STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1865

John Antonio Brown, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 5, 2011
Affirmed; motion granted
Schellhas, Judge

Ramsey County District Court
File No. 62-K1-07-4274

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

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

John J. Choi, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

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

SCHELLHAS, Judge

Appellant challenges the district court's summary denial of his postconviction petition in which he sought to withdraw his plea on the basis that it was not supported by

an adequate factual basis. Appellant also moves to strike supplemental documentation submitted by the state after appellant filed his notice of appeal. We grant appellant's motion to strike, and we affirm.

FACTS

Respondent State of Minnesota charged appellant John Brown with one count of second-degree murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2006), for conduct committed in the early morning of December 11, 2007. On March 25, 2008, appellant signed a petition to enter a plea of guilty pursuant to Minn. R. Crim. P. 15 and appeared at a plea hearing. The district court examined appellant to establish a factual basis for the plea. After appellant admitted that he shot and killed the victim with a .45 caliber handgun, the court addressed the issue of appellant's intent:

> THE COURT: Okay. And when you were shooting at him, you understand that when you shoot a .45 at somebody, it's very highly likely that they're going to die if you hit them? Do you understand that?
> THE DEFENDANT: Yes.
> THE COURT: And were you trying to kill him?
> THE DEFENDANT: Was I trying to?
> THE COURT: Yeah.
> THE DEFENDANT: No.
> THE COURT: Were you intentionally firing at him?
> THE DEFENDANT: Yes.

The state then questioned appellant:

> THE PROSECUTOR: And when you aimed the gun and pulled the trigger, you knew that the result of that would be—that he'd be struck by bullets, right?
> THE DEFENDANT: Yes.
> THE PROSECUTOR: And by that happening, you may not have known for sure he was going to die, but you pretty well knew that he could die from that, right?

THE DEFENDANT: Yes.
THE PROSECUTOR: And it was your intent to shoot him?
THE DEFENDANT: Yes.
THE PROSECUTOR: And it was your intent for him to die?
THE DEFENDANT: No.

And when defense counsel asked appellant, "[W]ould you agree that by shooting the gun at [the victim] that you intended to cause his death," he responded, "No."

After the state expressed concern about whether the evidence was sufficient to establish intent, the district court mentioned information in the case records, and engaged in further questioning. When the court finished, the state asked:

> THE PROSECUTOR: And when you pulled the trigger and you're aiming at a person, you knew enough that night to know that it's a powerful handgun and that could result in either he's going to get hurt bad or he's going to die. You knew that that night, didn't you?
> THE DEFENDANT: Right. Yes.
> THE PROSECUTOR: And you knew that the person you were aiming at was [the victim] specifically[?]
> THE DEFENDANT: Yes.
> THE PROSECUTOR: . . . . And you . . . intended to pull the trigger and aim right at him, is that right?
> THE DEFENDANT: Yes.
> THE PROSECUTOR: And so you believed that pulling that trigger could either injure him or kill him, would that be fair to say?
> THE DEFENDANT: Yes.

The district court accepted appellant's plea based on his testimony as well as "the reports that have been submitted by the County Attorney's Office," which the court made "part of the file." Consistent with the terms of the plea agreement, the court sentenced appellant on May 7, 2008. On May 4, 2010, appellant petitioned the court for

postconviction relief, seeking to withdraw his plea on the basis that it was not supported by an adequate factual basis. The district court summarily denied the petition.

This appeal follows.

D E C I S I O N

Motion to Strike

Appellant moves to strike supplemental documentation that the state submitted after appellant filed his notice of appeal. Appellant asserts that the documents are not part of the district court record, *see* Minn. R. Civ. App. P. 110.01, and that the state failed to provide him with copies of the documents and failed to follow the proper procedure to supplement the record, as set out in Minn. R. Civ. App. P. 110.05. The state explains that the documents are not new material but merely replace material that was lost and not included in the district court file—the documents consist of police reports that the state claims were submitted to the district court prior to the plea hearing and mentioned by the court at that hearing. In reply, appellant reiterates that the state has not followed the proper procedure to supplement the record and that, at this point, appellant has no way to verify the state's claim that the 265 pages submitted to this court were, in fact, the same materials to which the district court referred at the plea hearing.

Even though the district court referred to police reports at the plea hearing, those reports apparently were not placed in the district court file and are not part of the record provided to this court on appeal. Once this omission was brought to the state's attention, it should have filed a motion to correct the record as provided by rule 110.05. Nevertheless, as noted below, the district court did not need to rely on any additional

reports or documents outside the admissions made by appellant at the plea hearing nor does this court now do so. We therefore grant appellant's motion to strike.

Appeal

A person who is convicted of a crime and who claims that the conviction violated his or her "rights under the Constitution or laws of the United States or of the state" may file a petition for postconviction relief. Minn. Stat. § 590.01, subd. 1(1) (2008). "Unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, the court shall promptly set" a hearing. Minn. Stat. § 590.04, subd. 1 (2008). This court generally reviews the district court's denial of a postconviction petition without a hearing for an abuse of discretion, but issues of law are reviewed de novo. *Chambers v. State*, 769 N.W.2d 762, 764 (Minn. 2009). Assessing the validity of a plea is a question of law reviewed de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

Appellant petitioned the district court for permission to withdraw his guilty plea. A defendant is entitled to withdraw his or her guilty plea after sentencing if he or she can prove "that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice has occurred if a plea was not accurate, voluntary, and intelligent. *Raleigh*, 778 N.W.2d at 94. A plea is inaccurate if it lacks a proper factual basis. *Id.* "The factual basis must establish sufficient facts on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008) (quotation omitted). "[A] defendant may not withdraw his plea simply because the court failed to

elicit proper responses if the record contains sufficient evidence to support the conviction." *Raleigh*, 778 N.W.2d at 94.

Here, appellant pleaded guilty to second-degree intentional murder. The elements of the offense are (1) causing the death of a human being (2) with intent to effect the death of that person or another. Minn. Stat. § 609.19, subd. 1(1). Appellant argues that the evidence of his intent was insufficient, emphasizing that when he was asked directly whether he intended to cause the victim's death, he answered, "No." But other portions of appellant's testimony were sufficient to establish intent.

"'With intent to' . . . means that the actor either has a purpose to do the thing or cause the result specified *or believes that the act, if successful, will cause that result*." Minn. Stat. § 609.02, subd. 9(4) (2006). Appellant testified that he intended to shoot at the victim, and that he understood that "when you shoot a .45 at somebody, it's very highly likely that they're going to die if you hit them." This evidence was sufficient to establish that appellant believed that shooting at the victim, if successful, would cause the victim's death. We conclude that the intent element is satisfied and that the district court therefore properly denied appellant's postconviction petition to withdraw his plea.

Appellant also argues that the district court "sua sponte convert[ed] [the] botched guilty plea into an *Alford* plea without the knowledge or consent of the defendant." An *Alford* plea is a plea entered by a defendant who maintains his or her innocence, but the record establishes that the state has sufficient evidence to obtain a conviction. *See North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970); *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977). While some of the court's questions at the plea hearing suggested that

it had an *Alford* plea in mind—the court asked appellant whether the jury, if it believed the state's witnesses, would conclude that he intended to kill the victim—the court did not rely on this reasoning in its order, instead stating that there was sufficient evidence of intent. As discussed above, we agree with the district court.

Affirmed; motion granted.