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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1465**

State of Minnesota,
Respondent,

vs.

Wallie Gene Lang,
Appellant.

**Filed March 10, 2014
Affirmed
Hudson, Judge**

Mahnomen County District Court
File No. 44-CR-12-480

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

Darlene Rivera Spalla, Mahnomen County Attorney, Mahnomen, Minnesota (for
respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

HUDSON, Judge

On appeal from his convictions of first-degree driving while impaired (DWI) and
driving after cancellation, appellant argues that he should be permitted to withdraw his

guilty plea because a manifest injustice occurred when the district court failed to independently conclude that there was a strong probability a jury would find appellant guilty of the crime charged. Appellant also argues that the district court erred by failing to properly inquire into the validity of his past convictions. We affirm.

FACTS

Appellant Wallie Gene Lang was arrested and charged with two counts of felony first-degree DWI and driving after cancellation as inimical to public safety after police officers responded to a call about a traffic accident and found appellant in a ditch beside a motorcycle; appellant's alcohol concentration was .27. Appellant entered an *Alford* plea to one count of first-degree DWI under Minn. Stat. § 169A.20, subd. 1(5) (2012), and Minn. Stat. § 169A.24, subd. 1(2) (2012), and one count of driving after cancellation as inimical to public safety under Minn. Stat. § 171.24, subd. 5 (2012). The second count of DWI was dismissed, and appellant was sentenced to 60 months' incarceration. This appeal follows.

D E C I S I O N

Guilty Plea

Appellant argues that he should be permitted to withdraw his guilty plea because the district court failed to independently conclude that there was a strong probability that a jury would find him guilty based on the evidence. The validity of a guilty plea is a question of law reviewed de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A defendant is entitled to withdraw his plea if necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists if a guilty plea is not

constitutionally valid; to be valid a plea must be accurate, voluntary, and intelligent. *Raleigh*, 778 N.W.2d at 94 (citation omitted). The “defendant bears the burden of showing his plea was invalid.” *Id.* At issue here is the accuracy prong.

[A] 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, notwithstanding his claims of innocence. In such a circumstance, the court can ensure that an *Alford* plea meets the accuracy prong.

State v. Theis, 742 N.W.2d 643, 649 (Minn. 2007) (citation omitted).

An *Alford* plea is a plea under which the defendant acknowledges that the record establishes his guilt and that he reasonably believes the state has sufficient evidence to secure a conviction, but does not expressly admit the factual basis for guilt and maintains his innocence. *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970); *see also State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (recognizing *Alford* pleas in Minnesota). District courts must closely scrutinize the factual basis of an *Alford* plea “because of the inherent conflict in pleading guilty while maintaining innocence.” *Theis*, 742 N.W.2d at 648–49. The district court has the responsibility “to determine whether there is a sufficient factual basis to support” the plea. *Goulette*, 258 N.W.2d at 761.

Here, appellant testified at the plea hearing that he understood the charges against him and was satisfied with his attorney’s representation. Appellant stated that he understood his trial rights and that he was waiving them by entering the plea. Appellant acknowledged that he understood the maximum penalty for the crime to which he was pleading guilty, that he was not under the influence of any drugs or alcohol, and that his

plea was offered voluntarily and of his own free will. Appellant's attorney then discussed the evidence in the state's case; appellant stated that he had seen all of the evidence including the complaints, police reports, and photographs. Appellant's attorney explained that the state would admit records of appellant's past convictions, photographs of the accident, and police reports as proof of appellant's guilt.

Appellant's attorney also explained that the paramedics who responded to the motorcycle accident would testify that they saw appellant in the ditch next to the motorcycle, that appellant had the ability to control the motorcycle, and that the motorcycle was operable. Appellant's attorney stated the paramedics would further testify that they had tested appellant's blood and that his alcohol concentration was over the legal limit. Appellant stated that he understood what the paramedics would testify to, and that he agreed, based on the evidence and testimony, that a jury would find him guilty of felony DWI beyond a reasonable doubt. The judge accepted the plea, stating

I do agree that from what you've said here today, based upon the summary of evidence provided by [your attorney], that this is your choice to plead guilty and that based upon the benefit your plea is knowingly made, intelligently made, voluntarily made. You're looking for the benefit of the plea agreement. So I will accept your plea of guilty based upon what you've said here today and the summary of evidence provided by [your attorney] and the narrative of the complaint.

The prosecutor then moved to admit, without objection, the probable cause portion of the complaint and the police reports as additional support for the plea. The judge acknowledged that acceptance of the guilty plea was also based on the discovery in the case.

The Minnesota Supreme Court has held that discussing the state's evidence against the defendant on the record at the plea hearing is the "better practice" for laying a factual basis for the plea and ensuring the protection of the accuracy requirement. *Theis*, 742 N.W.2d at 649. The record shows that was done in this case. Appellant's attorney explained the state's evidence to appellant in detail and appellant acknowledged that the evidence was sufficient for a jury to find him guilty beyond a reasonable doubt. That provides the basis for the court to "independently conclude" that there was a strong probability the defendant would be found guilty. *See Theis*, 742 N.W.2d at 649. The judge stated that she accepted the plea in light of appellant's statements, the evidence summarized by appellant's attorney, the complaint, and the discovery in the case; those statements demonstrate that a proper review of the evidence was conducted by the court. Accordingly, there is no basis to allow appellant to withdraw his guilty plea.

Past Convictions

Appellant also argues that the district court erred by not reviewing the records of his past convictions to determine their accuracy. At the sentencing hearing, appellant's attorney argued that because there were issues with several of appellant's past DWI convictions, they should not have been used to enhance appellant's current charge to a felony. But the district court is permitted by Minn. Stat. § 609.041 (2012) to accept certified court records alone to establish proof of a prior conviction. Section 609.041 provides that "[i]n a criminal prosecution in which the degree of the crime or the penalty for the crime depends, in whole or in part, on proof of the existence of a prior conviction . . . proof of it is established by competent and reliable evidence, including a certified

court record of the conviction.” Appellant also acknowledged that his prior convictions could not be re-litigated.¹ Accordingly, there was no error here.

Affirmed.

¹ Importantly, appellant does not claim that he was unrepresented at the time of any of his prior convictions. When a defendant is unrepresented and no valid waiver of counsel exists, a prior conviction that was unconstitutionally obtained may be collaterally attacked when it is used for purposes of an enhanced penalty statute. *See State v. Nordstrom*, 331 N.W.2d 901, 904 (Minn. 1983).