part of a "package deal" for three codefendants and included a lenient sentence for the defendant's younger

brother. 516 N.W.2d at 540-41. The district court was not informed of the offers of leniency in *Danh*, and because the contingent nature of the plea was not revealed, the case was remanded for an evidentiary hearing. *Id.* at 544-45.

Here, the postconviction court found that the district court was not fully informed of how the plea would benefit P.N., and therefore the district court did not adequately inquire into the voluntariness of appellant's plea at the plea hearing. But, the postconviction court nonetheless concluded that the plea was voluntary because this case is more akin to *Butala v. State*, 664 N.W.2d 333 (Minn. 2003) than to *Danh*. We agree.

In *Butala*, the Minnesota Supreme Court found that a guilty plea was voluntary despite the parties' failure to lay out the entire plea agreement for the court because: the promise not to prosecute the defendant's family members was later revealed following a motion to withdraw the plea; the defendant proposed the third-party deal, not the prosecutor; and the postconviction court found no coercive effect stemming from the agreement. 664 N.W.2d at 339-340.

Here, both parties and the district court were informed of the specifics of the plea agreement at the time of the plea, including the agreement not to prosecute P.N. for a controlled-substance offense. The only omission at that time was that P.N. is appellant's mother, a fact that neither party revealed to the court, although the "duty to disclose the elements of a plea agreement is shared by the prosecutor and defense counsel." *Butala*, 664 N.W.2d at 340 n.4. At the same time, the district court failed to conduct further inquiry into the details of the plea agreement, despite also having a responsibility to do so under *Danh*. 516 N.W.2d at 542. We thus express our concern, as the court did in *Butala*, that

full disclosure did not occur by the parties, and that the court did not inquire further into the voluntariness of the plea. 664 N.W.2d at 339-40. Nonetheless, as in *Butala*, by the time of appellant's postconviction petition, the court knew that P.N. is appellant's mother. *Id.* at 340. And other than noting that P.N. is appellant's mother, the postconviction court recognized the same details of the plea agreement that were articulated at the plea hearing.

Further, it is undisputed that appellant proposed the offer of leniency for his mother, which supported the postconviction court's conclusion that the arrangement lacked any coercive effect. *Id.* (citing *United States v. Marquez*, 909 F.2d 738, 742 (2d. Cir. 1990)). The postconviction court flatly rejected appellant's argument that there was any coercive effect or undue influence, finding that his testimony lacked credibility and that it was a self-serving attempt to disrupt a related third-degree murder conviction. This finding is supported by the record, and this court gives deference to the primary observations and credibility determinations of the district court. *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997).

The postconviction court did not err in in upholding the district court's finding that appellant's plea was voluntary.

II. Appellant's plea was accurate.

Appellant also argues that his *Alford* plea was inaccurate. To be accurate, a plea must be established on a proper factual basis. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn.1994). "The main purpose of the accuracy requirement is to protect a defendant

from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial." *Trott*, 338 N.W.2d at 251.

Appellant contends that statements and testimony given by J.J. and C.B. in 2015 and 2016, before and during his related third-degree murder trial,[2] constitute newly discovered evidence that changes the underlying factual basis of his plea.

Appellant asks this court to apply the four-factor test articulated in *Rainer v. State* to decide whether to allow him to withdraw his plea based upon newly discovered evidence. 566 N.W.2d 692, 695 (Minn. 1997). The state correctly notes that reviewing courts apply *Rainer* to determine whether to grant a new trial based upon newly discovered evidence, not to decide whether to allow the withdrawal of a plea. But, this court applied nearly identical factors in the context of withdrawing a guilty plea in *Saiki v. State*.

Under *Saiki*, to justify the withdrawal of a plea, the appellant must show that the newly discovered evidence "could not have been discovered through the exercise of due diligence before the trial; that at the time of the trial the evidence was not within petitioner's or his counsel's knowledge; that the evidence is not impeaching, cumulative, or doubtful; and that it would probably produce a result different from or more favorable than that which actually occurred." 375 N.W.2d 547, 549 (Minn. App. 1985), *review denied* (Minn. Dec. 19, 1985) (quoting *State v. Caldwell*, 322 N.W.2d 574, 588 (Minn. 1982)).

Here, the postconviction court concluded, and the state concedes, that the first two factors under *Saiki* are met. First, the later statement and testimony of J.J. and C.B. were

[2] On February 5, 2016 appellant was convicted of third-degree murder for providing the cocaine that led to his girlfriend's death.

not known at the time of appellant's plea, and second, they could not have been discovered through due diligence, because they had not yet been given. In regard to the third and fourth factors, the postconviction court concluded that J.J.'s later statement and testimony were merely impeachment evidence, and that appellant failed to establish that the new evidence would probably produce an acquittal or a more favorable result.

We agree with the postconviction court's analysis that J.J.'s later statement and testimony were merely impeaching and would not have necessarily produced a different result if the case had gone to trial. This is also true of C.B.'s later testimony. Both J.J.'s and C.B.'s December 14, 2012 statements were given in close proximity to the December 9 offense, thereby bolstering their veracity. The later statement and testimony were given two to three years later, and both J.J. and C.B. conceded that their memories had faded. Further, neither J.J.'s later statement and testimony, nor C.B.'s later testimony, were full recantations because they were not entirely inconsistent with their earlier statements. The postconviction court did not err in concluding that the later statement and testimony were merely impeaching and not newly discovered evidence that justified the withdrawal of appellant's plea.

Appellant also contends that the later statement and testimony impact the perceived strength of the state's case against him, resulting in an invalid plea. This court has rejected a request to withdraw a guilty plea based on the mistaken apprehension of the strength of the state's case where the defendant admitted his guilt by pleading guilty. *State v. Tuttle*, 504 N.W.2d 252, 256-57 (Minn. App. 1993). But here, appellant entered an *Alford* plea, thereby maintaining his innocence while acknowledging the perceived strength of the

state's case. An *Alford* plea "is valid if the defendant agrees that evidence the state is likely to offer at trial is sufficient to convict and if the district court independently determines that there is a strong factual basis for a finding of guilty and a strong probability that a jury would find the defendant guilty." *See State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007) (internal quotations omitted)).

Here, the postconviction court found, and the record supports, that appellant acknowledged the strength of the state's case at the plea hearing, and that the district court made the requisite independent finding that there was a strong probability that appellant would be convicted of the offense at trial. Appellant acknowledged the strength of the state's case despite counsel's advice that he had "pretty good issues" and that the state's case was "pretty weak."

Even if we accept appellant's argument that the later statement and testimony constitute newly discovered evidence that weakens the factual basis relied upon at the time of his plea, we are not persuaded. Based on our thorough review of the record, there was still a sufficient factual basis for the district court to find that appellant would likely be convicted at trial. Therefore, even with a weakened factual basis, we cannot conclude that it was clear error for the district court to accept appellant's plea or that the postconviction court erred in upholding the district court's finding that appellant's plea was accurate.

However, we again express our dismay that the district court failed to conduct an independent inquiry into the strength of the factual basis for appellant's *Alford* plea, and instead relied solely on the plea colloquy of the attorneys. Minnesota appellate courts generally discourage the practice of establishing guilty pleas by permitting counsel to ask

leading questions of the defendant while the district court remains silent, preferring instead that courts take an active role in asking direct questions and asking the defendant to state what happened in his own words. *See, e.g.*, *Raleigh*, 778 N.W.2d at 95-96 (finding that defendant's plea was accurate, despite the disfavored use of counsel's leading questions). This procedure is all the more critical in an *Alford* plea where the perceived strength of the state's case, and thus the strong probability of conviction, form the basis for both the defendant's decision to plead guilty and the district court's acceptance of the plea. We therefore urge caution in accepting *Alford* pleas in cases where the court and counsel do not carefully conduct a proper inquiry into the strength of the factual basis.

Because the record supports the postconviction court's conclusion that appellant's *Alford* plea was accurate, voluntary, and therefore valid, we conclude that there was no manifest injustice and that the postconviction court did not err in denying appellant's request to withdraw his plea.

III. Appellant's pro se supplemental brief.

Finally, appellant submitted a pro se supplemental brief, raising the same legal challenges as his attorney, and in addition, arguing ineffective assistance of counsel. To succeed on a claim of ineffective assistance of counsel, a "defendant must affirmatively prove that his counsel's representation 'fell below an objective standard of reasonableness' and 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2064, 2068 (1984)). We conclude that appellant's counsel's performance did not fall below an

objective standard of reasonableness, and that appellant's ineffective-assistance-of-counsel claim is without merit. Appellant's other pro se arguments were addressed above.

Affirmed.