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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0359**

Robert Allen Schuler, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 24, 2009
Affirmed
Schellhas, Judge**

Polk County District Court
File No. K0-04-1656

Lawrence Hammerling, Chief Appellate Public Defender, Cathryn Middlebrook, Assistant Public Defender, 540 Fairview Avenue South, Suite 300, St. Paul, MN 55104 (for appellant)

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

Gregory A. Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, 816 Marin Avenue, Suite 125, Crookston, MN 56716 (for respondent)

Considered and decided by Johnson, Presiding Judge; Minge, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

On appeal from the district court's denial of his postconviction petition challenging his conviction of attempted first-degree controlled substance crime of manufacture of methamphetamine, appellant argues that his *Alford* plea was invalid because the district court failed to establish a sufficient factual basis for his plea. Because appellant's *Alford* plea was valid, we affirm.

FACTS

Appellant Robert Allen Schuler was charged with three counts of controlled substance crime. On March 25, 2005, he entered an *Alford* plea to count two, attempted first-degree controlled substance crime of manufacture of methamphetamine, as part of a plea agreement. In exchange for the *Alford* plea, the state agreed to a presumptive guideline sentence, to dismiss the remaining counts, and to not oppose appellant's furlough request to attend the anticipated birth of his son. At the plea hearing, the district court questioned appellant regarding his understanding of the charge and evidence against him:

THE COURT: It's alleged that on December 3rd of [2004] that you and others intended to manufacture an amount of methamphetamine, a violation of statute. At least one of you committed an act which was a substantial step toward doing so. The offense occurred in Polk County, Minnesota. Do you understand that charge?

DEFENDANT: Yes, I do.

....

THE COURT: You've gone over the probable cause statement and the police reports and all of the matters with all

of the information that the State has provided to your attorney, you've gone over those with your attorney?

DEFENDANT: Yes.

THE COURT: So if this matter went to trial, you would have a pretty good idea of what kind of testimony and evidence the State would present [to] the jury?

DEFENDANT: Yes.

THE COURT: Are you satisfied that if a jury heard that testimony, believed those witnesses, accepted that evidence, that there is a substantial risk that they would convict you of the charges in the complaint?

DEFENDANT: Yes.

THE COURT: And you're asking the Court to accept your plea in order to take advantage of the plea agreement?

DEFENDANT: Yes.

The prosecutor also questioned appellant regarding his understanding of the evidence against him:

PROSECUTOR: And again, you've got a good idea the evidence [the state] possesses in this matter?

DEFENDANT: Yes.

PROSECUTOR: And you think if that was presented to a jury that there's a substantial likelihood that they'd convict you of the crimes with which you're charged with here?

DEFENDANT: Yes.

The prosecutor then requested that the district court accept the probable-cause portion of the complaint as part of the permanent record and to allow ten days for the prosecution to file "whatever disclosures deem [sic] necessary in support of [appellant's] *Alford* plea."

The court granted the prosecutor's requests. Six days later the prosecution filed the following materials: (1) booking sheet; (2) lab analysis request; (3) Crookston Police Department incident report; (4) Polk County Sheriff's Office incident report; (5) inventory report of items seized from an apartment; (6) inventory report of items seized from the vehicle in which appellant and three others were passengers; (7) copies of

the receipts for nasal decongestant; (8) Target's point-of-sale transaction report from November 17, 2004, with surveillance pictures; and (9) Bureau of Criminal Apprehension criminal history records of appellant and three others who were passengers in the vehicle on December 3, 2004.

The district court sentenced appellant on June 8, 2005, to 67 months' imprisonment and dismissed counts one and three of the complaint.

Appellant filed a petition for postconviction relief on July 16, 2007, seeking to withdraw his *Alford* plea. Appellant claimed that the factual basis for his *Alford* plea was insufficient because there was no factual basis to show that appellant committed the "substantial step" necessary for conviction of attempted first-degree controlled substance crime. Additionally, appellant claimed that the record failed to show any factual basis to demonstrate that appellant had aided or abetted anyone else who had committed that substantial step.

The state opposed appellant's postconviction petition, arguing that a sufficient factual basis for the *Alford* plea was established, that the petition was untimely and without explanation for delay, and that the state would be prejudiced by withdrawal of the plea.

The district court denied the petition, finding that the district court had accepted the *Alford* plea and the state had filed discovery materials after the hearing "in accordance with the directives of Judge Roue at the plea hearing." The court concluded that appellant's petition was untimely because he had waited over two years to file the motion to withdraw his plea and offered no justification for the delay, that the state would

be prejudiced in a subsequent prosecution because some of the evidence had been destroyed¹ and there were a large number of co-conspirators, and that “the facts on the record are sufficient to support a conclusion that [appellant] was attempting to manufacture methamphetamine” and took a “substantial step” towards commission of the crime by purchasing and crushing ephedrine tablets. This appeal follows.

DECISION

When reviewing postconviction proceedings, we apply an abuse-of-discretion standard to determine whether the evidence is sufficient to sustain the district court’s findings. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). Likewise, a district court’s denial of a request to withdraw a plea will be reversed only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). We review de novo issues of law in a postconviction court’s denial of relief. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007); *cf. Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003) (stating that courts “extend a broad review of both questions of law and fact” when reviewing a denial of postconviction relief (quotation omitted)).

The postconviction court denied appellant’s petition on two grounds: timeliness and lack of merit. We affirm the district court’s ruling that the plea was supported by an adequate factual basis and conclude it is unnecessary to reach the timeliness issue.

A court must allow a defendant to withdraw a guilty plea “upon a timely motion” and upon a showing that the “withdrawal is necessary to correct a manifest injustice.”

¹ The state offered proof of the destruction of evidence by attaching a Polk County Sheriff’s Office report from Deputy Nathan Brouse stating he had destroyed “all evidentiary items” on January 30, 2007.

Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists when a guilty plea was not “accurate, voluntary, and intelligent.” *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). “A proper factual basis must be established for a guilty plea to be accurate.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). The court is responsible for ensuring a sufficient factual basis has been established in the record. *Id.*

A plea constitutes an *Alford* plea if 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, 91 S. Ct. 160 (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.

In *Theis*, 742 N.W.2d at 649, the supreme court explained that in the context of an *Alford* plea, “the better practice is for the factual basis to be based on evidence discussed with the defendant on the record at the plea hearing, as it was in both *Goulette* and *Ecker*.”

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.

Id. (citations omitted). The *Theis* court noted that the “main purpose of the accuracy requirement of a valid plea is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial.” *Id.* (quotation omitted).

The best practice for ensuring this protection is to have the defendant specifically acknowledge on the record at the plea hearing that the evidence the State would likely offer against him is sufficient for a jury, applying a reasonable doubt standard, to find the defendant guilty of the offense to which he is pleading guilty, as was done in both *Goulette* and *Ecker*.

Id.

In *Theis*, the defendant acknowledged “that there was a mere ‘risk’ that he would be found guilty of the crime to which he was pleading guilty.” *Id.* at 650. The supreme court said that “[i]n the context of an *Alford* plea, where a defendant maintains his innocence, the defendant’s acknowledgement that there is a risk that he could be convicted does not meet the standard for accuracy that we applied in *Goulette* and *Ecker*.” *Id.* The court concluded that the defendant’s acknowledgement did not provide a basis for the court to conclude that the defendant “was not pleading guilty to a crime that [was] a more serious offense than he could be convicted of at trial.” *Id.* (quotation omitted).

In this case, appellant argues that his plea was not accurate because there was no record made of evidence to establish a factual basis for his plea. At the plea hearing, the district court referenced the complaint and granted the state's motion to have the probable cause portion of the complaint admitted into the record. The postconviction court, which also presided over the plea hearing, considered the facts submitted by the state following the plea hearing to conclude that there was a sufficient factual basis for the plea.

This court recently addressed similar circumstances in *Williams v. State*, ___ N.W.2d ___ (Minn. App. January 27, 2009). In *Williams*, this court reviewed a *Norgaard* plea² and concluded that the plea was supported by an adequate factual basis. *Williams*, ___ N.W.2d at ___, No. A07-2447 slip op. at 7-8. In *Williams*, the defendant admitted some facts underlying one offense to which she pleaded guilty,³ and the complaint on file with the court summarized witness testimony that showed, "in all likelihood," that the defendant committed the crimes charged. *Id.* The defendant also acknowledged that the evidence would be sufficient to convict her by acknowledging the police reports and witness statements and agreeing that there was a "substantial likelihood" that she would be found guilty. *Id.* at 8-9. Finally, the defendant

² A *Norgaard* plea is one in which a defendant pleads guilty but asserts absence of memory on the elements of the offense. *Williams*, ___ N.W.2d at ___, No. A07-2447 slip op. at 5.

³ *Williams* was charged with assault and terroristic threats. *Williams*, ___ N.W.2d at ___, No. A07-2447 slip op. at 3. Although *Williams* could not remember all of the facts because of her alcohol consumption before committing the acts, she admitted driving her truck toward the victim. *Id.* at 7-8. But her "recollections did not indicate any intent to cause fear, attempt to inflict bodily harm on [the victim], or threat to commit a crime of violence." *Id.* at 8.

acknowledged that the state would have to prove her guilt beyond a reasonable doubt.
Id. at 9.

We conclude that *Williams* controls the result in this case. We acknowledge that unlike our case, the defendant in *Williams* admitted some facts underlying one of the charges to which she pleaded guilty, and that the *Williams* court examined the validity of a *Norgaard* plea, while we are examining the validity of an *Alford* plea. But because *Williams* applied *Theis*, a case addressing an *Alford* plea, and did not rest its decision on the distinction between *Norgaard* and *Alford* pleas, we conclude *Williams* is controlling. *Id.* at 6-7 (citing *Theis*, 742 N.W.2d at 648-49 and *Ecker*, 524 N.W.2d at 717).

In this case, as in *Williams*, appellant acknowledged the state's evidence, admitted going over the complaint, acknowledged a substantial likelihood of conviction, and testified that he knew that the state would be required to prove his guilt beyond a reasonable doubt at trial. Additionally, the facts recited in the complaint demonstrated that "in all likelihood" appellant would be convicted of the crime charged.

Appellant acknowledged on the record that if a jury heard the testimony, believed the witnesses, and accepted the evidence, there was a substantial likelihood that he would be convicted of the charges in the complaint. Because of the factual basis for appellant's plea and his acknowledgements on the record, the postconviction court properly concluded that appellant's plea was accurate and his petition for plea withdrawal was properly denied.

Affirmed.