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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1004**

Shannon Ranae Johnson, petitioner,
Respondent,

vs.

State of Minnesota,
Appellant.

**Filed April 21, 2009
Reversed
Worke, Judge**

Dakota County District Court
File No. 19-K4-07-001107

Mark D. Nyvold, Special Assistant Public Defender, 332 Minnesota Street, Suite W-1610, St. Paul, MN 55101 (for respondent)

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

James C. Backstrom, Dakota County Attorney, Cheri A. Townsend, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for appellant)

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

UNPUBLISHED OPINION

WORKE, Judge

The state argues that the district court abused its discretion when it permitted respondent to withdraw her guilty plea post-sentencing. Because plea withdrawal is not necessary to correct a manifest injustice, we reverse.

DECISION

Respondent Shannon Ranae Johnson pleaded guilty to felony identity theft and was sentenced to five years probation. Respondent moved to withdraw her guilty plea. The district court permitted respondent to withdraw her plea and vacated her conviction. The state argues that the district court abused its discretion by permitting respondent to withdraw her guilty plea.

Once a guilty plea has been entered, a defendant does not have an absolute right to withdraw it. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). This court reviews a district court's postconviction decision permitting a plea withdrawal for an abuse of discretion. *Hale v. State*, 566 N.W.2d 923, 926 (Minn. 1997). The district court's findings will be sustained if supported by sufficient evidence in the record. *Cuypers v. State*, 711 N.W.2d 100, 103 (Minn. 2006). We review legal issues de novo. *Id.*

A defendant may withdraw a plea after sentencing only “upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice occurs when a guilty plea is not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688

(Minn. 1997). The defendant must prove by a fair preponderance of the evidence that plea withdrawal is necessary. *Id.* at 685.

Accurate

The district court judge who granted respondent's motion to withdraw her plea was not the judge who accepted the plea. In its order granting plea withdrawal, the district court found that "[n]o transcript of the plea hearing [was] provided" for the district court to review at the plea-withdrawal hearing. The decision to allow respondent to withdraw her plea was based on a finding that respondent asserted her innocence at the plea hearing, making the plea inaccurate. The state argues that a review of the plea transcript establishes that respondent entered a valid *Alford* plea.

"The accuracy requirement protects the defendant from pleading guilty to a more serious offense than [she] could properly be convicted of at trial." *Munger v. State*, 749 N.W.2d 335, 337 (Minn. 2008). "Accuracy requires an adequate factual basis to support the charge." *Id.* at 337-38. The factual basis must establish sufficient facts to support the conclusion that the defendant's conduct falls within the charge to which she pleads guilty. *Id.* at 338. The district court is responsible for ensuring that the record establishes a sufficient factual basis. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

An *Alford* plea occurs when a defendant maintains her innocence but pleads guilty because the record establishes, and the defendant reasonably believes, that the evidence is sufficient 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 facts forming the basis

for the plea. *Alford*, 400 U.S. at 37, 91 S. Ct. at 167; *Goulette*, 258 N.W.2d at 761. An *Alford* plea is 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.” *Goulette*, 258 N.W.2d at 761. Because the defendant’s 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. *Id.*

A review of the plea transcript establishes that respondent admitted that she worked for a home-mortgage company and that she obtained the victim, A.C.’s, identifying information when A.C. applied for a loan. Respondent admitted that A.C.’s information was used to open accounts for cellular phones in A.C.’s name and that the accounts were linked to respondent’s email account. Respondent admitted that A.C. did not authorize the accounts. Respondent stated: “I used the phone [] I didn’t order the phone, but I used the phone.” Respondent acknowledged that the offense includes aiding in or benefiting from the unlawful activity. Respondent reviewed the reports and evidence and agreed that the evidence was sufficient to obtain a conviction. Respondent stated that she was pleading guilty because she knew what had been going on and did not do anything to stop it. Respondent admitted that she was not “scot-free.”

At the time of the plea, the district court probed further and asked respondent if she knew about the identity theft while she was using the phone. Respondent replied that

she became aware after someone told her that when she called, A.C.'s name appeared on the caller identification. The court told respondent that if she did not commit the crime, she should not take responsibility. Respondent replied: "I know. I used the phone. My whole family will come and tell you I used the phone," and that "[i]t's linking my email. Everything's linking to my name. That is why I'm being charged with it." Although the parties had not agreed to an *Alford* plea, the state did not object because the victim wanted things to be over (the identity theft occurred in July 2005 and respondent did not plead guilty until February 2008). The district court accepted the factual basis for the *Alford* plea.

The plea was accurate. Respondent admitted some guilt and that the evidence was sufficient to convict. *See id.* (stating that an *Alford* plea occurs when a defendant maintains innocence but pleads guilty because the evidence is sufficient to obtain a conviction and the defendant believes that she will be convicted). Because at the time of respondent's motion to withdraw the plea the district court was not provided with a transcript of the plea hearing to review, it was not aware of respondent's admissions and her belief that the evidence against her was sufficient to obtain a conviction. Therefore, the district court erred in finding that respondent's plea was not accurate.

Voluntary

The district court also found that respondent's plea was not voluntary. A voluntary plea is one made without improper pressure or inducement. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

In her written request to withdraw her guilty plea, respondent claimed that she was misled and manipulated by her attorney. Respondent asserted that she wanted a trial, but her attorney told her that she could go to jail and because she feared jail, she agreed to plead guilty. Respondent claimed that when she met with the probation officer the plea was explained to her and it was not how she understood it. Respondent also claimed that she “was in a complete daze,” she was “dealing with postpartum depression,” she was not “thinking clearly due to lack of sleep,” and she had “extremely low hemoglobin,” which caused her to feel drained.

At the hearing on her request to withdraw her plea, however, respondent altered her argument. Rather than arguing that her attorney manipulated her, respondent claimed that she had been coerced into pleading guilty by the father of her youngest child. Respondent alleged that this man is the guilty person, but initially she did not want to “throw him under the bus.” After respondent pleaded guilty, however, and this man did not sign the recognition of parentage, she realized that he did not care and she decided she wanted to go to trial.

The plea transcript demonstrates that respondent acknowledged that she was not threatened or promised anything in exchange for her plea and was not suffering from any condition that would affect her ability to understand the proceedings. Additionally, respondent signed a petition to enter a plea of guilty in felony or gross misdemeanor case, in which she indicated that she (1) had not been treated for a nervous or mental condition and had not recently been ill; (2) had not recently been taking any type of medication and

was not under the influence of alcohol or drugs; (3) had been adequately informed and represented by her attorney; and (4) was not threatened or made promises to get her to plead. Further, during the plea hearing, respondent appropriately answered every question asked, and did not indicate that she was doing anything against her own free will. Finally, although respondent claimed that she was coerced into pleading guilty by the father of her youngest child and that this man is the guilty party, she did not reveal this during the plea hearing. The prosecutor asked respondent if this man was the person who opened the accounts and respondent replied, “I don’t know.” Respondent’s argument at the plea-withdrawal hearing was contradicted by the record and is not sufficient to establish a manifest injustice. Therefore, the district court clearly erred in finding that respondent’s plea was not voluntary.

Intelligent

Finally, the district court determined that respondent’s plea was not intelligent. An intelligent plea is one made when the defendant understands the charges, her legal rights, and the consequences of pleading guilty. *Id.*

Respondent claimed that her plea was not intelligent because she did not think she was pleading guilty to a felony. The plea transcript demonstrates that respondent understood (1) that she was pleading guilty to a felony; (2) the terms of her sentence; and (3) what would happen if she violated the terms of her probation. Further, the word *felony* was used on more than one occasion during the plea hearing. Respondent’s attorney asked her: “Do you understand that the offense that you’re pleading guilty to, []

is considered a *felony*-level offense in the state of Minnesota?” (Emphasis added.) Respondent replied: “Yes.” Then respondent stated: “This is like a lot on me. I’ve never had a *felony*.” (Emphasis added.) Additionally, the petition that respondent signed was a petition to enter a plea of guilty to a *felony* or gross misdemeanor, in which she indicated that she understood (1) the charge; (2) her trial rights and that she was waiving those rights; (3) the terms and conditions of her guilty plea and sentence; and (4) that she was pleading guilty to a felony. Respondent was well aware that she was pleading guilty to a felony. Therefore, the district court clearly erred in finding that her plea was not intelligent.

Respondent failed to meet her burden of proving by a fair preponderance of the evidence that plea withdrawal was necessary to correct a manifest injustice. *See Perkins*, 559 N.W.2d at 685; Minn. R. Crim. P. 15.05, subd. 1. A review of the record shows that the plea was valid. Therefore, the district court abused its discretion in permitting respondent to withdraw her plea.

Reversed.