STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1429

State of Minnesota,
Respondent,

vs.

Brian Edward Thomas,
Appellant.

Filed May 25, 2010
Affirmed
Randall, Judge[*]

Ramsey County District Court
File No. 62-CR-08-4204

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

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant Ramsey County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Susanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and Randall, Judge.

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

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

RANDALL, Judge

On appeal from his conviction of felony domestic assault, appellant argues that the district court abused its discretion in denying his motion to withdraw his *Alford* plea before sentencing because (1) his plea was not accurate or intelligent because he was innocent of the charged crime; and (2) the state did not establish that it would have been prejudiced by the withdrawal. We affirm.

FACTS

The facts in this case are undisputed. Appellant was charged with felony domestic assault for an altercation with his girlfriend T.H. on May 11, 2008.

On January 22, 2009, appellant pled guilty to the charged offense pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970).[1] In exchange for this plea, another felony domestic assault charge arising from a separate incident was dismissed. Though appellant maintained his innocence, he agreed that if he went to trial he would likely be found guilty because of the combination of the state's evidence and the history of his relationship with T.H. The district court accepted his plea and ordered him to remain law-abiding, to honor the various no-contact orders in place, and to cooperate with Ramsey County Probation regarding the presentence-investigation report.

[1] In an *Alford* plea, a defendant maintains his claim of innocence but pleads guilty because the record establishes, and the defendant reasonably believes, that the state has sufficient evidence to obtain a conviction. *Alford*, 400 U.S. at 37, 91 S. Ct. at 167; *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.

At appellant's sentencing hearing on May 7, 2009, appellant informed the district court that he wanted to withdraw his plea because he was innocent. He told the court that he had maintained his innocence from the very beginning and that he told his probation agent throughout the presentence-investigation interview that he wanted to withdraw his plea. The state argued that appellant should not be allowed to withdraw his plea because (1) the state had released its witnesses from subpoena, (2) the victim expected that she would be able to put the case behind her, (3) appellant did not cooperate with the presentence-investigation process, (4) appellant was charged with a new offense after he entered his *Alford* plea, and (5) appellant violated the no-contact order.

The district court denied appellant's request to withdraw his plea:

> I find specifically that it's not in the interest of justice to permit him to withdraw his plea. It would be a substantial burden to the State to reissue the subpoenas and reinitiate placing this matter for trial.
>
> I am also persuaded by the failure to cooperate with the Presentence Investigation. The information provided by [appellant] is simply not an adequate basis to find any reason for the failure to cooperate.

The court sentenced appellant to 21 months incarceration, but stayed execution of that sentence for five years for appellant to serve probation. This appeal followed.

D E C I S I O N

The issue is whether the district court abused its discretion in denying appellant's motion to withdraw his *Alford* plea. A defendant does not have an absolute right to withdraw a guilty plea. *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). The district court *may* allow a defendant to withdraw a plea before sentencing "if it is fair and

just to do so, giving due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea." Minn. R. Crim. P. 15.05, subd. 2; *accord State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007). A defendant bears the burden of proving that there is a "fair and just" reason for withdrawing his plea. *Farnsworth*, 738 N.W.2d at 371 (quotation omitted). To be valid, a guilty plea "must be accurate, voluntary, and intelligent (i.e., knowingly and understandingly made)." *Perkins*, 559 N.W.2d at 688.

Withdrawals of pleas should not be liberally granted: "*Kim* rejected the approach of the pre-*Kim* decisions of the court of appeals, which had been saying that the trial courts ought to be liberal and lenient in allowing defendants to withdraw guilty pleas before sentencing." *State v. Kaiser*, 469 N.W.2d 316, 319-20 (Minn. 1991).

> If a guilty plea can be withdrawn for any reason or without good reason at any time before sentence is imposed, then the process of accepting guilty pleas would simply be a means of continuing the trial to some indefinite date in the future when the defendant might see fit to come in and make a motion to withdraw his plea.

Kim v. State, 434 N.W.2d 263, 266 (Minn. 1989) (quotation omitted).

The reasons appellant advances for withdrawing his plea are that his "plea was not accurate or intelligent because he was innocent of the charged crime." He further argues that the state did not prove that it would have been unduly prejudiced by allowing appellant to withdraw his plea. We analyze these arguments in turn.

Accuracy

An *Alford* plea is accurate "if the court, on the basis of its interrogation of the accused and its analysis of the factual basis offered in support of the plea, reasonably concludes that the evidence would support a jury verdict of guilty." *Goulette*, 258 N.W.2d at 759; *see also State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994) (stating that an *Alford* plea is accurately made if it is supported by a factual basis). "The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial." *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). "[P]recedent . . . requires a strong factual basis for an *Alford* plea" and "the [district] 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); *accord Williams v. State*, 760 N.W.2d 8, 12–13 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009). An *Alford* plea is valid if "the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Alford*, 400 U. S. at 31, 91 S. Ct. at 164.

> Within the context of an *Alford* plea, where the defendant is maintaining his innocence, the defendant's acknowledgement that the State's evidence is sufficient to convict is critical to the court's ability to serve the protective purpose of the accuracy requirement. 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 . . . .

Theis, 742 N.W.2d at 649.

Appellant's plea was accurate. Appellant admitted that he believed he would be found guilty if he went to trial because of the likely evidence that would be presented and because of his prior record of assaults and domestic assaults against the victim in this case. Appellant acknowledged that he was pleading guilty to take advantage of the plea agreement, which, among other things, provided that the state would dismiss another charge of felony domestic assault stemming from a separate incident. Appellant admitted that he was with the victim on the night in question and that they had an argument that turned "physical" at some point. Concerning this argument and its aftermath, appellant acknowledged the following:

- The victim contacted the police the next morning, claiming that appellant hit and choked her.
- The police photographed marks on the victim that looked like injuries to her face.
- The victim told police that the injuries were caused by appellant.
- Appellant understood that what the police saw, what the victim told them, and the photographs would be introduced at trial.
- The state would introduce evidence of appellant's history of domestic violence against the victim, including his prior convictions of domestically assaulting her in the past, because it showed there was a pattern or practice of appellant abusing the victim.

Based on these acknowledgments from appellant, the district court could reasonably conclude that there was evidence that would support a jury verdict of guilty. Appellant acknowledged three separate times that the state's evidence was not only sufficient to convict him, but that he would likely be convicted. Given his alternatives, appellant made a voluntary and intelligent choice to accept the plea agreement. The fact that now

appellant claims innocence does not make his acknowledgements during the plea hearing inaccurate.

Intelligence

"To be intelligently made, a guilty plea must be entered after a defendant has been informed of and understands the charges and direct consequences of a plea." *State v. Byron*, 683 N.W.2d 317, 322 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). "The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea." *Farnsworth*, 738 N.W.2d at 372 (quotation omitted). If a defendant had a full opportunity to consult with counsel before entering a plea, the court "may safely presume that counsel informed him adequately concerning the nature and elements of the offense." *State v. Russell*, 306 Minn. 274, 275, 236 N.W.2d 612, 613 (1975). The fact that a guilty plea is counseled "justifies the conclusion that counsel presumably advised defendant of his other rights." *State v. Simon*, 339 N.W.2d 907, 907 (Minn. 1983) (citing *Henderson v. Morgan*, 476 U.S. 637, 646, 96 S. Ct. 2253, 2258 (1976)).

Appellant's plea was intelligent. After the terms of the plea agreement were read on the record, appellant stated that he understood (1) the terms of the agreement, (2) that he would be pleading to a felony, (3) that he would have a stayed felony sentence for five years of probation, and (4) that he may have to serve some time in prison depending on how many criminal points he had. Appellant and his attorney went through the plea agreement line-by-line and prepared for the trial together. Appellant acknowledged that

his attorney had advised him of all the rights he was giving up by accepting the agreement. Finally, appellant stated that he did not have any questions about the agreement. Appellant's testimony establishes that he was aware of the charges against him, the likely course a trial would take, and the consequences of accepting the plea.

Prejudice

The state's case for prejudice is not strong. The district court alluded to a burden on the state to reissue subpoenas and to reinstate the case for trial. But that is true in *every* case where the administration of justice calls for a new trial. That is true in every case where the court declares a mistrial. If the state has the option of again trying the defendant, it always clamors for that right. Certain issues and duties go with all criminal cases, including calling a jury pool, and providing courtroom space, a bailiff, and other court personnel. Adequate time must be given to both the state and the defendant to properly prepare their case. Whether there is a second trial or a motion to withdraw a plea of guilty and request a first one, these basic duties are a price of the justice system, not a burden that significantly prejudices the prosecution.

Although the state cannot show "substantial prejudice," it does not automatically mandate that a voluntary and knowledgeable plea of guilty be allowed to be withdrawn. It is simply one factor among many that we consider. Appellant's argument for plea withdrawal is undercut by his lack of cooperation with the presentence investigation, by the charging of a new offense after this plea agreement, and by the claimed violation of the no-contact order.

Appellant's basic argument is that since entering an *Alford* plea, with the assistance of counsel, he has changed his mind and now claims innocence. It appears appellant had a change of heart between his plea and his request to withdraw the plea. As respondent notes, changing your mind after tendering an *Alford* plea is not enough by itself to require a district court to withdraw a plea. No pleas of guilty, whether made before or after sentencing, can be "automatically" withdrawn. There needs to be a sound legal basis for withdrawal. *See Kim*, 434 N.W.2d at 266 (rejecting liberal and lenient approaches to plea withdrawals). The district court did not abuse its discretion in denying appellant's request to withdraw his plea.

Affirmed.