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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0470**

In the Matter of Welfare of: Benjamin Jacob Hunt

**Filed November 26, 2012
Affirmed
Johnson, Chief Judge**

Rice County District Court
File No. 66-JV-07-3746

David W. Merchant, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

G. Paul Beaumaster, Rice County Attorney, Jennifer J. Nelson, Assistant County Attorney, Faribault, Minnesota (for respondent)

Considered and decided by Johnson, Chief Judge; Peterson, Judge; and Crippen, Judge.*

UNPUBLISHED OPINION

JOHNSON, Chief Judge

In 2007, Benjamin Jacob Hunt pleaded guilty to first-degree burglary and second-degree assault. In 2011, he petitioned for postconviction relief on the ground that his plea

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

to the burglary charge was inaccurate and, thus, invalid because it lacked a sufficient factual basis. The district court denied the petition on the grounds that Hunt entered an *Alford-Goulette* plea, that a factual basis was presented, and that Hunt acknowledged the strength of the state's evidence. We affirm.

FACTS

This case arises from an incident that occurred in the city of Northfield during the early-morning hours of October 7, 2007. Hunt entered a woman's apartment through a bedroom window and assaulted a male guest by punching him and threatening him with a 10-inch kitchen knife.

Hunt, who was 17 years old at the time, had stayed at the woman's apartment for approximately two months, until one or two days before the incident. During that time, Hunt was not on the lease and did not have a key to the apartment. Before entering the apartment on October 7, 2007, Hunt found the front door locked; he knocked, but no one answered. He walked around the outside of the apartment building to a bedroom window, which he crawled through after knocking a window fan onto the bedroom floor. Once inside, he saw his female acquaintance in bed with a man, engaging in sexual intercourse. Hunt assaulted the man by punching him in the face and head. He then went to the kitchen and grabbed a long knife, which he used to threaten the man. The male guest escaped by jumping out the bedroom window and called police. When officers arrived, Hunt was leaving the apartment carrying several bags.

Later that month, the state charged Hunt in a juvenile-delinquency petition with three counts of first-degree burglary, violations of Minn. Stat. § 609.582, subd. 1(a)-(c)

(2006); one count of second-degree assault with a dangerous weapon, a violation of Minn. Stat. § 609.222, subd. 1 (2006); one count of terroristic threats, a violation of Minn. Stat. § 609.713, subd. 1 (2006); and one count of fifth-degree assault with the intent to inflict bodily harm, a violation of Minn. Stat. § 609.224, subd. 1(2) (2006).

In November 2007, the state and Hunt entered into a plea agreement in which Hunt would plead guilty to one count of first-degree burglary and one count of second-degree assault. In exchange, the state would dismiss the four other charges, withdraw its motion to certify Hunt as an adult, and not charge him with attempted burglary for a prior incident that allegedly occurred at the same apartment.

At the plea hearing, Hunt admitted to possessing a dangerous weapon and committing an assault while in the apartment. But when the district court sought to establish that Hunt did not have a right to enter the apartment, Hunt disagreed and responded that he was not aware that he did not have such a right. The district court informed Hunt that he would not be guilty of burglary if he had a right to enter the apartment and asked him whether he still wanted to plead guilty. Hunt answered in the affirmative and agreed that the plea agreement was “a better deal than going to trial.” In response to a question asked by his own attorney, Hunt agreed that a jury could conclude that he did not have a right to enter the apartment. In addition, the prosecutor informed the district court that the tenant of the apartment and her male guest would testify that Hunt was listening to the activities inside the bedroom while standing outside the bedroom window and would testify to the forceful manner in which Hunt entered through the window.

The district court accepted Hunt's guilty plea, designated him an extended jurisdiction juvenile (EJJ), and adjudicated him guilty of first-degree burglary and second-degree assault. *See* Minn. Stat. § 260B.130, subd. 4 (2006). The district court imposed adult sentences of 58 months of imprisonment for first-degree burglary and 33 months of imprisonment for second-degree assault but stayed execution of those sentences. The district court imposed a juvenile disposition by committing Hunt to the custody of the commissioner of corrections until age 21, with the condition, among others, that Hunt commit no further offenses.

Three years later, in October 2010, the district court revoked Hunt's juvenile disposition and executed his adult sentences after finding that Hunt committed new offenses and failed to abide by the terms of his release from MCF-Red Wing. This court affirmed. *State v. B.J.H.*, 2011 WL 6141634 at *1 (Minn. App. Dec. 12, 2011), *review denied* (Minn. Feb. 14, 2012).

In June 2011, Hunt petitioned for postconviction relief on the ground that his guilty plea to the burglary charge is invalid because there is not a sufficient factual basis to support the plea. The state opposed the petition on the grounds that it is untimely and that it fails on the merits. In January 2012, the district court denied the petition on the merits, without addressing the timeliness of the petition. Hunt appeals.

D E C I S I O N

Hunt argues that the district court erred by denying his postconviction petition, in which he sought to withdraw his guilty plea.

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Hughes*, 758 N.W.2d 577, 582 (Minn. 2008); *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). After a defendant is sentenced, a defendant may withdraw a guilty plea only by establishing that withdrawal is necessary to correct a “manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1; *Theis*, 742 N.W.2d at 646. A defendant may establish manifest injustice by showing that his guilty plea is invalid. *Theis*, 742 N.W.2d at 646. For a guilty plea to be valid, it “must be accurate, voluntary and intelligent.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). As the supreme court has explained,

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. The voluntariness requirement insures that the guilty plea is not in response to improper pressures or inducements; and the intelligent requirement insures that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty.

Alanis v. State, 583 N.W.2d 573, 577 (Minn. 1998) (citations omitted). If a guilty plea fails to meet any of these three requirements, the plea is invalid. *Theis*, 742 N.W.2d at 650. This court applies a *de novo* standard of review to a determination that a guilty plea is valid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

On appeal, Hunt challenges only the accuracy of his guilty plea to the burglary charge, not the assault charge. He argues that his plea was inaccurate on the ground that there was an insufficient factual basis to support a finding of guilt because he did not admit that he entered the apartment without consent. Generally, a guilty plea is inaccurate if it is not supported by a proper factual basis. *Ecker*, 524 N.W.2d at 716. A

factual basis exists if there are “sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.” *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (quoting *Kelsey v. State*, 298 Minn. 531, 532, 214 N.W.2d 236, 237 (1974)). “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.” *Id.* at 350 (citing *Chapman v. State*, 282 Minn. 13, 20, 162 N.W.2d 698, 703 (1968); *State v. Jones*, 267 Minn. 421, 426-27, 127 N.W.2d 153, 156-57 (1964)).

Hunt is correct insofar as he asserts that he did not admit that he did not have consent to enter the apartment. For a defendant to be found guilty of burglary, the jury must find that the defendant entered a building without consent. *See* Minn. Stat. § 609.582, subd. 1(b). Hunt did not admit at the plea hearing that he did not have a right to enter the apartment. But in the Minnesota courts, a defendant may enter a so-called *Alford* plea, which allows the defendant to plead guilty while maintaining innocence. *See State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (citing *North Carolina v. Alford*, 400 U.S. 25, 38-39, 91 S. Ct. 160, 167-68 (1970)). “An *Alford* plea is not supported by the defendant’s admission of guilt, and is actually contradicted by his claim of innocence” *Theis*, 742 N.W.2d at 649. A defendant submitting an *Alford* plea must “agree[] that evidence the State is likely to offer at trial is sufficient to convict.” *Id.* The postconviction court concluded that Hunt expressed such an agreement. Accordingly, we proceed to analyze whether Hunt entered a valid *Alford* plea.

In challenging the postconviction court's decision, Hunt first contends that he did not enter a valid *Alford* plea because the record of the plea proceeding does not explicitly reflect that the plea was being submitted pursuant to *Alford* and *Goulette*. Hunt is again correct insofar as he states that no one present at the plea proceeding made an explicit reference to either the *Alford* opinion or the *Goulette* opinion. But Hunt cannot establish that such an explicit reference is required by law. The supreme court has expressed a preference for an explicit reference to *Alford* or *Goulette* but has not stated that an explicit reference is required. See *Theis*, 742 N.W.2d at 648; *Ecker*, 524 N.W.2d at 717. The transcript of Hunt's plea hearing makes clear that the district court, defense counsel, and the prosecutor noted Hunt's refusal to make an unqualified admission to all facts necessary for a burglary conviction and then sought, as an alternative, to obtain Hunt's acknowledgment that the state's evidence is sufficient to convict him of burglary. In other words, it is obvious that the district court, defense counsel, and the prosecutor were proceeding under *Alford* and *Goulette*, even if none of them explicitly said so. Thus, Hunt's guilty plea may be analyzed according to the *Alford-Goulette* caselaw, notwithstanding the fact that neither *Alford* nor *Goulette* were expressly invoked at the plea proceeding.

Hunt next contends that he did not enter a valid *Alford* plea because he did not sufficiently acknowledge the state's evidence concerning lack of consent to enter the apartment. With respect to an *Alford-Goulette* plea, the "better practice" is for the district court first to establish a factual basis for a determination of guilt by discussing the state's evidence with the defendant on the record, by an interrogation of the defendant, by

receiving documentary evidence, by receiving abbreviated testimony from the state's witnesses, or by receiving a stipulation of facts. *Theis*, 742 N.W.2d at 649. In addition, the "best practice" 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." *Id.* If the record contains a "strong factual basis" and "the defendant's agreement that the evidence is sufficient to support his conviction," the district court then must determine whether there is "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." *Id.* (emphasis in original).

In this case, the factual basis consists, in part, of Hunt's admissions and, in part, of evidence possessed by the state. Hunt admitted to all facts necessary for first-degree burglary except lack of consent. But he admitted to certain historical facts that tend to prove the lack of consent. He admitted that he was not on the lease for the apartment and did not have a key to the apartment. He admitted that his relationship with the woman living at the apartment was deteriorating. He admitted that he did not stay overnight at the apartment the night before the incident for which he was charged. He admitted that he knocked on the front door and that the woman did not answer despite being at home. In addition, the prosecutor summarized the anticipated testimony of the state's witnesses, that Hunt was outside the window listening to their interactions inside the bedroom, which tends to establish a motive for Hunt to enter the apartment without consent. The prosecutor also represented that the woman would testify that she had refused Hunt entry

to the apartment the evening before the incident. Hunt's admissions and the prosecutor's summary of the anticipated testimony of other witnesses satisfy the requirement of a "strong factual basis" for a finding that Hunt lacked consent to enter the apartment. *See id.*

Hunt further contends that he made an insufficient acknowledgement of the probability of a conviction. He contends that his acknowledgment is similar to the defendant's acknowledgment in *Theis* that there was a mere "risk" of conviction. To the contrary, Hunt acknowledged that the evidence was sufficient to convict. He was asked whether he "could understand how the jury would say, if you had to crawl through a window to get in, you probably don't have a right to be there," and he answered in the affirmative. That answer is, in essence, a statement that the evidence is sufficient to allow the jury to find him guilty. Hunt was not required by the caselaw to say more. A defendant must acknowledge only that the "evidence described at the plea hearing would be sufficient for a jury to find him guilty beyond a reasonable doubt." *Id.* at 650. To the extent that Hunt is withholding his admission that he was not a tenant of the apartment, he is essentially disagreeing with an inference that may be made rather easily given the historical facts that are undisputed. Furthermore, the likelihood of conviction is a matter for the district court to assess, not the defendant. The district court must "independently conclude that there is a *strong* probability that the defendant would be found guilty." *Id.* (emphasis in original).

In sum, the postconviction court did not err by concluding that Hunt's *Alford-Goulette* plea rests on an adequate factual basis and by denying Hunt's petition for

postconviction relief. In light of this disposition on the merits of Hunt's postconviction claim, we need not consider whether the postconviction petition was timely filed.

Affirmed.