STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0099

State of Minnesota,
Respondent,

vs.

Justin Lee Brown,
Appellant.

Filed December 2, 2019
Affirmed
Bjorkman, Judge

Stearns County District Court
File No. 73-CR-17-7312

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Cochran, 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

BJORKMAN, Judge

Appellant challenges his conviction and sentence for first-degree assault, arguing that his guilty plea was invalid and that the district court abused its discretion by imposing a guidelines sentence. We affirm.

FACTS

Close to midnight on August 15, 2017, appellant Justin Lee Brown was involved in an altercation outside of his apartment. According to Brown, A.M. had stopped by, the two had some drinks, and A.M. attacked Brown from behind without provocation as he was leaving the apartment. Brown asserted that he fought back to defend himself, but he also told police that he "got pissed off," threatened to kill A.M., and "stomped him." Witnesses reported seeing Brown strike and kick A.M.'s head as he was lying on the ground. As a result of the assault, A.M.'s ear was "nearly amputated." And A.M. sustained a serious traumatic brain injury that necessitated appointment of both a legal guardian and a conservator.

Brown was charged with first-degree assault. In September 2018, Brown petitioned to enter an *Alford* plea[1] in exchange for a 74-month cap on prison time—the low end of the

[1] In an *Alford* plea, the defendant maintains his claim of innocence, but agrees that the state's evidence is sufficient for a jury to find him guilty and wishes to accept the state's plea offer. *See 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, 761 (Minn. 1977) (recognizing *Alford* pleas in Minnesota).

presumptive 74- to 103-month sentencing range, and the ability to argue for a downward dispositional departure at sentencing. The district court accepted Brown's plea.

At sentencing, Brown moved for a downward dispositional departure, arguing that a probationary sentence is appropriate because he took responsibility for his actions, was remorseful, had minimal criminal history, was not the aggressor, and was intoxicated at the time of the assault. The district court credited Brown for expressing some remorse, but found that he did not take responsibility for his actions. The court noted that Brown rejected the opportunity to obtain chemical-dependency treatment after the offense, despite his contention that alcohol mitigated his conduct. And the district court rejected Brown's claim of self-defense, stating that while A.M. may have initiated the altercation, independent witnesses saw Brown "kicking and hitting [A.M.] when he was on the ground." The district court sentenced Brown to 74 months' imprisonment. Brown appeals.

D E C I S I O N

I. Brown's guilty plea is accurate.

A defendant does not have an absolute right to withdraw his guilty plea, *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017), but must be allowed to do so if "withdrawal is necessary to correct a manifest injustice," Minn. R. Crim. P. 15.05, subd. 1. This standard is met if a plea is not valid; a guilty plea is valid if it is "accurate, voluntary, and intelligent." *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). The accuracy requirement focuses on the factual basis for the plea and ensures the defendant does not plead guilty to a greater offense than what he could be convicted of after a trial. *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007). The same standards apply to *Alford* pleas. *Id.*

at 646. A defendant may challenge the validity of a guilty plea for the first time on appeal. *State v. Anyanwu*, 681 N.W.2d 411, 413 (Minn. App. 2004), *overruled on other grounds by Wheeler v. State*, 909 N.W.2d 558, 568 (Minn. 2018).

To ensure the accuracy of Brown's *Alford* plea, the district court was required to discuss with Brown the evidence the state would likely offer at trial and elicit his agreement that the evidence was likely sufficient for a jury to find him guilty. *Theis*, 742 N.W.2d at 649. Once "the State demonstrated a strong factual basis for the plea and [Brown] clearly expressed his desire to enter the plea based on his belief that the State's evidence would be sufficient to convict him," the district court could accept the plea if it "reasonably conclude[d] that there is evidence which would support a jury verdict of guilty and that the plea is voluntarily, knowingly, and understandingly entered." *Id.* at 647 (quotations omitted).

Brown argues that his guilty plea is inaccurate because he acted in self-defense and because the district court failed to independently determine that there was a strong probability that a jury would find him guilty. Both arguments are unavailing.

First, the record, including Brown's testimony at the plea hearing and his admissions in the *Alford* addendum to his plea petition, fully demonstrates the accuracy of Brown's guilty plea. Brown acknowledged that he understood he was pleading guilty even though he maintained his innocence. At the plea hearing, he agreed that if he "went to trial, there [was] a substantial likelihood that [he] could be found guilty of the offense" and that a jury could find him guilty based on the evidence the prosecutor could offer. In reviewing the evidence with the prosecutor, he agreed that the state could show that he engaged in an

altercation with A.M., two witnesses would testify that they observed him stomping or kicking A.M. in the face, and medical evidence would establish that A.M. sustained a traumatic brain injury. Finally, he agreed that there was a significant benefit for him to take the plea offered by the state. Before accepting the plea, the district court received all law enforcement reports as evidence. On this record, we agree with the district court's assessment when accepting the guilty plea, that Brown "knowingly, voluntarily, and intelligently waived [his] rights; [and] that [he] did provide . . . a sufficient factual basis to accept [his] guilty plea."

Second, we reject Brown's assertion that the district court erred by failing to "independently conclude that there was a strong probability that Brown would be found guilty." To convict Brown of first-degree assault, the state was required to prove that he assaulted A.M. and inflicted "great bodily harm" upon him, which is defined to include "a permanent or protracted loss or impairment of the function of any bodily member or organ." Minn. Stat. §§ 609.02, subd. 8, .221, subd. 1 (2016). The record evidence Brown admitted clearly satisfies each element of the offense. And we are not persuaded that the district court's failure to specifically state that the evidence creates a "strong probability" that a jury would return a guilty verdict requires plea withdrawal. In *State v. Johnson*, this court concluded that a district court is not required to make express findings regarding the strength of the state's evidence when the defendant enters a *Norgaard* plea. 867 N.W.2d 210, 217 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015).[2] *Norgaard* and *Alford*

[2] In a *Norgaard* plea, "the defendant asserts an absence of memory on the essential elements of the offense but pleads guilty because the record establishes, and the defendant

pleas are both premised on the sufficiency of the state's evidence, not the defendant's admission to the elements of the charged offense. Accordingly, we observe no reason to require different findings in cases involving *Alford* and *Norgaard* pleas.

II. The district court did not abuse its discretion by imposing a guidelines sentence.

Brown argues that his particular amenability to probation justified a downward dispositional departure. Dispositional departures are based on offender-related factors such as the defendant's age, prior record, remorse, cooperation, attitude in court, and external support. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Brown argues that A.M. was the initial aggressor in the altercation, and his criminal history, respectful court demeanor, family support, remorse, cooperation throughout the proceedings, and willingness to participate in alcohol-dependency treatment weigh in favor of a probationary sentence. He also argues that his sentence should be vacated because the district court failed to weigh the circumstances for and against departure against each other.

A district court is accorded "great discretion" at sentencing. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quotation omitted). The court must impose a sentence within the presumptive range "unless there exist identifiable, substantial, and compelling circumstances" to overcome that presumption. *Id*. at 308 (quoting Minn. Sent. Guidelines 2.D.1 (2012)). If substantial and compelling circumstances exist, making the case "atypical," *Taylor v. State*, 670 N.W.2d 584, 589 (Minn. 2003), the district court "may

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reasonably believes, that the state has sufficient evidence to obtain a conviction." *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009); *see State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871 (Minn. 1961).

depart," *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981) (quotation omitted). We will reverse the imposition of a presumptive sentence only in a "rare case." *Kindem*, 313 N.W.2d at 7; *see State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) ("A district court abuses its discretion when its reasons for departure are legally impermissible and insufficient evidence in the record justifies the departure.").

We observe no abuse of discretion in the district court's imposition of a guidelines sentence. Both the prosecutor and the probation officer who conducted the presentence investigation recommended a 74-month prison term, and the district court gave valid reasons for imposing that sentence. The district court was well aware of Brown's arguments for sentencing departure and deliberately weighed the most pertinent circumstances in reaching its decision. The district court was not required to place Brown on probation even though a mitigating factor may have been present. *State v. Pegel*, 795 N.W.2d 251, 253-54 (Minn. App. 2011). And the district court was not required to provide reasons for imposing a presumptive sentence. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013). In short, this is not a rare case in which we would reverse a guidelines sentence.

III. Brown's pro se arguments are unavailing.

In his supplemental brief, Brown argues that (1) evidence of his blood at the crime scene was destroyed, (2) his attorney was ineffective because he did not "build a case" or "present discovery material that was in my favor," (3) his attorney violated "confidentiality" by participating in a "roundtable" at a court hearing, and (4) he pleaded guilty under duress because of his "neglected medical treatment" caused by injuries he

received during the offense. Brown also suggests his neglected medical treatment was cruel and unusual punishment and that his due-process rights were violated.

All of these arguments fail because Brown cites no law to support them. *See State v. Sontoya*, 788 N.W.2d 868, 876 (Minn. 2010) (declining to consider pro se defendant's argument offered without supporting legal authority); *State v. Bartylla*, 755 N.W.2d 8, 23 (Minn. 2008) (noting that "[a]n assignment of error based on mere assertion and not supported by any argument or authorities . . . is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection" (quotation omitted)).

Even if we consider Brown's arguments on the merits, they fail. Brown's guilty plea defeats his evidentiary arguments. *See State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007) (noting that a guilty plea generally operates as a waiver of nonjurisdictional defects, including the admissibility of evidence); *State v. Johnson*, 422 N.W.2d 14, 16 (Minn. App. 1988), *review denied* (Minn. May 16, 1988). He offers no evidentiary support for his ineffective-assistance-of-counsel claims, including the purported confidentiality violation. *See Crow v. State*, 923 N.W.2d 2, 14 (Minn. 2019) (requiring for a valid ineffectiveness-of-counsel claim that an attorney's representation "fell below an objective standard of reasonableness" and that the result would have been different without the attorney's errors). Finally, the record belies Brown's duress argument. His plea petition expressly states that he had "not been ill recently." And he denied at both the plea hearing and in the plea petition that any "promises or threats" induced his guilty plea.

Affirmed.