

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0266**

Malik Jordan Olsen, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 21, 2019
Affirmed
Johnson, Judge**

Polk County District Court
File No. 60-CR-17-1381

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, First Assistant County Attorney, Crookston, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and Kirk, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Judge

Malik Jorden Olsen pleaded guilty to fourth-degree assault of a peace officer. He later petitioned for post-conviction relief and argued that his guilty plea is invalid because it was not supported by a proper factual basis. The post-conviction court denied the petition. We affirm.

FACTS

On July 10, 2017, at approximately 1:30 a.m., Officer Quanrud of the East Grand Forks Police Department was on patrol when he saw a suspicious vehicle in an alley. He approached the vehicle and spoke with the driver. Officer Quanrud detected an odor of marijuana emanating from the vehicle. He instructed the three occupants of the vehicle to exit the vehicle so that he and another officer could search it. Olsen became uncooperative. When asked why he was uncooperative, he said, “Because I hate cops.” When Officer Quanrud instructed Olsen to stand near his squad car, Olsen took a step toward Officer Quanrud “in an aggressive manner.” Officer Quanrud twice instructed Olsen to place his hands behind his back, but Olsen refused to do so. The officers attempted to subdue Olsen, but the situation escalated. When Officer Quanrud attempted to place handcuffs on Olsen, he swung at Officer Quanrud and shoved him in the chest. The officers eventually took Olsen to the ground and handcuffed him after a physical struggle. Officer Quanrud’s right forearm was scraped during the struggle, which caused him pain.

The state charged Olsen with the felony offense of fourth-degree assault of a peace officer resulting in the infliction of demonstrable bodily harm, in violation of Minn. Stat.

§ 609.2231, subd. 1(c)(1) (2016), and obstructing legal process, in violation of Minn. Stat. § 609.50, subd. 1(2) (2016). In May 2018, the state and Olsen entered into a plea agreement in which Olsen agreed to plead guilty to the gross-misdemeanor offense of fourth-degree assault of a peace officer, in violation of Minn. Stat. § 609.2231, subd. 1(b) (2016), and the state agreed to dismiss the other charge. Olsen pleaded guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970), and *State v. Goulette*, 258 N.W.2d 758 (Minn. 1977). In his plea petition, Olsen acknowledged that he had “reviewed the evidence that the state will offer against me if I have a trial.” The plea petition also states:

I am pleading guilty on an *Alford* basis . . . because the prosecutor possesses evidence against me that, if believed by a jury, would make it substantially likely that the jury would return a verdict of guilty beyond a reasonable doubt of the elements of this crime. (Specifically, at trial, East Grand Forks Police Department Officers Jared Quanrud and Gilbert Trevino would testify that I physically assaulted Officer Quanrud, who is a licensed peace officer, while Officer Quanrud was executing a duty imposed by law on or about July 10, 2017, in Polk County, Minnesota.)

During the plea hearing, Olsen confirmed that he had read the complaint and reviewed discovery materials provided by the state. Olsen acknowledged that there was a substantial likelihood that a jury would find him guilty. The district court accepted Olsen’s plea. The district court imposed a sentence of one year of imprisonment but stayed execution of the sentence and placed Olsen on supervised probation for two years. The district court asked the state to submit its discovery materials to the court within ten days, but the state neglected to do so.

In July 2018, Olsen filed a *pro se* motion to withdraw his guilty plea on the ground that he received ineffective assistance of counsel. In September 2018, an assistant state public defender appeared on Olsen’s behalf and filed a supplemental post-conviction petition, seeking relief on the ground that Olsen’s guilty plea is invalid. At a hearing in October 2018, the state objected to the assistant state public defender’s limited representation and to Olsen’s insistence on simultaneously proceeding *pro se* on his original motion. After discussion, Olsen withdrew his motion and agreed to proceed solely on the post-conviction petition that had been filed by the assistant state public defender. After the hearing, the parties filed additional memoranda. In January 2019, the post-conviction court denied Olsen’s petition. Olsen appeals.

D E C I S I O N

Olsen argues that the post-conviction court erred by denying his post-conviction petition.

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a district court must grant a defendant’s motion to withdraw a guilty plea if necessary to “correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid.” *Raleigh*, 778 N.W.2d at 94. To be constitutionally valid, “a guilty plea must be accurate, voluntary, and intelligent.” *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). The supreme court has explained each of the three requirements as follows:

The main purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to

trial. . . . The purpose of the voluntariness requirement is to insure that the defendant is not pleading guilty because of improper pressures. 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). If a guilty plea fails to meet any of these three requirements, it is invalid. See *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). Thus, if a person's guilty plea is not accurate, not voluntary, or not intelligent, a district court must permit the person to withdraw the plea. *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). A defendant bears the burden of showing that his or her guilty plea is invalid. *Raleigh*, 778 N.W.2d at 94. This court applies an abuse-of-discretion standard of review to the denial of a post-conviction petition. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012).

Olsen contends that his guilty plea is invalid because it is not accurate. To satisfy the accuracy requirement, a guilty plea must "be established on a proper factual basis." *Raleigh*, 778 N.W.2d at 94. A proper 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*, 214 N.W.2d 236, 237 (Minn. 1974)). Stated somewhat differently, a proper factual basis exists if "the record contains a showing that there is credible evidence available which would support a jury verdict that defendant is guilty of at least as great a crime as that to which he pled guilty." *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016) (quoting *State v. Genereux*, 272 N.W.2d 33, 34 (Minn. 1978)).

In a conventional guilty plea, the defendant's admissions provide the factual basis of the admission of guilt. *Ecker*, 524 N.W.2d at 716. But an *Alford* plea is different; it allows a defendant to maintain his innocence but plead guilty based on his belief that the state has sufficient evidence and would be likely to obtain a conviction if the case were to go to trial. *Goulette*, 258 N.W.2d at 761. A strong factual basis for an *Alford* plea is particularly important because such a plea is “not supported by the defendant’s admission of guilt, and is actually contradicted by [a defendant’s] claim of innocence.” *Theis*, 742 N.W.2d at 649. Accordingly, a defendant submitting an *Alford* plea must “agree[] that evidence the State is likely to offer at trial is sufficient to convict.” *Id.* A defendant should “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.* This agreement and a strong factual basis “provide the court with 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.*; *Ecker*, 524 N.W.2d at 716-17; *see also State v. Johnson*, 867 N.W.2d 210, 214-17 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015).

A.

Olsen first contends that there was not a strong factual basis with respect to the element of intent to inflict bodily harm. The statute setting forth the offense of conviction requires proof that the defendant “physically assault[ed] a peace officer.” Minn. Stat. § 609.2231, subd. 1(b). The word “assault” is defined by statute to mean “the intentional infliction of or attempt to inflict bodily harm upon another.” Minn. Stat. § 609.02,

subd. 10(2) (2016). Olsen’s offense is a general-intent crime that “requires the State to prove that the defendant intended to do the physical act,” but it does not require “proof that the defendant meant to violate the law or cause a particular result.” *State v. Fleck*, 810 N.W.2d 303, 308-09 (Minn. 2012).

In the context of an *Alford* plea, the key question is whether “the evidence the State would likely offer . . . is sufficient for a jury, applying a reasonable doubt standard, to find the defendant guilty.” *Theis*, 742 N.W.2d at 649. This inquiry is not necessarily limited to the evidence that is recited at the plea hearing; rather the inquiry considers “the evidence the State would likely offer” if the case were to go to trial. *See id.*; *see also Lussier v. State*, 821 N.W.2d 581, 588-89 (Minn. 2012). “The complaint may provide a factual basis for a defendant’s plea,” and appellate courts “are permitted to examine the complaint to assess whether a defendant’s plea was accurate.” *Sanchez v. State*, 868 N.W.2d 282, 289 (Minn. App. 2015); *see also Trott*, 338 N.W.2d at 252. In addition, a defendant’s guilty plea may be accepted based not only on the specific facts admitted at a plea hearing but also the facts that may be inferred from the admitted facts. *See Nelson*, 880 N.W.2d at 861. “[A] defendant may not withdraw his plea simply because the court failed to elicit proper responses [through questioning of the defendant] if the record contains sufficient evidence to support the conviction.” *Raleigh*, 778 N.W.2d at 94.

In this case, the post-conviction court concluded that the record of the plea hearing, which consisted of the complaint and the plea petition, “provided a sufficient and strong factual basis to support [Olsen’s] plea.” The post-conviction court reasoned that Olsen “affirmatively agree[d] on the record that there was a substantial likelihood that he would

be found guilty at trial.” Olsen contends that a proper factual basis was lacking because the district court merely “conditionally” determined that there was a proper factual basis and accepted the plea in anticipation of the submission of discovery materials that the state never submitted. The post-conviction court rejected this argument. The post-conviction court identified the issue as “whether the record, at the time of plea, contained a sufficient factual basis to support” the plea. The post-conviction court acknowledged that Olsen’s plea hearing was “imperfect” in that neither the district court nor counsel specifically outlined the anticipated witness testimony, but the post-conviction court stated that “those imperfections did not render his plea invalid.” The post-conviction court stated that, during the plea hearing, it relied on both the complaint and the plea petition, which outlined the anticipated testimony of Officer Quanrud and Officer Trevino, in concluding that there was sufficient evidence to support the conviction. The post-conviction court concluded that the complaint and petition were sufficient to provide a strong factual basis for Olsen’s guilty plea at the time of the plea hearing.

The record supports the post-conviction court’s analysis. The complaint describes the assault in detail, including physical acts committed by Olsen that resulted in injury to Officer Quanrud, as well as Olsen’s expressed motivation for his actions, which allows an inference of Olsen’s intent. Olsen’s plea petition states that police officers “would testify that I physically assaulted Officer Quanrud, who is a licensed peace officer, while officer Quanrud was executing a duty imposed by law.” These parts of the record are sufficient to establish that Olsen “intended to do the physical act,” even if he did not “mean[] to violate the law or cause a particular result.” *See Fleck*, 810 N.W.2d at 308-09. In this way,

this case is similar to *Williams v. State*, 760 N.W.2d 8, 13-14 (Minn. App. 2009), in which this court reasoned that the complaint and the defendant's admissions were sufficient to establish a strong factual basis for a *Norgaard* guilty plea. *See id.* at 13-14.

Thus, the post-conviction court did not err by concluding that Olsen's guilty plea was supported by a proper factual basis with respect to the element of intent.

B.

Olsen also contends that he did not acknowledge that there was a substantial likelihood that a jury would find him guilty. The post-conviction court determined that Olsen agreed, both in writing in his plea petition and orally during the plea hearing, that there was a substantial likelihood that a jury would find him guilty of fourth-degree assault. The post-conviction court also determined that Olsen's guilty plea is not invalid on the ground that he did not specifically acknowledge that a jury would conclude that the state had proved the requisite intent.

The record and the caselaw support the post-conviction court's analysis. In the plea petition, Olsen acknowledged that he had reviewed the state's evidence and agreed that he was "pleading guilty on an *Alford* basis . . . because the prosecutor possesses evidence against me that, if believed by a jury, would make it substantially likely that the jury would return a verdict of guilty beyond a reasonable doubt of the elements of this crime." At the plea hearing, Olsen agreed that he had received the complaint and discovery materials and that, based on his review, he believed that there was a substantial likelihood that he would be found guilty of fourth-degree assault. Because a criminal defendant is allowed to maintain his or her innocence while entering an *Alford* plea, a defendant need only

acknowledge the sufficiency of the state's evidence to support a conviction; he or she need not admit to each element of the underlying crime. *Ecker*, 524 N.W.2d at 717; *State v. Klug*, 839 N.W.2d 723, 728 (Minn. App. 2013). Thus, the post-conviction court did not err by concluding that Olsen made a sufficient acknowledgment of the likelihood of conviction.

C.

We note that Olsen filed a *pro se* supplemental brief in which he makes several additional arguments for reversal. None of the issues raised in the supplemental *pro se* brief were raised in Olsen's post-conviction petition or memorandum. In his *pro se* motion to withdraw his guilty plea, Olsen alleged ineffective assistance of counsel, but he later voluntarily withdrew the motion and opted to proceed solely on the post-conviction petition filed by his attorney. Because the arguments in the *pro se* supplemental brief were not presented to the post-conviction court, they have been forfeited. See *Powers v. State*, 731 N.W.2d 499, 502 (Minn. 2007); *Schleicher v. State*, 718 N.W.2d 440, 445 (Minn. 2006); *Azure v. State*, 700 N.W.2d 443, 446-47 (Minn. 2005).

In sum, the post-conviction court did not err by denying Olsen's petition for post-conviction relief.

Affirmed.