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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1828**

Mary Kate Nguyen, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 8, 2019
Affirmed
Hooten, Judge**

Scott County District Court
File No. 70-CR-14-15511

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijo,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Ronald Hovevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

The postconviction court denied appellant's petition for postconviction relief in which she requested to withdraw her *Alford* plea. She appeals, arguing that her *Alford* plea was neither accurate nor intelligent. We affirm.

FACTS

In the early morning hours of September 1, 2014, a Shakopee police officer observed an SUV parked on the shoulder of U.S. Highway 169 and appellant Mary Nguyen on foot, signaling to passing cars. The officer stopped and spoke with Nguyen, who told the officer that she had been driving the SUV and was involved in a crash. The police officer smelled alcohol, and Nguyen admitted to having two or three drinks earlier in the evening and again admitted to driving the SUV. The officer had her perform some field sobriety tests and arrested her under the belief that she had been driving the SUV while intoxicated. The officer brought Nguyen to the Prior Lake Police Department and, after reading her the Minnesota Implied Consent Advisory, had her undergo a breath test. The test revealed a blood alcohol concentration (BAC) of 0.15.

Nguyen was charged with: first-degree driving while intoxicated (DWI) for operating a motor vehicle under the influence of alcohol, in violation of Minn. Stat. § 169A.20, subd. 1(1) (2014); first-degree DWI for operating a motor vehicle with a BAC of 0.08, in violation of Minn. Stat. § 169A.20, subd. 1(5) (2014); and driving after having her driver's license cancelled, in violation of Minn. Stat. § 171.24, subd. 5 (2014). In August 2016, Nguyen entered pleas in two files. She entered an *Alford* plea on the second

first-degree DWI charge (BAC over 0.08) in the present file and entered a guilty plea with regard to a fifth-degree controlled substance charge in a different file.¹ In exchange for her pleas, the remaining charges in both files were dismissed, a third file was dismissed in its entirety, and the state agreed not to charge her in another matter. Nguyen was given a downward dispositional departure. On the DWI charge, she was given a stayed 84-month prison sentence and seven years of probation.

In March 2017, Nguyen’s probation was revoked. She filed a petition for postconviction relief in July 2018, arguing that she should be allowed to withdraw her *Alford* plea because it was neither accurate nor intelligent. The postconviction court denied the petition. This appeal follows.

DECISION

Nguyen appeals the postconviction court’s denial of her petition for postconviction relief. We review such a denial for an abuse of discretion. *Greer v. State*, 836 N.W.2d 520, 522 (Minn. 2013). “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017) (quotation omitted). We review the postconviction court’s factual findings for clear error and its legal conclusions de novo. *Id.*

Nguyen argues that she should be allowed to withdraw her *Alford* plea. The Minnesota Rules of Criminal Procedure set out two standards for plea withdrawal. A

¹ “An *Alford* plea is a plea in which an individual accused of a crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence while not admitting guilt.” *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015) (quotation omitted).

district court may allow the withdrawal of a guilty plea prior to sentencing if it would be fair and just to do so. Minn. R. Crim. P. 15.05, subd. 2. And a withdrawal must be allowed at any time in order to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. Nguyen has already been sentenced, so the manifest-injustice standard applies.

“A manifest injustice exists if a guilty plea is not valid.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A guilty plea must be accurate, voluntary, and intelligent in order to be valid. *Id.* And the validity of a guilty plea is a legal question that we review de novo. *Id.* In this case, Nguyen claims that her plea was inaccurate and unintelligent. We examine each argument in turn.

i. Accuracy

Nguyen begins by arguing that her plea was not accurate. “To be accurate, a plea must be established on a proper factual basis.” *Id.* While the factual basis for a plea is generally established by questioning the defendant, “a defendant may not withdraw [her] plea simply because the court failed to elicit proper responses if the record contains sufficient evidence to support the conviction.” *Id.* In other words, a guilty plea “may be supplemented by other evidence to establish the factual basis for a plea.” *Lussier v. State*, 821 N.W.2d 581, 589 (Minn. 2012).

Minnesota caselaw, recognizing that “[a]n *Alford* plea is not supported by the defendant’s admission of guilt, and is actually contradicted by [her] claim of innocence,” places special emphasis on the importance of a “strong factual basis” in the context of an *Alford* plea. *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007). And district courts have been cautioned not to “cavalierly accept” *Alford* pleas. *Id.* at 648 (quotation omitted).

Instead, “the better practice is for the factual basis to be based on evidence discussed with the defendant on the record at the plea hearing.” *Id.* at 649. This can be done “through an interrogation of the defendant about the underlying conduct and the evidence that would likely be presented at trial,” the introduction of witness statements or other documents at the plea hearing, or a stipulation by the parties to factual statements in documents submitted at the plea hearing. *Id.*

Additionally, since the accuracy requirement for valid pleas is in place to protect defendants from pleading guilty to more serious offenses than they could be convicted of were they to insist on a trial, “the defendant’s acknowledgement that the State’s evidence is sufficient to convict is critical to the court’s ability to serve the protective purpose of the accuracy requirement.” *Id.* And the supreme court recommends having the defendant specifically acknowledge at the plea hearing that the state’s evidence is sufficient for a jury to convict, applying the reasonable-doubt standard. *Id.*

Nguyen asserts that the factual basis was insufficient to support her conviction of first-degree DWI under Minn. Stat. § 169A.20, subd. 1(5). That statute criminalizes a person driving, operating, or being in physical control of any motor vehicle when her BAC “at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the motor vehicle is 0.08 or more.” Minn. Stat. § 169A.20, subd. 1(5). Nguyen argues that the factual basis was inadequate as to whether she was the one driving, operating, or in physical control of the vehicle, and she argues that it is also lacking as to her BAC. We examine each element.

With regard to the first, Nguyen asserts that “it remain[s] unclear from the hearing transcript whether appellant drove, operated or was in physical control of the vehicle.” She bases this argument on the fact that, at the plea hearing, she responded “yes” after her attorney asked her “you have told me . . . that there was another driver of that vehicle; correct?” Nguyen claims that this creates a “conflict in the record about whether appellant was the driver.” She also makes much of the “lack of testimony by [her] about whether she was the driver.”

But this line of reasoning forgets the purpose of an *Alford* plea, which is to allow a defendant to plead guilty while maintaining her innocence but acknowledging that there was sufficient evidence to convict her of the crime. *Theis*, 742 N.W.2d at 647. Because a defendant is allowed to maintain her innocence while giving an *Alford* plea, it stands to reason that she would not affirmatively admit to every element of the underlying crime. The requirement is simply that she acknowledge the sufficiency of the state’s evidence. And that is precisely what Nguyen did. At the plea hearing, she acknowledged that: she read the police reports and watched the squad car video prior to the hearing; she understood that the police officer would testify based on those reports; despite telling her attorney there was another driver, she never said as much to the officer at the scene, instead referring to herself as the driver; and that, after reviewing the evidence, she agreed that there was a substantial likelihood that she would be found guilty if she proceeded to trial.

The exhibit submitted at the plea hearing also supports the driving element. Specifically, the officer’s report contained within the exhibit references two separate admissions from Nguyen that she was driving the SUV. Moreover, the district court made

sure that Nguyen understood that the state would have to prove her guilt beyond a reasonable doubt, and she agreed that “even with that high burden of proof, that there is a substantial likelihood that a jury would convict [her].” We conclude that the factual basis was adequate on this element.

Nguyen also argues that there was an inadequate factual basis on the element of whether her BAC was 0.08 or more within two hours of the underlying incident, emphasizing her lack of testimony regarding that element. Her BAC was not specifically discussed at the plea hearing. But the exhibit submitted at the plea hearing supports this element. A printout from the breath test is included and states that at 3:38 in the morning Nguyen had a BAC of 0.15. And the police officer’s report indicates the same. We conclude that the factual basis was adequate with regard to Nguyen’s BAC being 0.15.

As for the two-hour requirement, the exhibit submitted at the plea hearing contains multiple references to the time of the offense and arrest as being 1:44 in the morning. And the statement of probable cause indicates that the officer first observed Nguyen at approximately 1:45. Since the breath-test reading indicating a BAC of 0.15 was made at 3:38, the record indicates that the test was within two hours of the officer finding Nguyen by the side of the highway. The record does not specify how much time had passed between Nguyen’s driving, operation, or physical control of the vehicle and the officer finding her. But an *Alford* plea may be accepted if, based on the factual basis, the district court “reasonably concludes that there is evidence which would support a jury verdict of guilty.” *Theis*, 742 N.W.2d at 647 (quotation omitted). It was reasonable for the district court to conclude that the factual basis provided at the plea hearing would support a jury

verdict of guilty because a jury could reasonably infer from the factual basis that the officer found Nguyen shortly after the accident and that the breath test therefore occurred within two hours of her driving, operating, or being in physical control of the vehicle. Accordingly, we conclude that there was an adequate factual basis on this element. And because the factual basis was adequate on all of the elements, we conclude that the *Alford* plea was accurate.

ii. *Intelligence*

Nguyen also argues that her plea was not intelligent. “The intelligence requirement ensures that a defendant understands the charges against [her], the rights [she] is waiving, and the consequences of [her] plea.” *Raleigh*, 778 N.W.2d at 96. Nguyen asserts that she was not informed of the trial rights that she was waiving by entering an *Alford* plea and that the district court did not comply with Minn. R. Crim. P. 15.01, subd. 1(6), which requires the district court to ensure that “defense counsel has told the defendant and the defendant understands” 18 different aspects of her right to a jury trial before accepting a plea.

Specifically, Nguyen claims that the district court did not inform her or ask her whether: (1) her attorney told her and she understood that she had a right to a jury trial and a unanimous verdict; (2) she was waiving her right to a jury or court trial; (3) she knew she was presumed innocent and the standard of proof is guilt beyond a reasonable doubt; (4) she was waiving her right to have witnesses testify in open court and be subject to cross-examination; (5) she was waiving her right to subpoena witnesses; and (6) she knew that she had a right to remain silent at trial. But Nguyen was questioned by her attorney about

the plea petition that she filled out. She testified that she had gone through it with her attorney twice, understood the rights mentioned in the document, understood that she was giving up her trial rights by pleading, had enough time to discuss the plea petition with her attorney, and was satisfied with her attorney's representation. The plea petition itself covers all of the requirements in Minn. R. Crim. P. 15.01, subd. 1(6). And the district court accepted the petition. "We presume that, prior to entry of a guilty plea, defense counsel reviews the plea petition with the defendant and the defendant understands its terms." *State v. Byron*, 683 N.W.2d 317, 323 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). In light of the contents of Nguyen's signed plea petition, her testimony at the plea hearing confirming her understanding of its contents, and the caselaw presumption that she understood those terms, we conclude that her *Alford* plea was intelligently given.

Affirmed.