STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1043

State of Minnesota,
Respondent,

vs.

Anthony Steven Kalland,
Appellant.

Filed May 4, 2020
Affirmed
Rodenberg, Judge

Meeker County District Court
File No. 47-CR-18-1255

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

Brandi L. Schiefelbein, Meeker County Attorney, John P. Fitzgerald, Assistant County Attorney, Litchfield, Minnesota (for respondent)

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

Considered and decided by Reilly, Presiding Judge; Rodenberg, Judge; and Hooten, Judge.

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

RODENBERG, Judge

In this direct appeal from judgment of conviction for a fifth-degree controlled-substance crime, appellant Anthony Kalland argues that he should be permitted

to withdraw his *Alford* plea[1] because the district court did not expressly find appellant guilty and because the anticipated evidence identified in the plea colloquy did not demonstrate a "strong probability" that appellant would be found guilty at trial. We affirm.

FACTS

On the evening of December 27, 2018, police responded to a residence in Litchfield. A woman had called 911 and reported that appellant, her boyfriend, was in the residence and threatening to shoot himself with a revolver. Police arrived, set up a perimeter around the residence, and unsuccessfully attempted to communicate with appellant. Police thereafter obtained a warrant to search the residence in order to retrieve the firearm. Although police did not find the firearm, they did find methamphetamine paraphernalia, which included smoking devices, snort tubes, and a scale—all of which were covered in methamphetamine residue. Police did not find appellant in the residence.

On December 30, 2018, police received a tip that appellant had returned to the Litchfield residence. The owner of the residence informed police that the residence was supposed to be locked and vacant. Police returned to and entered the residence—with the permission of the owner—and found appellant hiding under a pile of blankets. After securing the residence and determining that appellant was the only occupant, police located a firearm, a small amount of methamphetamine, a scale containing methamphetamine

[1] An *Alford* plea permits a defendant to plead guilty while nonetheless 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).

residue, and several small plastic bags. The state charged appellant with unlawful possession of a firearm and misdemeanor domestic assault.

At an omnibus hearing on March 14, 2019, the district court received into evidence 25 exhibits offered by the state. The district court additionally heard from law enforcement officers, who testified to their activities concerning appellant on December 30, 2018.[2]

On April 15, 2019, and after the complaint was amended to add a fifth-degree controlled-substance-possession charge, the state and appellant entered into a plea agreement. Appellant entered an *Alford* plea to the amended fifth-degree possession charge as a gross misdemeanor, and the domestic-assault charge was dismissed. In the plea petition, appellant acknowledged that he "had sufficient time to discuss [his] case with [his] attorney," and that appellant's attorney was "fully informed as to the facts of this case" and "fully advised" appellant. Appellant also affirmed that, "I understand that the judge may accept my *Alford* guilty plea despite my claim of innocence, so long as I agree the state's evidence is sufficient for a jury to find me guilty, beyond a reasonable doubt." Appellant further acknowledged that, "I have reviewed the evidence that the state will offer against me if I have a trial," and that "I believe that there is a substantial likelihood that I will be found guilty, beyond a reasonable doubt, of the offense to which I am pleading if the state's evidence is presented against me at trial."

[2] Although the omnibus record is significant to the plea-validity question, as discussed below, there are no omnibus issues on appeal.

During the plea hearing, but before his colloquy with the district court, appellant had the following exchange with his counsel:

> COUNSEL: . . . the Judge may accept a plea of guilty pursuant to State versus Alford even if you claim to be innocent provided that you agree that the evidence is sufficient for a jury to convict you. Do you understand that?
> APPELLANT: I do.
> COUNSEL: And, do you believe that that's possible that—or likely that a jury would convict you if you did have a trial?
> APPELLANT: Yes.

During his colloquy with the district court, the district court asked appellant:

> DISTRICT COURT: So, knowing this is an Alford plea and you're maintaining your innocence, if this were a jury trial and we were at trial and there were a jury, if they were to hear testimony from Detectives Danielson and Miller of the Meeker County Sheriff's Office and they were to testify that on December 30, 2018, they arrested you at a residence off County State Aid Highway 16 in Litchfield, which is Meeker County, and that they had previously obtained a search warrant for the residence and got a second search warrant after you had been at the residence, um, and found methamphetamine bag—baggies, a scale, and methamphetamine at the residence, and—and [the methamphetamine] wasn't there after they searched it the first time, but it was there after they arrested you, do you believe that it is substantially likely a jury could find you guilty of the crime of fifth degree possession of a controlled substance? And that's if a jury were to hear the testimony of the detectives.
> APPELLANT: Yes, your honor.

The district court then accepted appellant's plea and sentenced him to 365 days in jail concurrent with any other sentences.

This appeal followed.

D E C I S I O N

Appellant argues that he is entitled to withdraw his *Alford* plea because the factual basis supporting his guilty plea to gross-misdemeanor fifth-degree possession of a controlled substance was inaccurate. Appellant did not present this argument to the district court. Nonetheless, the supreme court has held that "by pleading guilty, a defendant does not waive the argument that the factual basis of his guilt was not established." *State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003). Moreover, appellant "is free to simply appeal directly from a judgment of conviction and contend that the record made at the time the plea was entered is inadequate" to establish the requirements of a guilty plea. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). We therefore consider appellant's argument.

For a guilty plea to be valid, it must be "accurate, voluntary and intelligent." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994) (citation omitted). In explaining the validity of a plea, the supreme court provided that:

> 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. . . . The purpose of the voluntariness requirement is to insure that the defendant is not pleading guilty because of improper pressures. The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.

State v. Trott, 338 N.W.2d 248, 251 (Minn. 1983). "If a plea fails to meet any one of these requirements, it is invalid." *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). We apply

a de novo standard of review when determining the validity of a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

As noted, appellant argues that his plea failed to meet the accuracy requirement. "A guilty plea is inaccurate if it is not supported by a proper factual basis." *State v. Johnson*, 867 N.W.2d 210, 215 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015). A proper factual basis exists if there are "sufficient facts on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *Iverson*, 664 N.W.2d at 349 (quotation omitted). A guilty plea may not be withdrawn "simply because the court failed to elicit proper responses if the record contains sufficient evidence to support the conviction." *Raleigh*, 778 N.W.2d at 94. A plea should not be accepted by the district court "unless the record supports the conclusion that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty." *Trott*, 338 N.W.2d at 251-52.

An *Alford* plea is a plea under which the defendant acknowledges that the record establishes his guilt and accepts as a fact that he reasonably believes the state has sufficient evidence to secure a conviction, while not expressly admitting guilt. *Alford*, 400 U.S. at 37, 91 S. Ct. at 167; *see also State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (recognizing *Alford* pleas in Minnesota). The factual basis concerning such a plea must be carefully scrutinized by the district court "because of the inherent conflict in pleading guilty while maintaining innocence." *Theis*, 742 N.W.2d at 648-49. The district court should

ordinarily determine whether an adequate factual basis has been established. *Goulette*, 258 N.W.2d at 761.

Appellant contends that plea withdrawal is appropriate here because the district court did not state on the record that it found appellant guilty of gross-misdemeanor fifth-degree possession of a controlled substance and did not separately find a "strong probability" that a jury would convict appellant at trial. Appellant asserts that the record is therefore insufficient to establish a factual basis for the offense.

Appellant cites no binding authority supporting the notion that an *Alford* plea is invalid if the district court does not make an express finding of guilt, "and we are unaware of any such authority." *Johnson*, 867 N.W.2d at 216. Moreover, "there is no suggestion in the rules of criminal procedure that a district court must make an express finding on the record concerning the adequacy of the factual basis of every [*Alford*] plea." *Id.* The rule provides that a "defendant must state the factual basis for the plea." Minn. R. Crim. P. 15.01 subd. 1(8). We have declined to "impose a requirement that, in every [*Alford*] guilty plea, the district court must make an express finding on the record that there is a strong probability that the defendant would be found guilty of the crime to which he is pleading guilty." *Johnson*, 867 N.W.2d at 217. Instead, we may consider on appeal whether there is a strong probability that appellant would be found guilty of gross misdemeanor fifth-degree possession of a controlled substance. *Id.* at 216.

The record as a whole reveals a sufficient factual basis to support appellant's plea. Appellant acknowledged in the pea petition and in sworn plea testimony that a jury would

likely find him guilty of the offense and that there is ample evidence of his guilt. At the omnibus hearing, evidence demonstrated that methamphetamine and paraphernalia were recovered from the residence of which appellant was the only occupant. Omnibus exhibits and the testimony of the responding police officers demonstrate that appellant would surely have been found guilty of gross-misdemeanor fifth-degree possession of a controlled substance had the case been tried.

Based on this record, we conclude that the district court did not err when it accepted appellant's *Alford* plea. Appellant is not entitled to withdraw his guilty plea.

Affirmed.