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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A17-0004

A17-0708

State of Minnesota,
Respondent,

vs.

Jerrmaine Winston Knowles,
Appellant.

Filed December 11, 2017

Affirmed

Schellhas, Judge

Ramsey County District Court
File No. 62-CR-13-10054

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public
Defender, Jennifer Lauermann, Assistant Public Defender, St. Paul, Minnesota (for
appellant)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his conviction of identity theft involving eight or more victims, his sentence, and his restitution order. He also raises other pro se arguments. We affirm.

FACTS

After the discovery of documents in appellant Jerrmaine Knowles's car and shared bedroom at a halfway house that contained the identities, birthdates, social security numbers, and driver's licenses of 12 people, respondent State of Minnesota charged Knowles with one count of identity theft involving eight or more victims in violation of Minn. Stat. § 609.527, subds. 2, 3(5) (2012). Knowles signed a plea petition, acknowledging that he was pleading guilty to identity theft involving eight or more victims and that the maximum penalty the court could impose was 20 years in prison. He then entered a straight *Alford* plea to the district court on one count of identity theft. The prosecution offered nothing to Knowles in exchange for his plea. The district court accepted Knowles's *Alford* plea, scheduled sentencing, and conditionally released Knowles "to Project Remand to verify treatment, inpatient treatment program."

The record before us is unclear as to when Knowles was released from custody, but on September 8, 2014, Knowles filed a motion for a downward dispositional sentencing departure or, in the alternative, permission to withdraw his plea. The district court did not consider Knowles's motion because he failed to appear for his sentencing hearing on September 17.

On July 12, 2016, after his apprehension, Knowles filed a motion to withdraw his *Alford* plea. The district court heard the motion on August 9 and denied it. At his sentencing hearing on October 5, Knowles moved to proceed pro se and again moved to withdraw his plea. The court granted his motion to proceed pro se but denied his plea-withdrawal motion. The court then sentenced Knowles to a middle-of-the-box presumptive guidelines term of 108 months' imprisonment, based on a criminal-history score of seven. At a contested restitution hearing, the court ordered Knowles to pay restitution of \$1,000 per victim, totaling \$11,000.

This consolidated appeal from Knowles's conviction and restitution order follows.

D E C I S I O N

Validity of Alford plea

At the plea hearing, the prosecution summarized the evidence that it would offer at trial, including evidence of Knowles's prior record of using people's identities to purchase phones. The prosecution discussed its intention to offer testimony from Stanley Lockett that he and Knowles would use the information, which they called "profiles," to open new cellphone accounts in other people's names and then sell the phones to a different store for money. The prosecution also planned to introduce conversations of phone calls made by Knowles from jail in which he discussed needing to "get[] rid of" the "profiles" found in his car as soon as possible.

Knowles acknowledged the prosecution's summary of evidence and agreed that a substantial likelihood existed that a jury would conclude that he committed theft by swindle and was participating in identity theft, and he agreed that a jury "probably" would find him

guilty of the charged offense beyond a reasonable doubt. The district court found that the evidence summarized by the state was sufficient to support Knowles's *Alford* plea, and that Knowles entered his plea voluntarily, knowingly, and intelligently.

In his July 2016 motion to withdraw his plea, Knowles argued that his plea was not supported by a sufficient factual basis, particularly regarding the element of intent. The district court found that Knowles's plea was supported by an adequate factual basis, including the element of intent, and was knowing, voluntary, and intelligent and denied the motion. Knowles now asks this court to "invalidate" his plea.

"A defendant has no absolute right to withdraw a guilty plea after entering it." *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). "Withdrawal is permitted in two circumstances. First, a court must allow withdrawal of a guilty plea if withdrawal is necessary to correct a manifest injustice." *Id.* (quotation omitted); Minn. R. Crim. P. 15.05, subd. 1. "Second, a court may allow withdrawal any time before sentencing if it is fair and just to do so." *Id.* (quotation omitted); Minn. R. Crim. P. 15.05, subd. 2. "A manifest injustice exists if a guilty plea is not valid." *Raleigh*, 778 N.W.2d at 94. Knowles appears to argue that he must be allowed to withdraw his guilty plea to avoid a manifest injustice. We review the validity of a guilty plea de novo. *Id.* at 94.

The supreme court has "held that there are three prerequisites to a valid guilty plea: it must be accurate, voluntary, and intelligent (i.e. knowingly and understandingly made)." *Matakis v. State*, 862 N.W.2d 33, 37 (Minn. 2015) (quotation omitted).

"In the context of an *Alford* plea, an adequate factual basis must be established to ensure the plea is voluntary and represents an intelligent choice of the alternative courses

of action available.” *Id.* at 37–38 (quotations omitted). “[A] defendant who enters an *Alford* plea must, despite maintaining his innocence, agree that the evidence the State is likely to offer at trial is sufficient to convict.” *Id.* at 38 (citing *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007)). Citing *Theis*, the supreme court has “outlined the factual basis necessary for a proper *Alford* plea.” *Id.* at 38. “[T]he better practice is for the factual basis to be based on evidence discussed with the defendant on the record at the plea hearing.” *Id.* (quoting *Theis*, 742 N.W.2d at 649). If a plea is entered without an adequate factual basis, the district court must permit the plea to be withdrawn. *Theis*, 742 N.W.2d at 650.

A person commits identity theft under Minn. Stat. § 609.527, subd. 2, when he or she “transfers, possesses, or uses an identity that is not the person’s own, with the intent to commit, aid, or abet any unlawful activity.” The statute defines “identity” as “any name, number, or data transmission that may be used, alone or in conjunction with any other information, to identify a specific individual or entity,” including: “a name, Social Security number, date of birth, official government-issued driver’s license or identification number, government passport number, or employer or taxpayer identification number.” Minn. Stat. § 609.527, subd. 1(d)(1) (2012). “Direct victim” is defined in the identity-theft statute by reference to the restitution statute, in which “victim” is defined as a natural person who incurs loss or harm as a result of a crime, including good faith efforts to prevent a crime. *Id.*, subd. 1(b) (2012) (referencing Minn. Stat. § 611A.01(b) (2012)).

Accuracy

“The accuracy requirement exists to protect a defendant from pleading guilty to a more serious offense than he could be convicted of if he were to go to trial.” *Id.* (quotation omitted). An *Alford* plea is acceptable when “the State demonstrate[s] a strong factual basis for the plea and the defendant clearly expresse[s] his desire to enter the plea based on his belief that the state’s evidence would be sufficient to convict him.” *Theis*, 742 N.W.2d at 647 (quotation omitted).

Knowles argues that his plea was not supported by an adequate factual basis because the state failed to discuss any evidence that would prove that any of the 12 purported identity-theft victims suffered a loss or harm. Knowles’s argument is unavailing. Although “[t]he [identity-theft] statute does not define ‘harm,’” this court has concluded that the statute does not require a showing of economic loss to establish loss or harm. *State v. Moua*, 874 N.W.2d 812, 817 (Minn. App. 2016) (“[W]e do not read the identity-theft statute to require a showing of economic loss to establish loss or harm.”), *review denied* (Minn. Apr. 19, 2016). “[R]eal harm occurs even in the absence of economic loss, and it follows that the legislature intended direct victims to include those who incur such non-economic harm.” *Id.*

Here, the evidence discussed at Knowles’s plea hearing clearly showed that Knowles possessed documents containing the identities, birthdates, social security numbers, and driver’s licenses of 12 people, and that Knowles did not have permission to possess the documents. The documents in Knowles’s possession fall squarely within the definition of “identity” under Minn. Stat. § 609.527, subd. 1(d), and the 12 people clearly

exceed the requirement of 8 or more victims under Minn. Stat. § 609.527, subd. 2. Under *Moua*, real harm occurred. 874 N.W.2d at 817.

To succeed on an identity-theft charge under section 609.527, subdivision 2, the state must prove that Knowles possessed identities with the intent to commit, aid, or abet any unlawful activity, which includes theft by swindle under Minn. Stat. § 609.527, subd. 1(g) (2012). Knowles argues that the facts discussed by the state at his plea hearing were not adequate to establish his intent to commit an unlawful activity while possessing other people's personal information and insufficient to establish the elements of theft by swindle. We disagree.

"Intent is generally proved by inferences drawn from a person's words or actions in light of all the surrounding circumstances." *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) (quotation omitted). During the plea hearing, the prosecution explained to Knowles that its theory was that his conduct was theft by swindle because Knowles was getting phones from cellphone providers, using other people's information, and the people entering the agreements did not understand the true nature of the transaction. The anticipated testimony of Stanley Luckett was adequate to establish that Knowles possessed identities with the intent to commit or aid and abet theft by swindle.

Knowles argues that the anticipated testimony of the prosecution's witness would be inadmissible *Spreigl* evidence of a prior bad act and uncorroborated testimony of an accomplice, and that the evidence therefore was insufficient to establish that he possessed the identities with the intent to commit theft by swindle. The state argues that the witness's testimony concerned an ongoing criminal activity and would be corroborated by other

evidence, specifically the jail calls in which Knowles mentioned having the victims' personal information in his car. We agree with the state. When the district court asked Knowles if he agreed that a jury was likely to find that his conduct was theft by swindle, he said yes. He also agreed that there was a substantial likelihood that a jury would conclude that he was guilty. And, as to his *Spreigl*-evidence argument, Knowles waived such objections in his petition to enter a guilty plea. We conclude that the factual basis for Knowles's *Alford* plea was adequate.

Intelligent and knowing

“The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983). Knowles argues that his plea was not intelligent because he did not know the number of direct victims involved when he entered the plea. Knowles's argument is unsupported by the record.

The number of victims was set forth in the criminal complaint and plea petition. Moreover, at the plea hearing, Knowles specifically acknowledged that the charge against him involved eight or more victims when the prosecution asked him, “Of the papers that were found in your room and in your car, there are a total of twelve different individuals whose names and dates of birth or social security numbers or driver's licenses were contained within those papers, correct?” Knowles answered yes. We conclude that Knowles entered his plea knowingly. The evidence discussed by the state clearly included the number of the direct victims involved and that the number exceeded eight. Because

Knowles's plea was supported by a sufficient factual basis, making it accurate, and it was knowingly entered, his *Alford* plea was valid.

Sentencing

Blakely Inapplicable

Knowles claims that the district court failed to obtain a *Blakely* waiver from him before sentencing him to a presumptive sentence under the sentencing guidelines of 108 months' imprisonment. See *Blakely v. Washington*, 542 U.S. 296, 303, 124 S. Ct. 2531, 2537 (2004) (applying *Apprendi* to sentencing guidelines and holding that, under the Sixth Amendment, "the 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant" (emphasis omitted)). "[A] defendant must expressly, knowingly, voluntarily, and intelligently waive his right to a jury determination of facts supporting an upward sentencing departure before his statements at his guilty-plea hearing may be used to enhance his sentence." *State v. Dettman*, 719 N.W.2d 644, 650–51 (Minn. 2006).

Here, if an identity theft involves eight or more direct victims, a defendant may be sentenced to a maximum 20-year sentence. See Minn. Stat. § 609.527, subd. 3(5). But the involvement of eight or more victims is an element of the crime; it is not an aggravating factor. The prosecution discussed the evidence regarding the 12 direct victims of Knowles's identity theft and Knowles agreed that, based on the evidence, a jury was substantially likely to find him guilty beyond a reasonable doubt. We conclude that *Blakely* does not apply to Knowles's sentencing and that the district court was not required to obtain

a *Blakely* waiver from Knowles before imposing the presumptive guidelines sentence of 108 months' imprisonment.

Criminal-history score

Knowles argues that his sentence must be reversed and remanded for resentencing because the state failed to prove that the out-of-state and federal convictions used to calculate his criminal-history score would be felonies in Minnesota. "The district court's determination of a defendant's criminal-history score will not be reversed absent an abuse of discretion." *State v. Maley*, 714 N.W.2d 708, 711 (Minn. App. 2006).

At his sentencing on October 5, 2016, Knowles's sentencing worksheet showed six felonies:

1. Delivery of cocaine (MI, 1994) – 2 points
2. Aggravated theft over \$5,000 (OH, 2006) – 1 point
3. Fraud and related activity to ID documents (Federal, 2008) – 1.5 points
4. Identity fraud (OH, 2008) – 1 point
5. Forgery (OH, 2006) – 0.5 point
6. Aggravated theft over \$2,500 (OH, 2006) – 1 point

Knowles also had one misdemeanor/gross misdemeanor point and one custody-status point. The district court included the misdemeanor/gross misdemeanor point but rejected the custody-status point. Neither is disputed in this appeal. And the state conceded that the last two Ohio convictions listed above (forgery and aggravated theft over \$2,500) would not be considered felonies under Minnesota law and therefore should not be included in Knowles's criminal-history score.

A district court must take into consideration a defendant's out-of-state convictions when it calculates a defendant's criminal-history score. Minn. Sent. Guidelines 2.B.5 &

cmt. 2.B.502 (Supp. 2013). “The state . . . has the burden at a sentencing hearing of establishing the facts necessary to justify consideration of out-of-state convictions in determining a defendant’s criminal history score.” *State v. McAdoo*, 330 N.W.2d 104, 109 (Minn. 1983). The state must establish by a preponderance of the evidence that the prior conviction was valid, the defendant was the person involved, and the crime would constitute a felony in Minnesota. *State v. Griffin*, 336 N.W.2d 519, 525 (Minn. 1983).

To prove an out-of-state conviction, the state is not required to supply certified copies of the conviction, and may, in the absence of certified copies, supply such evidence as would be sufficient under Minn. R. Evid. 1005. *Id.* Minnesota Rule of Evidence 1005 states:

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

“*Griffin* does not relieve the state of its burden to prove out-of-state convictions by a preponderance of the evidence; rather, it permits the district court to rely on persuasive evidence that sufficiently substitutes for the official, certified record of conviction.” *Maley*, 714 N.W.2d at 712.

Here, the district court calculated Knowles’s criminal-history score to be seven.¹ The record contains sufficient evidence to prove Knowles’s out-of-state convictions, particularly based on the detailed presentencing investigation (PSI) describing each of Knowles’s prior convictions and the comparable Minnesota crime with its associated points. The PSI included all the necessary information (e.g., descriptions of each crime, relevant dates, value of the property stolen, sentence received) from which the district court could appropriately determine whether each conviction was considered a felony under Minnesota law. *Id.*

Because the PSI provided sufficient information on which to determine that the state proved by a fair preponderance of the evidence that Knowles’s out-of-state and federal convictions constituted felonies in Minnesota, we conclude that the district court did not abuse its discretion and Knowles’s sentence need not be reversed and remanded.

Restitution Challenge

A district court has broad discretion to order restitution. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999). Unlike fines, which are typically punitive in nature, the aim of restitution is to either rehabilitate a defendant or compensate the victim. *State v. Fader*, 358 N.W.2d 42, 48 (Minn. 1984). Under the identity-theft statute, the district court “shall order” \$1,000 to each direct victim of identity theft. Minn. Stat. § 609.527, subd.

¹ Seven is the criminal-history score that the parties used in their briefing. Based on our calculation, Knowles’s criminal-history score was six, rounded down from 6.5. *See* Minn. Sent. Guidelines 2.B.1(i) (Supp. 2013) (stating that “[i]f the sum of the weights results in a partial point, the point value must be rounded down to the nearest whole number). But the calculation error does not change the presumptive range of the applicable sentence—92 to 129 months. *See* Minn. Sent. Guidelines 4 (Supp. 2013).

4(b) (2012); *see also Anderson v. State*, 794 N.W.2d 137, 140–41 (Minn. App. 2011) (explaining that the specific provisions of the identity-theft statute, which do not require proof of loss, control over the general restitution procedures, which require proof of loss), *review denied* (Minn. Apr. 27, 2011).

Knowles challenges his court-ordered restitution to pay each victim \$1,000, except the deceased victim, arguing that the restitution mandated by Minn. Stat. § 609.527. subd. 4(b), violates his procedural and substantive rights to due process, and that the restitution award constitutes an unconstitutional fine. We disagree. “Minnesota statutes are presumed constitutional, and our power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary.” *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). The party challenging constitutionality bears the burden to demonstrate that the statute is unconstitutional beyond a reasonable doubt. *State v. Craig*, 826 N.W.2d 789, 791 (Minn. 2013).

Knowles did not make any constitutional arguments at his restitution hearing on February 1, 2017. Having raised no constitutional issues regarding the restitution statute before the district court, Knowles cannot raise the issues for the first time on appeal. *See Roby v. State*, 463 N.W.2d 506, 508 (Minn. 1990) (“[Appellate courts] do not decide issues which are not first addressed by the [district] court and are raised for the first time on appeal even if the issues involve constitutional questions regarding criminal procedure.” (quotation omitted)).

Moreover, this court recently rejected the constitutional challenges asserted by Knowles as to mandatory minimum restitution. *See State v. Rey*, 890 N.W.2d 135, 139–42

(Minn. App. 2017) (“We do not believe the legislature intended identity-theft victims to incur actual pecuniary loss as a prerequisite to claiming restitution.”), *review granted* (Minn. Mar. 28, 2017). In *Rey*, this court also concluded that “because Rey is not entitled to a jury trial to determine the underlying facts that form the basis for the amount of restitution, the restitution ordered is not an unconstitutional fine.” *Id.* at 142; *see also State v. Maxwell*, 802 N.W.2d 849, 851–52 (Minn. App. 2011), *review denied* (Minn. Oct. 26, 2011). And in *Moua*, this court rejected the argument that the mandatory restitution statute violated an appellant’s procedural due-process rights. 874 N.W.2d at 815–16.

Ability to Pay

Knowles argues that the district court did not consider his ability to pay restitution before ordering the mandatory minimum restitution. In determining whether to order restitution and the amount of restitution, the court shall consider the defendant’s ability to pay. Minn. Stat. § 611A.045, subd. 1(a)(2) (2012). But “[t]here is no strict requirement regarding how the district court should address the issue.” *State v. Miller*, 842 N.W.2d 474, 479 (Minn. App. 2014) (emphasis omitted), *review denied* (Minn. Apr. 15, 2014). The district court is not required to issue specific findings on the defendant’s ability to pay. *Id.* If a PSI is prepared under Minn. Stat. § 609.115, subd. 1, it must contain information pertaining to the defendant’s ability to pay. Minn. Stat. § 611A.045, subd. 2 (2012). The district court has broad discretion to award restitution, which this court reviews for an abuse of discretion. *Tenerelli*, 598 N.W.2d at 671.

In this case, the PSI contains information about Knowles’s income, resources, and obligations. It summarizes Knowles’s previous education, consisting of a GED and

culinary certification, and reports that Knowles had maintained consistent employment, including during periods of incarceration. The PSI also states that Knowles had a debt of \$30 from a cellphone bill and had applied for food and medical assistance.

The district court reduced Knowles's fines and fees to \$50 before ordering restitution in the amount of \$11,000. This court has recognized that "[t]he district court judge's imposition of a minimum fine of \$50 acknowledges that [the defendant] is indigent," and that "[t]his fact demonstrates that the district court judge properly considered his ability to pay." *Rey*, 890 N.W.2d at 142 n.6.

And even when an appellant may not be able to pay the restitution amount, Minnesota courts have upheld restitution orders. *See, e.g., State v. Lindsey*, 632 N.W.2d 652, 663–64 (Minn. 2001) (explaining that district court considered defendant's ability to pay when it ordered restitution to be paid from prison earnings); *State v. Tenerelli*, 583 N.W.2d 1, 3 (Minn. App. 1998) ("Since the statute is not explicit as to how the court must consider the appellant's ability to pay, the court's reference to the appellant's [prison] earnings as the source of restitution payments shows that the court did in fact consider appellant's payment capabilities."), *aff'd as modified*, 598 N.W.2d 668 (Minn. 1999); *State v. Maidi*, 520 N.W.2d 414, 419 (Minn. App. 1994) ("[A]lthough it is possible that appellant may not be able to pay the entire restitution award, the court was also required to consider [the victim's] economic losses."), *aff'd*, 537 N.W.2d 280 (Minn. 1995).

Because the record reflects that the district court considered Knowles's ability to pay restitution, the court did not abuse its discretion.

Pro Se Arguments

Knowles also challenges his conviction and sentence in pro se arguments. Knowles argues that Ramsey County lacked jurisdiction over him and that the district court miscalculated his criminal-history points because his out-of-state convictions occurred in the same course of conduct.

A “*pro se* defendant will be held to the standard of an attorney in presenting his appeal.” *State v. Seifert*, 423 N.W.2d 368, 372 (Minn. 1988), *superseded by rule on other grounds*, Minn. R. Crim. P. 28.02, subd. 5, *as recognized in Black v. State*, 560 N.W.2d 83, 86 (Minn. 1997). Knowles’s pro se brief includes neither arguments in support of his position nor citations to legal authority. The supreme court has said:

General allegations of error, without detailing specific factual or legal errors, do not aid our review of the lower court’s proceedings and consequently, almost never aid an appellant’s cause. Therefore, we will not consider any claim lacking supporting argument or authority unless prejudicial error appears obvious upon inspection of the record.

Nelson, 880 N.W.2d at 859 n.2. Because no such errors are obvious here, we will not consider these arguments.

Affirmed.