

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1355**

Michael Dale Miller, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 17, 2023
Reversed and remanded
Slieter, Judge**

Otter Tail County District Court
File No. 56-CR-19-3013

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michelle Eldien, Otter Tail County Attorney, Kathleen Schur, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant Michael Miller argues that the postconviction court erred by denying his petition to withdraw his *Alford* plea to first-degree burglary with a dangerous weapon

because his plea was not accurate. Because Miller’s plea was not accurate, we reverse and remand.

FACTS

Respondent State of Minnesota charged Miller with (1) first-degree burglary with a dangerous weapon, (2) theft of a firearm, (3) unlawful possession of a firearm, and (4) theft of a motor vehicle, all in relation to an alleged burglary on September 10, 2019.

On February 5, 2021, Miller entered an *Alford* plea¹ on count one, first-degree burglary with a dangerous weapon. The state agreed to dismiss the remaining counts and recommended a downward dispositional departure.

The district court accepted Miller’s plea, finding “sufficient facts that if presented to a jury that there’s a substantial likelihood that a jury of 12 persons would find . . . Mr. Miller guilty by proof beyond a reasonable doubt.” The district court imposed a 93-month sentence and stayed execution for 20 years of supervised probation, a downward dispositional departure. Following Miller’s violation of the probationary terms, the district court executed his sentence in May 2022.

Miller petitioned for postconviction relief, seeking to withdraw his *Alford* plea claiming that, because it was not supported by a strong factual basis, his plea was not accurate. The postconviction court found Miller’s “plea to be barely sufficient to meet the

¹ An *Alford* plea allows a defendant to plead guilty while maintaining innocence of the charged offense. *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (discussing *North Carolina v. Alford*, 400 U.S. 25 (1970)).

strong factual basis standard” for the possession of a dangerous weapon element and denied Miller’s petition. Miller appeals.

DECISION

“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). But “a court must allow withdrawal of a guilty plea if withdrawal is necessary to correct a ‘manifest injustice.’” *Id.* (quoting Minn. R. Crim. P. 15.05, subd. 1). “A manifest injustice exists if a guilty plea is not valid.” *Id.* at 94. A constitutionally valid “guilty plea must be accurate, voluntary, and intelligent.” *Id.* The validity of a plea is a question of law reviewed *de novo*. *Id.*

An accurate plea is “established on a proper factual basis.” *Id.* The accuracy requirement of a valid guilty plea protects 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.” *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007) (quoting *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983)). In the *Alford*-plea context, accuracy is particularly important “because of the inherent conflict in pleading guilty while maintaining innocence.” *Id.* Thus, the factual-basis inquiry is essential for a valid *Alford* plea. *Id.* Additionally, the defendant must acknowledge “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 of the offense to which he is pleading guilty.” *Id.*

Thus, an *Alford* plea must consist of a “strong factual basis and the defendant’s agreement that the evidence is sufficient to support his conviction.” *Id.* Together these two components “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.*

A person who “enters a building without consent and commits a crime while in the building” commits first-degree burglary if “the burglar possesses, when entering or at any time while in the building, . . . a dangerous weapon.” Minn. Stat. § 609.582, subd. 1(b) (2018).

Miller contends that his plea was not accurate because the state failed to establish a strong factual basis that he possessed a dangerous weapon while entering or inside T.K.’s residence. We agree.

During the plea hearing, the prosecutor asked Miller the following to establish a factual basis for the plea:

Q: Have you reviewed all the evidence that the State would offer against you in this case?

A: I have, yes.

Q: Do you understand that the State would present evidence, both physical evidence and evidence through testimony, that on or around September 10th of 2019 there was a report of a burglary in Otter Tail County, Minnesota?

A: Yes.

Q: Do you understand that? Okay. And do you understand that the State would present evidence through testimony of a co-defendant, [A.T.], that she learned that you had stolen some firearms from an individual with the initials T.K.?

A: Yes.

Q: And that she also knew that where you had stashed them and that police were able to locate the firearms where she had

indicated they were stashed. You understand that would be presented at trial?

A: Yep.

Q: And you also understand that the State would present evidence that some other items that were taken in the burglary were found in a vehicle that you were the passenger in?

A: Yes.

Q: Do you believe -- the State would also present evidence that you had no permission to be in T.K.'s residence or to take possession of any of his belongings. You understand that?

A: Yes.

Q: Do you believe that if this evidence were presented at trial there would be a substantial likelihood that a jury of 12 would find you guilty beyond a reasonable doubt of the first-degree burglary while in possession of a firearm?

A: I do, yes.

The state did not supplement this factual basis with additional testimony or other evidence.

In denying Miller's petition for postconviction relief, the district court found Miller had provided a strong factual basis by reading three of his on-the-record admissions in tandem. First, Miller agreed that the state would present evidence of a reported burglary on or about September 10, 2019. Second, Miller conceded that the state would "present evidence that he had no permission to be in T.K.'s residence or to take possession of any of his belongs." And third, Miller acknowledged that codefendant A.T. would testify that Miller had stolen firearms from T.K.

Reading these admissions together might create a strong factual basis for two of the three dismissed counts, theft of a firearm and possession of firearms, but not burglary in

the first degree with a dangerous weapon. Instead, Miller's admissions support only a strong factual basis for one element of burglary in the first degree, that he did not have permission to enter T.K.'s residence. And no evidence was presented, either via a summary of evidence presented to Miller or by reference to any documents received into evidence (as noted, the state presented no other evidence), that Miller entered the residence. And, it naturally follows, there is no evidence that Miller "possesse[d], when entering or at any time while in the [residence], . . . a dangerous weapon." Minn. Stat. § 609.582, subd. 1(b).

Like in *Theis*, no facts alleged in the complaint "satisfy the protective function of the accuracy requirement within the context of an *Alford* plea." *Theis*, 742 N.W.2d at 650. The complaint states that codefendant A.T. was interviewed by law enforcement and reported that Miller "[c]ame here and stole the vehicle from [T.K.]. Tried to steal some guns. Only got them halfway out a window and um, he was staying here in this room number with me up until he did that; and then he just left." A.T. did not indicate that Miller was in T.K.'s residence nor that he possessed a dangerous weapon "when entering or at any time while in the [residence]." Minn. Stat. § 609.582, subd. 1(b).

Miller's plea is invalid because it is inaccurate. It is inaccurate because the state failed to provide a strong factual basis establishing that Miller possessed a dangerous weapon while entering or inside T.K.'s residence. Miller must be allowed to withdraw his *Alford* plea because the factual basis presented did not ensure that Miller did not "plead[] guilty to a more serious offense than he could be convicted of were he to insist on his right to trial." *Theis*, 742 N.W.2d at 649 (quotation omitted).

Reversed and remanded.