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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1883**

Michael Alan Schmid, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 18, 2012
Affirmed
Bjorkman, Judge**

Martin County District Court
File No. 46-CR-09-638

Patricia E. Kuderer, Rossi Vucinovich Flaskamp PC, Bellevue, Washington; and

Max A. Keller, Keller Law Offices, Minneapolis, Minnesota (for appellant)

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

Elizabeth W. Bloomquist, Fairmont City Attorney, Fairmont, Minnesota (for respondent)

Considered and decided by Johnson, Chief Judge; Stoneburner, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the denial of his motion to withdraw his guilty plea, arguing that his plea was invalid due to ineffective assistance of counsel. We affirm.

FACTS

Shortly after 9:00 p.m. on May 30, 2009, Martin County Sheriff's Deputy Paul Frerichs responded to a 911 call about a suspected intoxicated pontoon operator on George Lake. Deputy Frerichs observed one pontoon on the lake and believed it matched the description given by the 911 caller. He noticed that the pontoon did not have a white light affixed to the rear, as required by law, and followed the pontoon to speak with its operator. As Deputy Frerichs approached the pontoon, he recognized the operator as appellant Michael Schmid. He spoke to Schmid about the light violation and told Schmid to drive the pontoon to the dock at a nearby park so that he could investigate the violation. Deputy Frerichs drove to the park to meet Schmid, but Schmid instead navigated toward Budd Lake Drive. Deputy Frerichs pursued Schmid to a residence on Budd Lake Drive, where he saw Schmid walking from the lake shore to the house with a beer in his hand. He approached Schmid and noticed that Schmid's eyes were "bloodshot and glossy" and that Schmid had an odor of alcohol. He asked Schmid to stop and talk. Schmid refused and walked into the house. Deputy Frerichs obtained a search warrant, entered the house, and arrested Schmid.

Schmid was charged with obstruction of legal process, fleeing a peace officer on foot, disorderly conduct, and failure to display a required light on his boat. The district court denied Schmid's challenge to the search warrant. On June 15, 2010, Schmid submitted an *Alford* plea¹ to fleeing a peace officer, disorderly conduct, and failure to

¹ *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970) (permitting a defendant to plead guilty by admitting that the state's evidence supports a conviction).

display a required light. The state dismissed the obstruction-of-legal-process charge. The district court stayed adjudication of Schmid's guilt for one year.²

Schmid subsequently obtained a transcript and audio recording of the 911 call, which matched Deputy Frerichs's recollection of the call. Schmid contacted the 911 caller, P.S., who indicated that she had reported a pontoon carrying children who were not wearing life jackets. Schmid moved to withdraw his *Alford* plea. Because the 911 recording contained no reference to children, he argued that he received ineffective assistance of counsel because his counsel's failure to obtain the recording and speak to P.S. deprived him of critical information. The district court denied Schmid's motion. This appeal follows.

DECISION

We review a district court's denial of a motion to withdraw a guilty plea for an abuse of discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). A defendant does not have an absolute right to withdraw a guilty plea. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). But a defendant may withdraw a guilty plea at any time if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a guilty plea is invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A guilty plea is valid if it is voluntary, accurate, and intelligent. *Perkins*, 559 N.W.2d at 688.

² On June 24, 2011, after Schmid successfully completed probation, the district court dismissed the charges.

A guilty plea is not voluntary if it is the product of ineffective assistance of counsel. *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). The defendant must demonstrate both that counsel's representation was objectively deficient and that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty. *Id.* (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)).

Schmid argues that his attorney's failure to obtain the recording of the 911 call and speak to P.S. was objectively deficient because it deprived him of the critical information that the police stopped the wrong boat.³ We disagree. The 911 call had no bearing on the validity of the stop or the elements of the offenses to which Schmid pleaded guilty. Any errors in the 911 recording or discrepancies between the recording and P.S.'s recollection are irrelevant.

Deputy Frerichs observed that Schmid's pontoon did not have a white light on at the rear, as required by law. *See* Minn. R. 6110.1200, subp. 7.A, C (2009) (requiring white stern lights after sunset); *see also* Minn. Stat. § 86B.811 (2008) (making violation of the lighting rules a misdemeanor). This direct observation of a violation of law independently justified Deputy Frerichs's contact with Schmid apart from the 911 call. *See State v. Everett*, 472 N.W.2d 864, 867 (Minn. 1991) (holding that a stop is valid, regardless of the officer's motives, if an objective legal basis for the stop exists).

³ The primary thrust of Schmid's argument is a claim of ineffective assistance of counsel, but he also invokes *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), in arguing that he should have been given access to the 911 recording before pleading guilty. Because the 911 call was irrelevant to the charges against Schmid, his reliance on *Brady* is similarly unavailing. *See Brady*, 373 U.S. at 87, 83 S. Ct. at 1196-97 (holding that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment").

After Deputy Frerichs made contact with Schmid about the lighting violation, he observed the additional conduct for which Schmid was charged. Deputy Frerichs lawfully asked Schmid to stop and speak with him about the lighting violation, but Schmid walked away from him. And when Deputy Frerichs and other deputies subsequently arrested Schmid, Schmid struggled and used profane language. Schmid acknowledged in support of his *Alford* plea that there was a “substantial likelihood” that a jury would convict him of fleeing a peace officer and disorderly conduct based on the state’s evidence of this conduct.

On this record, we conclude that Schmid’s counsel was not objectively deficient for failing to obtain the 911 recording or a statement from P.S. because this evidence had no bearing on whether the state could prove the charges against Schmid.⁴ We also observe that the state dismissed the misdemeanor charges after Schmid successfully completed his probation. Accordingly, withdrawal of his guilty plea is not necessary to correct a manifest injustice. The district court did not abuse its discretion by denying Schmid’s motion to withdraw his guilty plea.

Affirmed.

⁴ Schmid asserts that he would not have pleaded guilty had he known that there was a discrepancy between the 911 recording and P.S.’s description of the call. Because Schmid failed to establish objectively deficient representation, we decline to address his prejudice argument. *See State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (stating that an appellate court “need not address both the performance and prejudice prongs if one is determinative”).