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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1240**

Andy Roger Baccam, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 26, 2011
Affirmed
Collins, Judge***

Nobles County District Court
File No. 53-K6-01-000118

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

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

Gordon L. Moore, III, Nobles County Attorney, Worthington, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Kalitowski, 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.

UNPUBLISHED OPINION

COLLINS, Judge

In this postconviction appeal challenging his 2001 conviction of terroristic threats, appellant argues that he is entitled to withdraw his Alford plea because it lacked a sufficient factual basis. We affirm.

FACTS

In February 2001, appellant Andy Roger Baccam was charged in Nobles County District Court with one count of felony terroristic threats and one count of disorderly conduct. Baccam was in jail at the time, and the complaint alleged that he threatened to kill another inmate for being a “snitch.” In September 2001, Baccam entered an *Alford* plea¹ to the terroristic threats charge pursuant to a plea agreement. The state agreed that it would not seek revocation of Baccam’s probation stemming from a prior conviction.

At the plea hearing, the district court asked Baccam if he understood the nature of an *Alford* plea and Baccam said that he did. The court then questioned Baccam about the factual basis for the plea as well as his understanding of his rights:

Q: Are you claiming that you’re innocent of the charge?

A: Yes, sir. Or, I think that they can convict me if I went to--

Q: You dispute what they’re claiming?

A: Yeah.

Q: You don’t agree with what evidence the State claims they have? Is that your position here?

A: Yes, sir.

¹ See *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970) (upholding acceptance of plea even though defendant maintained innocence); *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (following *Alford* in accepting plea without admission of guilt).

Q: But you think after looking at all that evidence the State could prove beyond a reasonable doubt that you committed this terroristic threats offense?

A: Yes, sir.

....

Q: What is it that the State claims you did here?

A: That I threatened another inmate while I was in jail.

Q: Who was that?

A: Mr. Jay Drahotka.

Q: What does he say you threatened him, what does he say you threatened him about?

A: Says I threatened to kill him.

Q: And why were you making that threat?

A: Well, I never threatened him.

Q: Well, what does he say prompted you to make that threat?

A: That he snitched on a family member of mine and he thinks that I am going to hurt him or something.

Q: So in your view he made all of this up?

A: Yeah.

Q: Just to get you in trouble?

A: Well, I called him a narc. And I guess he got scared or, or I told an inmate that he was a narc and he got scared. I guess he got scared for his life. That is what he says.

Q: And you, you take the position that he is making this up?

A: That I called him a narc?

Q: No, that he, that you threatened to kill him, that this is all --

A: Yes.

Q: --in his own head? Well, you understand you can have a trial and you can tell the jury that? You understand that?

A: Yes, sir.

Q: But you want to plead guilty?

A: Yeah.

The district court accepted Baccam's guilty plea, stayed imposition of a sentence, and placed him on probation for a period of five years. Baccam did not pursue a direct appeal.

In 2003, Baccam was convicted in federal court of firearm and narcotics charges. He has been incarcerated in federal prison since April 2003. Due to his 2001 terroristic

threats conviction, Baccam's federal prison sentence is longer than he would have otherwise received. His tentative release date is September 1, 2020.

This is Baccam's second appeal to this court in which he has challenged his 2001 terroristic threats conviction. In July 2009, Baccam petitioned for a writ of habeas corpus in state district court, alleging that he was being held in federal prison because of his 2001 terroristic threats conviction. *See Baccam v. State*, A09-1610, 2010 WL 1029985, at *1 (Minn. App. March 23, 2010). He sought reversal of the conviction based on ineffective assistance of counsel. *Id.* The district court denied the petition, concluding that Baccam was not being held in federal prison because of his 2001 state conviction, and thus there was no basis for habeas relief. *Id.* We affirmed in an unpublished opinion. *Id.*

In May 2010, Baccam filed a "Writ of Coram Nobis," requesting that the district court vacate his 2001 terroristic threats conviction because he received ineffective assistance of counsel and there was an insufficient factual basis for his *Alford* plea. The district court construed Baccam's filing as a petition for postconviction relief and denied it as untimely and without merit. The district court denied Baccam's motion for reconsideration and this appeal followed.²

DECISION

In a postconviction appeal, this court reviews the postconviction court's decision for an abuse of discretion. *Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010). Factual

² On appeal, Baccam challenges only the validity of his *Alford* plea.

determinations will be upheld if they are supported by sufficient evidence, but issues of law are reviewed de novo. *Id.*

A defendant may withdraw a guilty plea if “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists when a guilty plea is invalid. *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). For a plea to be valid, it must be accurate, voluntary, and intelligent. *Id.* The validity of a guilty plea is an issue of law. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

In order for a guilty plea to be accurate, “[a] proper factual basis must be established.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). The supreme court has stated that regarding an *Alford* plea, “careful scrutiny of the factual basis for the plea” is especially important due to “the inherent conflict in pleading guilty while maintaining innocence.” *Theis*, 742 N.W.2d at 648-49. A sufficient factual basis is ordinarily “established by questioning the defendant and asking the defendant to explain in his or her own words the circumstances surrounding the crime.” *Ecker*, 524 N.W.2d at 716. The district court must also “determine that the defendant, despite maintaining his innocence, agrees that evidence the State is likely to offer at trial is sufficient to convict.” *Theis*, 742 N.W.2d at 649. Together, “[t]he 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.*

Although the supreme court has not explicitly detailed the requirements to establish a sufficient factual basis, the court noted in *Theis* that it is the “better practice”

for “the factual basis to be based on evidence discussed with the defendant on the record at the plea hearing.” *Id.*

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.

Id. (citations omitted).

Baccam challenges the validity of his *Alford* plea, arguing that the state did not present any anticipated trial evidence and because he did not concede that conviction was likely. Baccam asserts that when questioned by the district court regarding the terroristic threats charge, he stated only: “I think that if they didn’t find me guilty of [the terroristic threats charge] they would get me for the disorderly conduct and that would revoke my current probation.” But although that is not an unequivocal statement that he believed conviction was likely, Baccam responded to the district court more definitively at another point during the plea hearing:

Q: But you think after looking at all that evidence the State could prove beyond a reasonable doubt that you committed this terroristic threats offense?

A: Yes, sir.

It is thus shown that Baccam, despite maintaining his innocence, acknowledged that the state would offer sufficient evidence to convict him of the charge.

Baccam also argues that the factual basis for his *Alford* plea was insufficient because the district court heard only his own beliefs regarding the evidence the state

would offer. We disagree. Although the supreme court in *Theis* stated that a factual basis may be satisfied through introduction of witness statements or other evidence, it noted that this was but one example of how a proper factual basis may be established. The supreme court allowed that a sufficient factual basis may also be established by “an interrogation of the defendant about the underlying conduct and the evidence that would likely be presented at trial.” *Theis*, 742 N.W.2d at 649.

Here, the district court questioned Baccam about the allegations contained in the complaint. Baccam named the victim and acknowledged that the victim claimed Baccam threatened to kill him for being a jailhouse “narc” or “snitch.” While denying that he made a specific threat to kill the victim, Baccam admitted that he called the victim a narc and told other inmates that the victim was a narc. Baccam also acknowledged that the victim “got scared for his life.” And although the state did not specifically provide the district court with witness statements or abbreviated testimony that it planned to introduce at trial, the complaint shows that the victim and two other inmates gave statements to the effect that Baccam threatened to kill the victim. The complaint summarizes the witness’s testimony and, as part of the record, it may be used to demonstrate a strong possibility of conviction. *See State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (relying on allegations in criminal complaint to establish factual basis for plea); *Williams v. State*, 760 N.W.2d 8, 13 (Minn. App. 2009) (relying in part on complaint to establish factual-basis component), *review denied* (Minn. Apr. 21, 2009).

There was a sufficient factual basis for Baccam's *Alford* plea. Because the district court did not err by denying Baccam's petition on its merits, we need not address its timeliness.

Baccam also submitted a pro se supplemental brief in which he argues that he did not pursue a direct appeal from his terroristic threats conviction because he was advised by his attorney that this would be a waste of time. He also argues that he acted diligently in challenging his conviction, particularly given that he does not have access to Minnesota state law books at the federal prison where he is being held.

These arguments go to the district court's finding that Baccam's request for postconviction relief was untimely under the two-year statute of limitations provided by Minn. Stat. § 590.01, subd. 4 (2010). An otherwise untimely petition for postconviction relief may be heard if "the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice." *See id.*, subd. 4(b)(5). The supreme court has stated that the interest of justice exception is to be applied only "in exceptional circumstances." *Gassler v. State*, 787 N.W.2d 575, 586 (Minn. 2010). Baccam's arguments seek to establish that this is an exceptional circumstance where the interest of justice exception should apply. Because we reach the merits of Baccam's petition and affirm on that basis, rather than untimeliness, we need not address these additional arguments.

Affirmed.