STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1863

State of Minnesota,
Respondent,

vs.

Paul James Steichen,
Appellant.

Filed July 29, 2013
Affirmed; motion granted
Schellhas, Judge

Polk County District Court
File No. 60-CR-12-557

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

Greg Widseth, Polk County Attorney, Crookston, Minnesota (for respondent)

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

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and Stauber, Judge.

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

SCHELLHAS, Judge

In this direct appeal from his conviction of third-degree burglary, appellant argues that this court should permit him to withdraw his *Alford* plea because no district court transcript exists of the guilty-plea hearing and, therefore, no one can ascertain whether

his plea was knowing, voluntary, and intelligent. Appellant also moved to strike portions of respondent's brief and appendix. We grant appellant's motion to strike and affirm.

FACTS

In the early morning of March 15, 2012, someone discovered appellant Paul Steichen sleeping in the office area of the Boardwalk Bar and Grill Banquet Room in East Grand Forks, Minnesota. Upon arriving at the scene, a police officer saw an open bottle of wine with wine missing on the floor next to Steichen. Respondent State of Minnesota charged Steichen with third-degree burglary, in violation of Minn. Stat. § 609.582, subd. 3 (2010). Steichen entered an *Alford* plea to the charge of third-degree burglary. The record contains no written plea petition, and no transcript of the plea exists.

On July 20, Steichen appeared for sentencing. Steichen's presumptive sentence for the third-degree-burglary offense was a stayed sentence of 15 months. But Steichen also faced charges of contempt and terroristic threats in a separate case, and the state made Steichen an offer involving the third-degree-burglary charge and the other pending charges. If Steichen would agree to an executed 15-month sentence for the third-degree-burglary offense and plead guilty to the contempt charge, the state would dismiss the terroristic-threats charge. After the parties discussed the state's offer at length, Steichen accepted the offer, and the district court sentenced Steichen to an executed 15-month sentence for third-degree burglary.

Steichen filed a direct appeal and requested the district court plea and sentencing transcripts. Steichen obtained the sentencing transcript that is part of the record before us, but no recording of Steichen's plea hearing could be located and therefore no transcript exists.

D E C I S I O N

A defendant has the right to challenge his guilty plea on direct appeal even if he has not moved to withdraw the plea in district court. *State v. Anyanwu*, 681 N.W.2d 411, 413 (Minn. App. 2004). "A defendant has no absolute right to withdraw a guilty plea after entering it." *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). After conviction and sentencing, a court "must allow" a defendant to withdraw a guilty plea to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. "A manifest injustice occurs when a guilty plea is invalid." *Campos v. State*, 816 N.W.2d 480, 507 (Minn. 2012), *cert. denied*, 133 S. Ct. 938 (2013). "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Raleigh*, 778 N.W.2d at 94. "The defendant bears the burden to establish that his plea was invalid." *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012). Assessing the validity of a guilty plea is a question of law, which we review de novo. *Id.*

Steichen argues that he should be permitted to withdraw his *Alford* plea because no transcript of the plea is available, and, therefore, no one can ascertain whether his plea was accurate, voluntary, or intelligent. This argument is unavailing.

"The record on appeal consists of the papers filed in the district court, the offered exhibits, and the transcript of the proceedings, if any." Minn. R. Crim. P. 28.02, subd. 8. But if a transcript from a district court proceeding

> is unavailable, the appellant may prepare a statement of the proceedings from the best available means, including recollection. The statement is not intended to be a complete re-creation of testimony or arguments.
> . . . .
> The [district] court may approve the statement submitted by appellant, or modify the statement based on respondent's submissions or the court's own recollection of the proceedings. The statement as approved by the [district] court shall be included in the record.

Minn. R. Civ. App. P. 110.03; *see also* Minn. R. Crim. P. 28.02, subd. 9 ("To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern preparation of the transcript of the proceedings and the transmission of the transcript and record to the Court of Appeals . . . ."). Alternatively,

> the parties may prepare and sign a statement of the record showing how the issues presented by the appeal arose and were decided in the [district] court and setting forth only the facts averred and proved or sought to be proved which are essential to a decision of the issues presented. The agreed statement shall be approved by the [district] court . . . .

Minn. R. Civ. App. P. 110.04.

In *Hoagland v. State*, 518 N.W.2d 531, 535 (Minn. 1994), the Minnesota Supreme Court considered an appeal from a jury trial in which a transcript of the trial was unavailable. Based on the specific facts of the case, the court held

> that when both the trial judge and defense counsel make statements which could mislead a defendant about the appeal process; when an employee of the judicial system fails to

> follow clearly stated judicial policies and consequently a defendant is deprived of a transcript to his trial for appeal; and when it is impossible to reconstruct the trial because of the trial judge's death, that defendant is entitled to a new trial unless he has abused the judicial process or the state can establish that it would be unduly prejudiced by a new trial.

518 N.W.2d at 535.

In this case, Steichen did not attempt to reconstruct the record by either method available to him in the court rules. "Failure to follow rule 110.03 may result in dismissal of the appeal or affirmance of the [district] court's actions . . . ." *Schmuckler v. Creurer*, 585 N.W.2d 425, 429 (Minn. App. 1998) (citing *Kuehl v. Nat'l Tea Co.*, 310 Minn. 48, 51, 245 N.W.2d 235, 238 (1976)), *review denied* (Minn. Dec. 22, 1998). Nor does Steichen assert that it is impossible to reconstruct his plea hearing. Steichen instead argues that because no transcript is available, the validity of his plea cannot be determined, but he makes no allegation that his plea was not accurate, voluntary, or intelligent.

Steichen relies on *State v. Casarez*, in which the court vacated charges against appellant, when he challenged the validity of his guilty plea, because the partial transcript of the plea hearing was "so incomplete that there [was] no way of determining if [the appellant] properly waived all of his rights." 295 Minn. 534, 536, 203 N.W.2d 406, 408 (1973). But in *Casarez*, the appellant was *unrepresented* by counsel when he entered his plea. *Id.* at 535, 203 N.W.2d at 407. Here, Steichen was represented by counsel. Where a defendant has full opportunity to consult with counsel prior to entering his plea, the court may safely presume that the defendant was adequately informed of his rights.

Shackelford v. State, 312 Minn. 602, 602, 253 N.W.2d 149, 150 (1977) (citing *State v. Propotnik*, 299 Minn. 56, 58, 216 N.W.2d 637, 638 (1974)). And Steichen does not argue that he was not informed of his rights.

Moreover, the record shows that, at the time of his plea, Steichen had extensive experience with the criminal justice system, as illustrated by his lengthy criminal history and his statements to the district court at the time of his sentencing. *Cf. State v. Lopez*, 794 N.W.2d 379, 384–85 (Minn. App. 2011) (noting that appellant's *limited experience* with criminal justice system was significant in holding that appellant satisfied the fair-and-just standard to withdraw his *unrepresented* guilty plea); *State v. Wiley*, 420 N.W.2d 234, 237 (Minn. App. 1998) (considering represented appellant's "extensive exposure" to criminal justice system when determining whether his guilty plea was valid), *review denied* (Minn. Apr. 26, 1988).

Steichen has not attempted to reconstruct the record; alleges no deficiencies in his guilty plea; and provides no basis for this court to determine that his guilty plea was not accurate, voluntary, or intelligent. The remedy of automatic plea withdrawal that he seeks is not supported by our caselaw or by the policy favoring finality of judgments. *See Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002) (stating that public policy favors finality of judgments).

Motion to Strike

Steichen moved to strike portions of the state's brief and appendix. "The papers filed in the [district] court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. The general

rule is that an appellate court may not base its decision on matters outside the record on appeal and may not consider matters not produced and received in evidence below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). "Appellate courts may not consider matters outside the record on appeal and will strike references to such matters from the parties' briefs." *Stageberg v. Stageberg*, 695 N.W.2d 609, 613 (Minn. App. 2005), *review denied* (Minn. July 19, 2005).

Steichen moved to strike the following documents contained in the state's appendix: the criminal complaint from the file involving the contempt and terroristic-threats charges, a letter from the state identifying its offer to resolve the two files, and the court minutes from a hearing on the file involving the contempt and terroristic-threats charges held on the same day as Steichen's sentencing hearing in this matter. Steichen also moved to strike references in the state's brief that rely on the documents. Because these documents were not produced or received in evidence before the district court and are therefore not part of the record before this court on appeal, these documents and references to them are stricken. Although we do not consider these documents or the state's references to them, the record on appeal contains sufficient evidence establishing the existence of the other pending file, the charges it contained, and the terms of the state's offer involving resolution of the two files. In addition, the transcript from Steichen's sentencing hearing in this matter, which is properly part of record, shows that there was a lengthy discussion about the state's offer to resolve the two files, in which Steichen, Steichen's counsel, and the court each articulated the terms of the state's offer.

Steichen also moved to strike references in the state's brief to the experience of the district court judge who presided over his plea hearing and to the employment status and availability of those present at Steichen's plea hearing, including the district court judge, court personnel, the prosecutor, and Steichen's counsel. Because these references are outside of the record, they are stricken from the state's brief.

Affirmed; motion granted.