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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1094**

State of Minnesota,
Respondent,

vs.

Sandra Jean Roulet,
Appellant.

**Filed April 14, 2014
Affirmed
Rodenberg, Judge**

Renville County District Court
File No. 65-CR-12-429

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

Kristen E. Pierce, Anderson Larson Hanson & Saunders PLLP, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer L. Laueremann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

RODENBERG, Judge

Appealing her conviction of misdemeanor theft under Minn. Stat. § 609.52, subd. 2(a)(1) (2012), appellant Sandra Jean Roulet argues that she is entitled to withdraw her guilty plea because it was not made voluntarily or intelligently. We affirm.

FACTS

On November 10, 2012, police were notified that two employees at Maynard's grocery store in Bird Island suspected that appellant had shoplifted. They had witnessed appellant make strange movements while shopping, as if she was placing items in her coat. Appellant eventually purchased some groceries, and the store manager assisted appellant in carrying her groceries to her car. The manager confronted appellant about the Maynard's employees' suspicions. Appellant became upset, grabbed an item from the manager's arms, and drove away.

The manager noted appellant's license plate number and provided that information to the police. The police stopped appellant soon thereafter. While speaking with appellant, the officer observed and then photographed several small containers of dog food on the passenger seat in appellant's car. The store manager later matched the lot numbers of the containers found in appellant's car with the lot numbers on the containers still on the shelf at Maynard's. Based on the lot-number information on the containers, the manager concluded that the containers found in appellant's vehicle were from the Bird Island Maynard's. Appellant was later charged with misdemeanor theft in violation of Minn. Stat. § 609.52, subd. 2(a)(1), and she pleaded guilty on May 8, 2013.

At the plea hearing, the district court questioned appellant as follows:

Q: Do you have any questions about the terms of the plea agreement?

A: No.

Q: You understand what you're doing here?

A: Yes.

Appellant's attorney then laid foundation for offering the plea petition:

Q: The charge you've been charged with is theft. I think I provided you with a copy of the police reports, does that sound right to you?

A: Yes.

Q: Okay. And you'd be pleading guilty to theft and this was, as stated [in the plea petition,] "I took two cans of dog food from the grocery store in Bird Island on November 10th, 2012" correct? Does that sound correct to you?

A: I guess, yeah.

Q: Okay. That's what it says in the police reports. Does that sound—

A: Yes.

Q: Okay, okay. And you've read this over, specifically there's a paragraph here, eight, which sets forth your constitutional rights; which is the right to a trial to a court or jury, and other rights. Have you read that over?

A: Yes.

Q: Any questions about your rights?

A: No.

Q: Do you understand that today you're giving up those rights to enter into this plea agreement? Do you understand that?

A: Yes.

Q: So there would be no trial tomorrow, do you understand that?

A: Yes.

Appellant then signed the plea petition for the second time (she had earlier signed in the wrong place) and again stated that she understood the petition and did not have any questions. The district court questioned appellant further:

Q: All right, Ms. Roulet, do you think you've had enough time to discuss the case with [your attorney]?

A: Yes.

Q: Are you satisfied with his representation?

A: Yes.

Q: All right and I'm sure that he discussed these trial rights with you. I'll just go through them one more time.

The district court then reminded appellant of her constitutional rights, and specified those rights on the record. Appellant agreed that she understood her rights and that, by pleading guilty, she was waiving those rights.

The district court then questioned appellant as follows:

Q: Did you take something out of a store that—without paying for it?

A: I guess so. I don't remember it but I guess I did.

Q: Okay. You don't remember it?

A: No, sir, I don't remember doing it at all but they apparently—somebody must have seen me so.

Q: Okay. Is there a reason that you don't remember it?

Appellant then explained the types and doses of medication she was taking, both on November 10 and on the day of the plea. She stated that these medications were prescribed by her doctor, that they were not interfering with her ability to function, and that she had a clear understanding of the plea hearing. Then the district court asked:

Q: All right and you've reviewed a copy of the police report, I assume?

A: Yes.

Q: All right and if you look at the police report—now you don't remember but I'm assuming that if this case went to trial that the state would call witnesses that would include the persons identified in the police report and I think that's [the Maynard's manager] and [one of the police officers involved] who would testify basically consistent with the police report.

.....

Q: All right now if the case went to trial, do you believe that a jury, if they heard that evidence and if the jury applied the standard of proof beyond a reasonable doubt and the presumption of innocence, they'd find you guilty of the offense?

A: Most likely, I guess.

Q: All right. Has—do you have any reason to doubt that you didn't do it?

A: I guess not, no.

Q: Okay. You want me to accept your guilty plea on that basis?

A: Yes.

THE COURT: All right, then I do accept your plea of guilty and I do find a, a sufficient factual basis and it's kind of a hybrid *Alford/Norgaard* plea.

ROULET: What's that?

DEFENSE ATTORNEY: It's a type of plea. It's a legal thing.

The district court then sentenced appellant to 90 days in jail with 30 days executed and the balance of the jail time stayed on conditions including that appellant complete a mental-health evaluation, follow the resulting recommendations, and not enter the Bird Island Maynard's store. This appeal followed.

DECISION

A challenge on direct appeal to the validity of a guilty plea is permitted when the record contains factual support for the defendant's claim and when no disputes of material fact must be resolved to evaluate the claim on the merits. *State v. Anyanwu*, 681 N.W.2d 411, 413 n.1 (Minn. App. 2004). A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a defendant may withdraw a guilty plea at any time, even after sentencing, if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A guilty

plea is manifestly unjust when it is not accurate, voluntary, and intelligent. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). We review the validity of a guilty plea under the manifest-injustice standard de novo. *Raleigh*, 778 N.W.2d at 94.

The district court identified appellant's plea as an *Alford/Norgaard* hybrid.¹ Appellant appears to argue that her guilty plea should be regarded as an *Alford* plea, arguing that she maintained her innocence but pleaded guilty because she reasonably concluded that the evidence would likely result in a guilty verdict. *See State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (citing *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970)). That is not what happened. Appellant did not maintain her innocence. She testified that she had no doubt of her guilt. Appellant's plea was in the nature of a *Norgaard* plea because appellant claimed that she did not have a sufficient memory of "the essential elements of the offense," of which she agreed that she is guilty. *See Williams*, 760 N.W.2d at 12.

Although appellant repeatedly testified that she understood her rights, that she believed a jury would find her guilty, that she had no doubt that she had committed the charged crime, and that she had signed a guilty plea petition indicating that she was pleading guilty based on a plea agreement with the prosecutor, she still argues that her

¹ In an *Alford* plea, the defendant maintains her innocence but pleads guilty because she reasonably believes, and the record establishes, that the evidence against her would support a jury verdict of guilty. *See State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). In a *Norgaard* plea, a "defendant asserts an absence of memory on the essential elements of the offense but pleads guilty because the record establishes, and the defendant reasonably believes, that the state has sufficient evidence to obtain a conviction." *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

guilty plea was not voluntary or intelligent. “The voluntariness requirement insures that the guilty plea is not in response to improper pressures or inducements; and the intelligent requirement insures that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty.” *Carey v. State*, 765 N.W.2d 396, 400 (Minn. App. 2009). Appellant argues that, because she maintained her innocence, the district court was required to ask her why she was pleading guilty. But as discussed above, appellant did not maintain her innocence. And nothing in the record indicates that appellant pleaded guilty in response to improper or coercive pressures.

Appellant raises two issues concerning whether her plea of guilty was intelligent. She argues that she was not asked why she was entering a guilty plea, and second, that she was not asked whether she understood the legal consequences of her plea. These arguments are without merit. While appellant was not specifically asked why she was pleading guilty, appellant agreed under oath that she did not “have any reason to doubt” her guilt. She was pleading guilty because she is guilty. In the ten-page plea-hearing transcript, appellant was asked seven times whether she understood her rights and the implications of her guilty plea. She thrice responded that she understood. Appellant was asked three times whether she had any questions about the hearing or the plea petition. To each question, she responded that she had no questions. Appellant’s counsel and the district court each thoroughly questioned appellant concerning whether she understood the legal implications of her plea. She responded that she did understand.

Although appellant appears not to have understood the rubric of a “hybrid *Alford/Norgaard* plea,” she cites no authority suggesting that this invalidates her plea of

guilty. The record reflects that the district court complied with the *Norgaard* requirements when it accepted appellant's plea. And appellant acknowledged that she is guilty, despite her claim that she did not recall the events of November 10. Our independent review of the record convinces us that the record supports that appellant's plea of guilty to theft was voluntarily and intelligently given. There is no manifest injustice sufficient to entitle appellant to withdraw her guilty plea.

Affirmed.