STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0906

State of Minnesota,
Respondent,

vs.

Marvin Wayne Head,
Appellant.

Filed August 26, 2008
Affirmed in part and reversed in part
Schellhas, Judge

Beltrami County District Court
File No. K2-06-287

Lori Swanson, Attorney General, Peter R. Marker, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Timothy R. Faver, Beltrami County Attorney, Judicial Center Annex, 619 Beltrami Avenue Northwest, Bemidji, MN 56601 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Schellhas, Presiding Judge; Shumaker, Judge; and Hudson, Judge.

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

SCHELLHAS, Judge

Appellant challenges the district court's acceptance of his guilty pleas to four counts of possession and sale of drugs, arguing that the district court accepted two of his pleas without adequate factual bases and therefore that the entire plea hearing was illegitimate. Because the district court accepted appellant's guilty pleas to two counts of aiding and abetting possession and sale of drugs, despite appellant's sworn testimony that his crimes of possession and sale were completely his doing and that his codefendant was not involved in the crimes, we reverse in part, vacating the district court's acceptance of those pleas. But because appellant has not shown that the plea hearing as a whole was illegitimate, we affirm the district court's acceptance of appellant's guilty pleas to first-degree possession of a controlled substance and first-degree sale of a controlled substance.

FACTS

The facts in this case are undisputed. On February 19, 2006, appellant Marvin Wayne Head's wife asked Beltrami County police for assistance in checking on a residence owned by appellant and her. Appellant's wife believed that appellant was allowing "transients and other persons" to stay at the residence without her knowledge or permission. Appellant's wife visited the property with two police officers, entered the property alone, and then motioned through a window for the officers to enter. One officer noticed "several items of drug paraphernalia lying in plain view on the kitchen table." Appellant's wife asked the police to do a full search of the residence, but

appellant refused to consent to the search. The police removed appellant and two other individuals, Heidi Lyons and Craig Cook, from the home, secured the area, and obtained a warrant to search the home.

After obtaining a search warrant, the police retrieved drug paraphernalia and several mixtures from the property that field-tested positive for cocaine. Lyons told police that she had purchased crack cocaine from appellant and Cook on several occasions and had come to the property that day to use crack cocaine with them. Appellant was charged with first-degree controlled substance crime (sale or manufacture) (count I); first-degree controlled substance crime (sale), aiding and abetting (count II); first-degree controlled substance crime (possession of cocaine) (count III); and first-degree controlled substance crime (possession of cocaine), aiding and abetting (count IV). Appellant pleaded guilty to all four counts.

When entering his guilty pleas, appellant admitted to possessing a mixture in excess of 53 grams containing cocaine and to selling cocaine to Lyons. But appellant specifically denied that he had any assistance from his codefendant, Craig Cook, in manufacturing or selling cocaine. At the plea hearing on September 14, 2006, appellant was sworn and provided, in pertinent part, the following testimony:

> PROSECUTOR: And Heidi Lyons claims that you and Craig Cook sold her cocaine on several occasions?
>
> APPELLANT: I did but not with Craig. By myself I did but I was never with Craig.
>
> PROSECUTOR: And Craig cocaine – or I'm sorry, Craig Cook was in your house and was discovered with a great deal of money. You reviewed that in the reports and statements?

APPELLANT: What do you mean great deal? Four Hundred Dollars? That's just walking around money. I don't think it's a great deal.

PROSECUTOR: So you're going to tell Judge Schluchter that Craig Cook was in your home but he was not associated with your manufacture of cocaine or your possession of cocaine?

APPELLANT: Yes, that's what I'm saying.

PROSECUTOR: Okay. Let me ask you this: Where did you get your cocaine?

APPELLANT: Just around.

PROSECUTOR: Just around?

APPELLANT: Yes.

PROSECUTOR: Found it on the street?

APPELLANT: No, I paid for it.

PROSECUTOR: You got it from people, didn't you?

APPELLANT: Yeah.

PROSECUTOR: You're not willing to tell Judge Schluchter where you got it?

APPELLANT: No, I'm not.

PROSECUTOR: In fact, you're not willing to tell Judge Schluchter about Craig Cook's involvement in this either?

APPELLANT: He has no involvement. He stayed at my house. That was it. That's our involvement. He slept at my place from time to time and that was it.

Before sentencing, appellant filed a motion to withdraw his guilty pleas, claiming that he felt coerced into entering his guilty pleas because he did not feel that his attorney had adequately represented him in prior hearings or would be able to adequately represent him at trial. Appellant also claimed that he thought he would be entering a plea of guilty to only one of the counts instead of all counts. Appellant's substitute counsel argued that because appellant entered his guilty pleas as a result of coercion, his pleas were not voluntarily made. The district court denied appellant's motion. At the sentencing hearing, the prosecutor reminded the court that appellant "stated that others arrested at the scene were not involved in the crack cocaine manufacturing operation in his home, and thereby irreparably damaged the state's prosecution against a co-defendant." The court accepted all of appellant's guilty pleas and, pursuant to Minn. Stat. § 609.035 (2006), sentenced appellant to 86 months' imprisonment for his conviction of first-degree controlled substance crime (sale or manufacturer) (count I). This appeal follows.

D E C I S I O N

Appellant pleaded guilty to four felony drug offenses, two of which included aiding and abetting another individual in the sale and possession of cocaine (counts II and IV). Under Minnesota's aiding-and-abetting statute, "[a] person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd 1 (2004). Aiding and abetting requires the state to show that the accused

played some knowing role in aiding another in the commission of the crime. *State v. Ostrem*, 535 N.W.2d 916, 924 (Minn. 1995).

Appellant argues that because he denied at his plea hearing that anyone else was involved in the manufacture, sale or possession of drugs at his home, his pleas of guilty to counts II and IV should not have been accepted by the district court. Respondent argues that whether there are factual bases for appellant's guilty pleas is not properly before this court because appellant raises his inadequate-factual-bases argument for the first time on appeal. A reviewing court generally will not consider issues not considered by the district court, but may do so in the interests of justice. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). But direct appeal is an appropriate means of challenging acceptance of a guilty plea where the grounds for the challenge do not go outside the record on appeal. *State v. Newcombe*, 412 N.W.2d 427, 430 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987). Because appellant's inadequate-factual-bases argument is based on the transcript of his plea hearing and not on any evidence outside the record, we may consider whether the district court erred in accepting appellant's guilty plea. Moreover, because it is manifestly unjust to refuse to allow a defendant to withdraw a plea that is not accurate, *State v. Christopherson*, 644 N.W.2d 507, 510 (Minn. App. 2002), *review denied* (Minn. July 16, 2002), we conclude that it is appropriate for this court to consider appellant's argument. Respondent, in its brief, states that if this court considers appellant's claim, we should vacate his pleas to counts II and IV.

"For a guilty plea to be valid, it must be accurate, voluntary, and intelligent (i.e., knowingly and understandingly made)." *Sykes v. State*, 578 N.W.2d 807, 812 (Minn.

App. 1998) (quotation omitted), *review denied* (Minn. July 16, 1998). A district court may not accept a guilty plea that is not supported by an adequate factual basis. *Kelsey v. State*, 298 Minn. 531, 532, 214 N.W.2d 236, 237 (1974). The purpose of requiring an adequate factual basis for accepting a guilty plea is to ensure that a defendant does not plead guilty to a crime more serious than he could be convicted of at trial. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). An adequate factual basis for a guilty plea does not exist where the defendant's statements contradict his plea. *See State v. Iverson*, 664 N.W.2d 346, 350 (Minn. 2003) ("The factual basis of a plea is inadequate when the defendant makes statements that negate an essential element of the charged crime because such statements are inconsistent with a plea of guilty."); *Chapman v. State*, 282 Minn. 13, 20 n.10, 162 N.W.2d 698, 703 n.10 (1968) ("It is improper to accept a plea of guilty where statements made by defendant at time of arraignment or sentencing are inconsistent with his guilty plea.").

In this case, appellant's statements at his plea hearing directly contradicted an essential element of the offenses of aiding and abetting. Aiding and abetting requires that the defendant "intentionally aids, advises, hires, counsels, or conspires with or otherwise procures" another in the commission of a crime. Minn. Stat. § 609.05, subd. 1. Because appellant denied that Cook, his accused codefendant, had any role in the crimes, his statements were inconsistent with his guilty pleas to aiding and abetting.

Appellant argues that because the district court erred in accepting his pleas to counts II and IV, his pleas to counts I and III should not be allowed to stand because "it would be manifestly unjust to permit the remaining two pleas to stand in light of the

infirmities that eroded the validity of the pleas to the aiding/abetting offenses." In so arguing, appellant asserts that the four charges are inseparable, and that there is "no appropriate means of insulating the two seemingly-accurate guilty pleas from the injustices that plagued the remaining two." Appellant cites no legal authority for his argument and we are unaware of any legal authority for the principle that the court's error in accepting appellant's guilty pleas to counts II and IV invalidates its acceptance of appellant's guilty pleas to counts I and III. Appellant's pleas to counts I and III were supported by an adequate factual basis at the plea hearing and appellant asserts no legal basis for this court to disallow them.

Because the district court erred in accepting appellant's pleas of guilty to counts II and IV, we reverse the district court as to those two pleas and vacate appellant's convictions based on counts II and IV. We affirm the district court's acceptance of and appellant's pleas and resulting convictions based on counts I and III.

Affirmed in part and reversed in part.