STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0262

Bruce Allen Knowles, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 27, 2009
Affirmed
Minge, Judge

Hubbard County District Court
File No. 29-K9-06-000511

Lori Swanson, Attorney General, 445 Minnesota Street, 1800 Bremer Tower, St. Paul, MN 55101-2134; and

Donovan Dearstyne, Hubbard County Attorney, Hubbard County Courthouse, 301 Court Avenue, Park Rapids, MN 56470 (for respondent)

Marie L. Wolf, Interim Chief Public Defender, Sara J. Euteneuer, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55102 (for appellant)

Considered and decided by Minge, Presiding Judge; Klaphake, Judge; and Stauber, Judge.

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

MINGE, Judge

Appellant challenges the district court's denial of his petition for postconviction relief seeking withdrawal of his guilty plea, arguing that (1) the factual basis presented

was not sufficient to support a finding of guilt; and (2) his guilty plea was not entered intelligently because he relied on information from his attorney indicating he would be eligible for the conditional-release program. We affirm.

FACTS

On June 14 and 15, 2006, Hubbard County Law Enforcement (county) received reports of suspicious activity and officers investigated. Initially, officers discovered appellant Bruce Allen Knowles in his vehicle with items consistent with the manufacture of methamphetamine (meth). The next day, the officers searched an area where appellant had been seen and discovered additional discarded items consistent with the manufacture of meth. Appellant was charged in two separate complaints with first-degree possession of a controlled substance in violation of Minn. Stat. § 152.021, subd. 2a (2006).

Appellant agreed to an *Alford* plea[1] in which he would plead guilty to the charge in the second complaint and the state agreed to dismiss the charges associated with the first complaint. On July 12, 2006, appellant entered the *Alford* guilty plea to first-degree possession of a controlled substance in violation of Minn. Stat. § 152.021, subd. 2a, contingent on the results of lab tests confirming that meth was present. On August 4, 2006, the district court received the Bureau of Criminal Apprehension (BCA) lab report indicating that meth was found. The lab report was placed in the file for the first complaint, which was to be dismissed. On September 6, 2006, appellant was sentenced to 146 months on the second complaint, and the first complaint was dismissed.

[1] As more fully described below, this plea is pursuant to admissions and a procedure set forth and upheld in the case of *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970).

In reviewing appellant's file, the Minnesota Department of Corrections (DOC) initially determined that appellant was eligible for the conditional-release program (CRP). On October 13, 2006, DOC contacted the prosecutor asking if there was any reason why CRP would not be appropriate for appellant. The prosecutor opposed CRP for appellant because appellant's prior convictions were for violent crimes and appellant refused to accept responsibility for his conduct. On December 12, 2006, DOC notified appellant that he was ineligible for CRP.

Two years after sentencing, appellant filed a petition for postconviction relief. Appellant argues that he should be allowed to withdraw his guilty plea on the following bases: (1) the plea was not accurate because the factual basis for his plea was insufficient; and (2) the plea was not intelligently made because he was led to believe by his attorney that he would be eligible for CRP and that he would not have pleaded guilty but for eligibility. The district court denied appellant's petition. This appeal follows.

D E C I S I O N

Appellant challenges the district court's denial of his petition for postconviction relief, arguing that his plea was not accurate or intelligent. Appellate courts "will reverse a decision of a postconviction court only if that court abused its discretion." *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). "But interpretation and enforcement of plea agreements involve issues of law that we review de novo." *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). On a postconviction petition, the petitioner has the burden of establishing, by a fair preponderance of the evidence, facts which warrant relief. *State v. Warren*, 592 N.W.2d 440, 449 (Minn. 1999).

A defendant may withdraw his guilty plea if the request is timely made and "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. "A manifest injustice occurs when a plea is not accurate, voluntary and intelligent." *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). A plea is intelligent when "the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty." *Id.* A plea is voluntary when it is made without "improper pressures or inducements." *Id.* "The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial." *Id.*

Accurate

Appellant argues that his plea was not accurate because the BCA test results that were a critical part of the evidentiary basis for establishing guilt were not included in the record and that, as a result, the factual basis was insufficient to support a guilty plea. In an *Alford* plea a defendant maintains his innocence but pleads guilty because the record establishes, and the defendant reasonably believes, that the state has sufficient evidence to obtain a conviction. *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970); *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977). Thus, an *Alford* plea allows a defendant to plead guilty without expressly admitting the factual basis for the plea. *Alford*, 400 U.S. at 37, 91 S. Ct. at 167; *Goulette*, 258 N.W.2d at 761. But "the court must be able to determine that the defendant, despite maintaining his innocence, agrees that evidence the State is likely to offer at trial is sufficient to convict." *State. v. Theis*, 742 N.W.2d. 643, 649 (Minn. 2007). Because the inherent conflict of pleading

guilty while maintaining innocence calls into question the rationality of the defendant's decision, the factual-basis requirement is "absolutely crucial" to determining the validity of the *Alford* plea. *Goulette*, 258 N.W.2d at 761.

At the plea hearing, appellant's counsel stated:

> [I]t's my understanding that we would be—he would be entering a plea to [the second complaint] and the State would be dismissing as part of the plea agreement [the first complaint]. We would be asking the Court to note the plea today but not accept it because we do not have the lab results back. The plea requires or the factual basis requires that there's at least a trace amount. . . . [I]f it comes back no controlled substances we would be asking the Court to allow us to withdraw the plea because there would not be a factual basis for it.

Appellant was also questioned in detail. He acknowledged that he understood that he was giving up the right to challenge the admissibility of the evidence that the state had obtained pursuant to a search warrant. Appellant acknowledged that he believed that the state, with supporting lab results, would have sufficient evidence to convict him of the charged offense. Finally, appellant acknowledged that one of his purposes for being out in the woods was to make meth.

Ultimately, lab results showing the presence of meth were received. The lab results were not admitted into evidence in the proceedings on the second complaint or placed in that file. Appellant argues that the results cannot be used as the basis for his plea to the charges in that complaint. The results, however, were received by the district court on August 4, 2006, a month before the sentencing hearing. Those results were placed in the file for the first complaint and confirm the existence of meth from the

evidence gathered from the June 15 crime site. The district court found the lab results were in the file for the first complaint prior to sentencing on the second complaint and noted that the first complaint had not been dismissed until the sentencing hearing. In addition, at the sentencing hearing appellant's counsel stated "[b]ut for the fact . . . of the manufacture, what was obtained as part of the lab results—I'm talking about quantitative results here—was a trace amount of meth." Appellant's counsel further stated "[t]he only quantitative amount was Item Number 7 of the lab results which was just a trace amount." The district court also asked appellant if there was anything else he wanted to say, and he responded "[e]verything I want to say is in the presentence investigation report, and everything that I wanted to be said my attorney has spoken for me."

The Minnesota Rules of Criminal Procedure provide that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." Minn. R. Crim. P. 31.01. Here, failing to file the lab results for the record in the proceeding on the second complaint was a mistake. But the error did not affect appellant's substantial rights and is disregarded because the report was received incident to the overall prosecution, all parties were aware of the results at the time of the sentencing hearing, and appellant does not challenge the results. Additionally, appellant had agreed that, if the results showed even a trace amount of meth, the state would have sufficient evidence to convict him. Therefore, appellant's plea is accurate and the district court did not abuse its discretion in denying appellant's postconviction petition.

Intelligent

Appellant also argues that his plea was not intelligent because it was based on assurances from his attorney that he would be eligible for the CRP.[2]

Appellant claims the analysis in the Minnesota Supreme Court's *Alanis* decision supports this argument. 583 N.W.2d at 578. In *Alanis*, the defendant pleaded guilty to offenses resulting in a maximum term of 54 months in prison so that he would be eligible for the Challenge Incarceration Program (CIP). *Id.* at 576. Before the defendant was admitted into the program, however, the Immigration and Naturalization Service lodged a detainer against him, which automatically disqualified him from CIP. *Id.* The Minnesota Supreme Court held that the risk of deportation and denial of admission into CIP were collateral consequences of his guilty pleas. *Id.* at 578-79. The supreme court determined that the defendant failed to establish that his guilty pleas were not intelligently made because the defendant's deportation and ineligibility for CIP were not direct consequences of the guilty pleas. *Id.* As a result, the supreme court upheld the district court's refusal to allow the defendant in *Alanis* to withdraw his guilty plea. *Id.* at 579.

[2] In his brief, appellant alludes to the sun-setting of Minn. Stat. § 244.055, subd. 10 (2006) (providing for notification of the prosecutor of DOC's consideration of an inmate for the CRP) and states that appellant understood that this sunset provision of the statute precluded DOC from so contacting the prosecutor. However, appellant neither cites us to any authority precluding such DOC contact with the prosecutor or making the prosecutor's objection improper nor further addresses this as an issue on appeal. Also, appellant did not raise this as an issue in the petition for postconviction relief. Accordingly, we do not further address it.

Here, like the CIP in *Alanis*, acceptance into CRP requires a person to qualify. Thus, because it does not flow automatically from a guilty plea, participation in CRP is not a direct consequence. *Alanis* does not provide support for appellant's argument.

In addition, appellant asserts that the record supports his claim that he pleaded guilty because of eligibility for CRP. The record is void of any evidence showing that acceptance into the CRP was part of the plea agreement. Appellant was questioned at the plea hearing.

> Q. And other than the plea agreement, that you would plead to the one count and the other one was dropped and that you would receive a guideline sentence, has anyone made any threats or promises to get you to plead guilty?
>
> A. No threats or promises.

Appellant also expressly stated that "I'm making this plea knowingly, voluntarily and intelligently" without being prompted to do so.

Because acceptance into CRP was not a direct consequence of appellant's guilty plea and because appellant stated on the record that there were no other promises, appellant's plea was intelligent and the district court did not abuse its discretion in denying appellant's postconviction petition.

We have reviewed appellant's pro se arguments and found them to be without merit.

Affirmed.

Dated: