STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1433

Ryan Jon Berscheid, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 3, 2010
Affirmed
Stauber, Judge

Anoka County District Court
File Nos. 02K603001894; 02K20207200

Craig E. Cascarano, Cascarano Law Office, Minneapolis, Minnesota (for appellant)

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

Robert M.A. Johnson, Anoka County Attorney, Marcy S. Crain, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Stauber, 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.

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

STAUBER, Judge

Appellant Ryan Jon Berscheid challenges the summary denial of his petition for postconviction relief, arguing that his 2004 guilty plea was not accurate. Because we see no abuse of discretion in the denial, we affirm.

FACTS

In March 2002, appellant, a certified emergency medical technician, was alone with R.L.S., a 16-year-old female patient who was considered a suicide risk, in the back of an ambulance while she was being transported from one hospital to another. He told her he needed to check to see if she had been sexually assaulted, instructed her to remove her underwear, and examined and touched her buttock.

In April 2002, appellant was alone with S.L.B., another 16-year-old female psychiatric patient in the back of an ambulance being transported from one hospital to another. He told her he needed to look at her legs, pulled down her pajamas and underwear, and told her to roll on her side so he could check her buttock, which he examined and touched.

S.L.B. reported the incident, which she said also involved appellant penetrating her rectum with his finger, to her mother, her aunt, and nurses when she arrived at the hospital. Appellant's supervisors terminated him because his alleged acts were not appropriate medical attention, and his license was revoked.

Appellant was charged with one count of third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(k) (Supp. 2001) ("sexual penetration by

means of deception or false representation that the penetration is for a bona fide medical purpose") and two counts of fourth-degree criminal sexual conduct in violation of Minn. Stat. § 609.345, subd. 1(k) (Supp. 2001) ("sexual contact by means of deception or false representation that the contact is for a bona fide medical purpose"). He pled guilty to the two counts of fourth-degree criminal sexual conduct in exchange for the state dismissing the third-degree charge and was sentenced to 180 days, stayed, to ten years' probation, including having no contact with minors while in any position of authority, power, or employment, and no employment in the medical field, and to a five-year conditional-release period.

Nineteen months after sentencing, appellant filed a petition for postconviction relief, seeking to withdraw his guilty plea. Because of the illness of one judge and the retirement of another, three and a half years elapsed before his petition was denied without a hearing.

He challenges the denial, arguing that, because his guilty plea was not accurate, the district court abused its discretion in summarily denying postconviction relief.

D E C I S I O N

A summary denial of a postconviction petition is reviewed for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005).[1] When reviewing the

[1] Appellant mentioned in his statement of the legal issue that the trial court denied his request for an evidentiary hearing and included a few citations on the subject in the opening paragraph of his argument. But his brief never discusses the absence of a hearing; instead, it limits "The question before this Court" to "whether the Trial Court abused its discretion in denying Appellants [sic] Request for Post-Conviction Relief; i.e., in requesting to withdraw his guilty plea." Appellant's prayer for relief likewise does not

denial of postconviction relief, this court reviews issues of law de novo and issues of fact for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). Appellant argues that he is entitled to withdraw his guilty plea because it was not accurate.

Specifically, appellant argues that the district court had an incomplete factual basis to conclude that he had committed the offenses because he entered an *Alford* plea on the intent element of the crimes. *See State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007) (noting that *Alford* plea is appropriate when defendant decides guilty plea is best course of action despite his belief in his innocence and district court, relying on factual basis given in support of the plea, concludes that evidence would support jury verdict of guilty).

Theis sets out the standard for the accuracy prong of an *Alford* plea.

> The strong factual basis and the defendant's agreement that the evidence is sufficient to support his conviction provide the court with a basis to independently conclude that there is a strong probability that the defendant would be found guilty of the charge to which he pleaded guilty, notwithstanding his claims of innocence. In such a circumstance, the court can ensure that an *Alford* plea meets the accuracy prong.

Id. at 649 (citation and emphasis omitted). *Theis* also discusses the factual basis:

> [C]areful 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

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mention a hearing; it asks only that he be allowed to withdraw his guilty plea. Thus, absent any discussion of the lack of a hearing, appellant has waived the issue. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (holding that issues not briefed on appeal are waived), *review denied* (Minn. Aug. 5, 1997).

> innocence. An *Alford* plea is not supported by the defendant's admission of guilt, and is actually contradicted by his claim of innocence; precedent therefore requires a strong factual basis for an *Alford* plea. In the context of an *Alford* plea, our jurisprudence indicates that the better practice is for the factual basis to be based on evidence discussed with the defendant on the record at the plea hearing . . . .

Id. at 648–49 (citation omitted).

Here, appellant testified that he committed the acts that constituted sexual contact and that he accomplished the contact by means of a false representation that it was part of a bona fide medical procedure. But "sexual or aggressive intent" is also an element of the crime to which appellant pled guilty. *See* Minn. Stat. § 609.341, subd. 11(a) (Supp. 2001) (defining "sexual contact" as used in Minn. Stat. § 609.345, subd. 1(k)(2000), to include intentional touching of the complainant's intimate parts "committed with sexual or aggressive intent"). As to the element of the requisite sexual intent, appellant made an *Alford* plea: *i.e.*, he claimed he was innocent of any sexual intent but agreed that a jury could nevertheless convict him.

In denying the petition for postconviction relief, the district court found that "[t]he trial court judge [at the plea hearing] made a record that he did not believe [appellant] was being completely truthful, so clearly the court looked to other parts of the record to establish the factual basis as to the element on which [appellant] exercised his *Alford* plea." Appellant's testimony at the plea hearing supports this finding.

1. Appellant answered "Yes" when the prosecutor asked him if he believed that his act with RLS, "not being a bona fide medical procedure[,] must have been done for some reason, be it either sexual or aggressive".

2. Appellant answered, "Yes" when the district court asked him if he acknowledged that there was a substantial likelihood that he "would be found guilty of all of the elements of this crime" and if he thought "a jury would . . . find [him] guilty [of all elements of the crime] including the intent."

3. Appellant testified that he had examined RLS to see if her buttock was bruised, but answered "No" when asked if anyone had communicated to him that RLS was bruised, if appellant had any reason to believe she had fallen or suffered any physical trauma while in his custody, and if it was his job to examine the vaginal and anal areas of women when he was transporting them.

4. Appellant also answered "No" when asked if the discharge summaries he saw before transporting SLB indicated that she had been sexually abused in any way, if SLB had expressed in any way to him that she had been recently sexually abused or assaulted, and if SLB had given "any indication that her buttock area needed to be checked, either visually or physically for injury."

5. Appellant said he saw "what appeared to be scratches" on SLB's back and, believing she had been abused, decided to continue with a physical exam, but that he never documented the scratches or his belief that SLB had been abused.

6. Appellant answered "Correct" when asked if "there must have been some reason other than a medically appropriate one, either sexual or aggressive as the reason for the contact with [SLB's] buttock on that day."

Here, as in *Theis*, the accuracy prong of an *Alford* plea is met by the combination of "[t]he strong factual basis and the defendant's agreement that the evidence is sufficient to support his conviction." *Id.* at 649.

The district court did not abuse its discretion in summarily denying appellant's petition for postconviction relief.[2]

Affirmed.

[2] At oral argument, appellant's attorney acknowledged that appellant's objective is being able to seek work in the medical field, which he is not permitted to do as a condition of his probation. But not working in the medical field was a negotiated condition of probation of which appellant was aware when he entered his plea, and even if he had not been aware of it, it would not entitle him to postconviction relief. *See Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998) ("[I]gnorance of a collateral consequence [of probation] does not entitle a criminal defendant to withdraw a guilty plea.").