STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0491

State of Minnesota,
Respondent,

vs.

Gerald Nicholas Villella, Jr.,
Appellant.

Filed January 14, 2013
Affirmed
Ross, Judge

Crow Wing County District Court
File No. 18-CR-10-1729

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

Donald F. Ryan, Crow Wing County Attorney, Candace A. Prigge, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Richard C. Kenly, Thomas F. Murtha, Backus, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Kirk, Judge; and Klaphake, 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

ROSS, Judge

Appellant Gerald Villella Jr. entered an *Alford* guilty plea to two counts of harassing another with intent to influence or tamper with a judicial proceeding. Villella challenges the district court's denial of his postconviction petition to withdraw his plea, arguing that his plea was neither accurate nor voluntary. We affirm the district court's decision because Villella's guilty plea was valid.

FACTS

In April 2010, the state charged Villella with two counts of harassing another with intent to influence or tamper with a judicial proceeding in violation of Minnesota Statutes section 609.749, subdivision 3(a)(4) (2008). The charges arose out of Villella's actions against a district court judge and the guardian ad litem assigned to his child-custody case. On the eve of trial, Villella's attorney Christopher Petros alerted the district court that Villella and the state had reached a plea agreement: Villella would enter an *Alford* guilty plea to both harassment counts and receive a stay of adjudication, serve five years' probation and ten days in jail, and avoid any contact with his victims. At the plea and sentencing hearings, the district court confirmed that Villella heard the agreement, understood its terms and conditions, had had enough time to confer with Petros, and was satisfied with Petros's representation. Villella's written guilty-plea petition repeated the statements, and agreed to waive his trial rights. He stated that he understood the plea agreement and would abide by it.

Villella signed the plea petition and the district court received it. The district court asked whether Villella understood the trial rights he was waiving. Villella responded that he understood. The district court then established the factual basis for the charges. Petros stated, "[W]e'd allow the complaint and any exhibits the County wanted to produce and the *Alford* plea is fine. I talked to my client about that already." The state had presented most of the police reports and statements as part of the probable-cause hearing, and it added a statement and report taken from Leisha Oftedahl, a witness, as well as a police report. Villella did not object to any of the state's materials.

After confirming Villella's understanding of the *Alford* plea, the district court asked Villella, "Is it your belief that if this matter went to the jury and if the jury believed the witnesses that had been offered by the State, there is a substantial likelihood that you would be found guilty of the charge?" Villella responded affirmatively. Villella acknowledged that he accepted the plea agreement to "take the benefit of the bargain." The district court reviewed the complaint, the discovery documents submitted at Villella's probable cause hearing, the police report, and Oftedahl's statement. It concluded that it was very likely that a jury would find Villella guilty of the charges. The district court also concluded that "there has been a free and voluntarily waiver of [Villella's] rights . . . . [a]nd that based on the documents that have been submitted, there is a factual basis to support [his] pleas." The district court proceeded to sentencing, as requested by the parties without a presentence investigation, and it sentenced Villella consistent with the agreement.

In July 2011, Villella retained attorney Richard Kenly and filed a petition for postconviction relief, seeking to withdraw his guilty plea. Villella alleged that Petros had coerced him into entering the plea, that Petros had rendered ineffective legal assistance, that the facts did not support his plea, and that his plea was not intelligent. Villella stated in an affidavit that he received a phone call from a subpoenaed witness who was told not to show up for trial because the matter had settled. He also asserted that after Petros told the district court that Villella wanted a trial, Petros told him that "the Judge was threatening to throw the book at me and start the trial without any of my witnesses or me having an attorney."

The district court conducted a hearing on the postconviction petition. Villella's position wavered. First, Kenly explained that Villella had become frustrated with the probationary terms restricting his firearms possession and his travel and that, but for those restrictions, Villella's plea was knowing and voluntary. But on cross-examination, Villella stated that Petros had pressured him into the plea agreement. Kenly then questioned Villella again, and Villella agreed that he would withdraw his request to withdraw his guilty plea in exchange for different probationary terms. Villella also offered that he would agree not to reraise a claim that he had been coerced. At the close of the hearing, Kenly offered to draft a proposed order memorializing a new agreement that would maintain Villella's guilt but order less restrictive probationary terms.

Two months after the hearing, however, Kenly instead informed the district court that Villella again wanted to withdraw his guilty plea. The district court held a second hearing on the petition. Villella's testimony echoed his affidavit supporting his petition.

He added that he was innocent of the charges and repeated that he was frustrated with his conditions of probation.

The state asked Villella, "[I]t wasn't until you found out you couldn't use guns and there were going to be some restrictions on your travel that you decided you wanted to withdraw your plea. If that hadn't happened, . . . you would not have tried to withdraw your plea, is that correct?" Villella responded, "I will say if our plea agreement would have been what we said to each other, then I would agree to it." He added, "I still was coerced and I still was threatened." The state pressed Villella on his claims that he received a call from Petros the night before trial and that a witness was told not to show up. Villella acknowledged that his testimony was the only evidence of those allegations.

The state submitted an affidavit sworn by Petros. In it, Petros avowed that he had discussed a plea offer with Villella, that Villella approved of a counteroffer that the state then accepted, that Villella confirmed his agreement, and that Petros notified the district court that the case had been settled. He stated that Villella understood there would be no trial. Petros also stated that Villella had asked him what would happen if he changed his mind and that Petros responded that he would withdraw as counsel and Villella would need to request another trial date. Petros explained to Villella the consequences of a felony conviction and the effect of a stay of adjudication, and he warned Villella of the jail sentence he would likely receive if found guilty. Petros "strongly advised [Villella] against a trial and to take the deal."

The district court considered Villella's postconviction plea-withdrawal request under the manifest-injustice standard. It held that withdrawal was not necessary to correct

a manifest injustice here because Villella's *Alford* plea was accurate, voluntary, and intelligent. It also found that Villella failed to develop or offer evidence to support his ineffective assistance of counsel claim.

Villella appeals the district court's ruling that his *Alford* plea was accurate and voluntary.

D E C I S I O N

Villella challenges the district court's denial of his postconviction petition. We review a postconviction court's ultimate decision for abuse of discretion and its legal decisions de novo. *Barnslater v. State*, 805 N.W.2d 910, 913 (Minn. App. 2011). Villella specifically contends that his plea is invalid because it was not supported by an adequate factual basis and was involuntary. A defendant may withdraw a guilty plea at any time, even after sentencing, if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a guilty plea is invalid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). A guilty plea is invalid if it is not voluntary, accurate, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). The plea-withdrawal petitioner bears the burden to establish that his plea was invalid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). Whether a plea is valid is a question of law subject to de novo review. *Id.*

Accuracy

Villella argues that his *Alford* plea was not accurate because it lacked an adequate factual basis. An *Alford* plea is a guilty plea under which a defendant maintains his innocence but acknowledges that the record establishes his guilt and that he reasonably

believes that the state has sufficient evidence to secure a conviction. *North Carolina v. Alford*, 400 U.S. 25, 37–38, 91 S. Ct. 160, 167–68 (1970); *see also State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (adopting *Alford* pleas in Minnesota). An *Alford* plea therefore allows a defendant to plead guilty without expressly admitting the factual basis for his guilt. *Alford*, 400 U.S. at 37, 91 S. Ct. at 167; *Goulette*, 258 N.W.2d at 761.

But before accepting a guilty plea, the district court must ensure that the plea is accurate. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). The purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of if he went to trial. *Id.* A plea is accurate if a proper factual basis is established. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). A proper factual basis exists when sufficient facts in the record support a conclusion that the defendant's conduct satisfies the charge to which he is pleading guilty. *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003). Careful scrutiny of the factual basis is especially necessary in an *Alford* plea because of the inherent conflict between pleading guilty and maintaining innocence. *Theis*, 742 N.W.2d at 648–49. Although the "better practice" is to establish the factual basis by discussing the evidence with the defendant on the record at the plea hearing, introducing witness statements or other documents can be sufficient. *Id*. at 649.

Villella pleaded guilty to two counts of harassing another with intent to influence or tamper with a judicial proceeding in violation of Minnesota Statutes section 609.749, subdivision 3(a)(4) (2008). Harassment is conduct that the actor knows or has reason to know would (and in fact does) cause the victim to feel frightened, threatened, oppressed, persecuted, or intimated under the circumstances. Minn. Stat. § 609.749, subd. 1 (2008).

A person is guilty if he harasses another with the intent to influence or tamper with a judicial proceeding or to retaliate against a judicial officer or officer of the court because of that person's performance of official duties in connection with a judicial proceeding. *Id.*, subd. 3(a)(4).

Villella's counsel acknowledged during oral argument on appeal that the evidence submitted at the plea hearing could lead a fact finder to conclude that Villella is guilty of the charges. The record supports this concession. The complaint states that Villella's victims were concerned that Villella was stalking them and their families and believed that Villella was attempting to influence their official decisions. The police report includes correspondence from Villella to his victims. In one letter, Villella asked the targeted judge in his family-court matter to "reopen[] this case" and then emphasized his knowledge of the judge's out-of-court activity: "So Judge when your [sic] working out at the Y[MCA] your [sic] early mornings maybe you should ask about myself and Lynda and who Eliz was better off. Who is Stable [sic], Who changes jobs and cant [sic] keep them." Villella mentioned his court case in another letter and then, emphasizing that he sat behind the judge during a recent speech by the governor, accused the judge of having a bias, acting discriminatorily, and disregarding conflicts of interest. Villella sent an email to the guardian ad litem requesting the guardian's educational, professional, and medical history, and then mentioned that he observed her son playing basketball. Villella also accused the guardian ad litem of failing to disclose conflicts of interest.

The police report contains a statement from Oftedahl, who asserted protection by a "harassment order" against Villella. She stated that she knew about Villella's harassment

of the judge, including his observations of her at the YMCA. Oftedahl added that Villella told her that "he had to give the judge a piece of his mind because . . . she was out of line and not doing her job." The police report also contains communications between Villella and an investigating officer. In two emails from Villella to the investigator, Villella alleged discrimination, bias, and dishonesty by the judge and those serving in her court. Another investigating officer met with Villella and concluded that Villella had written the judge in the manner that he did because he was disappointed that the judge would not consider evidence he offered. Villella told that investigator that he commented about the guardian ad litem's son because she had made comments regarding his daughter.

Villella contends that the district court erroneously failed to assess how each statutory element would be met by the factual basis of his *Alford* plea. But the factual basis may be drawn from the full record, including "judicially admitted . . . allegations contained in the complaint," *Trott*, 338 N.W.2d at 252, and the supreme court recently declined to require a verbatim factual recitation at the plea hearing, *cf. Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012) (holding, in a non-*Alford* plea context, that the factual basis supporting defendant's plea may be based on a grand jury transcript). Petros stated at his plea hearing that he would "allow the complaint and any exhibits the County wanted to produce and the *Alford* plea is fine. I talked to my client about that already." The complaint, Oftedahl's statement, and the police report contain inculpating facts that together satisfy the statute's elements. And Villella agreed with the district court that there is a substantial likelihood that a jury would convict him of the harassment charges based on all the material.

Voluntariness

The purpose of the voluntariness requirement is to insure that the defendant is not pleading guilty because of improper pressure. *Trott*, 338 N.W.2d at 251. The voluntariness of a plea is determined from the relevant circumstances. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994). Whether a plea is voluntary is a question of fact, and we will not disturb a voluntariness finding unless it is clearly erroneous. *Id*. Villella's appellate counsel conceded at oral argument that the evidence supports the district court's finding on voluntariness. The record supports this concession and belies Villella's written argument that his *Alford* plea was not voluntary because he was pressured by Petros to accept the plea agreement.

In concluding that Villella's plea was voluntary, the district court accepted Petros's account of the events and rejected Villella's. We defer to a district court's credibility determinations bearing on the validity of a guilty plea. *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. Mar. 25, 2997). And Villella's plea petition acknowledges that he had sufficient time to discuss his case with Petros, that he was satisfied with Petros' representation, and that no one had promised or threatened him to elicit his plea. *See Williams v. State*, 760 N.W.2d 8, 14–15 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009) (holding that the district court did not err by rejecting defendant's claim that plea was involuntary, relying, in part, on defendant's plea petition statements). Villella also acknowledged in testimony that his plea was voluntary, that the restrictions imposed by probation motivated his plea-withdrawal request, and that

he was willing to withdraw that request in exchange for lighter probationary restrictions. The district court's finding was not clearly erroneous.

Villella's counsel emphasizes that Villella maintains his innocence and wishes to have his day in court. But this sentiment reflects the oxymoronic, yet constitutional, nature of an *Alford* plea. *Alford*, 400 U.S. at 37–38, 91 S. Ct. at 167–68; *Goulette*, 258 N.W.2d at 761. If every defendant convicted under an *Alford* plea could withdraw his plea to emphasize his claimed innocence, then *Alford* pleas would not exist. That Villella changed his mind about pleading guilty—which is the essence of the circumstances based on the district court's factually supported findings—does not constitute a manifest injustice. We hold that the district court did not abuse its discretion by concluding that Villella's plea was voluntary and accurate.

Affirmed.