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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0716**

State of Minnesota,
Respondent,

vs.

Daniel Lee Thurmer,
Appellant.

**Filed May 6, 2008
Reversed and remanded
Collins, Judge***

Scott County District Court
File No. 70-CR-06-28107

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, Saint Paul, MN 55101; and

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Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Collins, Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

On direct appeal from a conviction of third-degree burglary, appellant argues that he is entitled to withdraw his *Alford* plea because the factual basis developed at the plea hearing consisted only of his admission that the evidence was adequate to sustain a conviction, and the district court failed to independently analyze the sufficiency of the evidence to ensure the accuracy of the plea. We reverse and remand.

DECISION

Withdrawal of a guilty plea after sentencing is permitted only if the defendant makes a timely motion and demonstrates that “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. A “manifest injustice” occurs whenever a guilty plea is “not accurate, voluntary, and intelligent.” *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

At the outset, the state argues that this matter is not properly before us because appellant Daniel Lee Thurmer did not move to withdraw his guilty plea before appealing to this court. But “[a] defendant is free to simply appeal directly from a judgment of conviction and contend that the record made at the time the plea was entered is inadequate.” *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989); *see also State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. App. 1987) (allowing direct appellate review of factual basis for a plea because the grounds for the challenge did not “go outside the record on appeal”), *review denied* (Minn. Nov. 13, 1987). Therefore, we will consider

the validity of Thurmer's plea de novo. *See State v. Rhodes*, 675 NW.2d 323, 326 (Minn. 2004).

Thurmer argues that his guilty plea was not accurate because the district court failed to develop an adequate factual basis. The state counters that the documents contained in the record are sufficient to sustain the conviction. An *Alford* plea may be accepted as valid only "if the court, on the basis of its interrogatories of the accused and its analysis of the factual basis offered in support of the plea, concludes that the evidence would support a jury verdict of guilty, and that the plea is voluntarily, knowingly, and understandingly entered." *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977).

Ordinarily, before accepting a plea of guilty, the district court must see to it that sufficient facts are elicited from the defendant to ensure that there is a factual basis for all elements of the offense. Minn. R. Crim. P. 15.02; *State v. Hoaglund*, 307 Minn. 322, 325, 240 N.W.2d 4, 5 (1976). "The court should not accept the plea unless the record supports the conclusion that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty." *State v. Trott*, 338 N.W.2d 248, 251-52 (Minn. 1983). "When a defendant pleads guilty but at the same time denies that he is in fact guilty, the rationality of the defendant's decision is immediately called into question. . . ." *Goulette*, 258 N.W.2d at 761. Therefore, "careful scrutiny of the factual basis for the plea is necessary within the context of an *Alford* plea because of the inherent conflict in pleading guilty while maintaining innocence." *State v. Theis*, 742 N.W.2d 643, 648-49 (Minn. 2007).

A proper record of the required factual basis for an *Alford* plea may be developed by various means. See *State v. Ecker*, 524 N.W.2d 712, 717 (Minn. 1994) (concluding that the defendant’s testimony at the plea hearing established an adequate factual basis); *Goulette*, 258 N.W.2d at 761 (endorsing the use of witness statements or testimony to develop a factual basis). The supreme court recently advised that the “better practice” for developing a factual basis for an *Alford* plea is to discuss the evidence with the defendant on the record at the plea hearing:

This discussion may occur through an interrogation of the defendant about the underlying conduct and the evidence that would likely be presented at trial, the introduction at the plea hearing of witness statements or other documents, or the presentation of abbreviated testimony from witnesses likely to testify at trial, or a stipulation by both parties to a factual statement in one or more documents submitted to the court at the plea hearing.

Theis, 742 N.W.2d at 649 (citations omitted).¹

We find no record of a factual basis for the plea in this case. The district court did not make an inquiry into the evidence supporting the burglary charge at the plea hearing, and the only questioning by the court addressed whether Thurmer believed that there was sufficient evidence to convict him notwithstanding his claim of innocence. Nor is there any indication in the record that the court independently assessed the strength of the available evidence before accepting Thurmer’s plea. The supreme court has held that a

¹ *Theis* was issued after the present case was concluded in the district court, and we are mindful that the district court did not have *Theis* for guidance to properly develop a factual basis supporting the guilty plea. However, we also note that *Theis* did not alter existing law, but instead provided a synthesis of precedents that established the accuracy requirements of a valid *Alford* plea. See *Theis*, 742 N.W.2d at 648-49.

court must not “cavalierly accept the plea but should assume its responsibility to determine whether the plea is voluntarily, knowingly, and understandingly made, and whether there is a sufficient factual basis to support it.” *Goulette*, 258 N.W.2d at 761. We conclude that the procedure followed by the district court in this case fell short of the requirements for an accurate *Alford* plea.

In arguing for the validity of the plea, the state contends that the district court may consider the full record, including the sworn complaint, information contained in the formal charge, the contents of a presentence investigation report, and the transcript of any previous hearing in determining whether an adequate factual basis exists. But even accepting that proposition, the shortcoming here is the lack of any indication that the district court actually relied upon the information contained in the record.

Because the prerequisites for an accurate guilty plea were not fulfilled, the plea is invalid and a manifest injustice would occur if plea withdrawal were not permitted. “Manifest injustice occurs if a guilty plea is not accurate, voluntary, and intelligent, and thus the plea may be withdrawn.” *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). Therefore, upon remand to the district court, Thurmer must be permitted to withdraw his guilty plea.

Reversed and remanded.