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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0695**

Gideon Charles Arrington, II, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 12, 2018
Affirmed
Smith, Tracy M., Judge**

Anoka County District Court
File No. 02-CR-13-8457

Gideon Charles Arrington II, Rush City, Minnesota (pro se appellant)

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

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and
Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Gideon Charles Arrington II challenges the district court's denial of his petition for postconviction relief following his *Alford* plea¹ to the charge of first-degree criminal sexual conduct. Arrington contends that the postconviction court should have permitted him to withdraw his plea because his counsel was ineffective and withdrawal was necessary to correct a manifest injustice. We affirm.

FACTS

In December 2013, Arrington was charged with three counts of first-degree criminal sexual conduct and one count of kidnapping. About two months before his trial, Arrington asked to represent himself and waived his right to counsel. Arrington's previous public defender was discharged, and advisory counsel was assigned. Advisory counsel prepared for trial in case Arrington changed his mind about self-representation.

On the day his trial was scheduled to begin, Arrington requested counsel. The district court appointed Arrington's advisory counsel to represent him, and counsel stated on the record that she was prepared to proceed and understood the theory of the case. Although the district court offered to delay the trial for a few days, and Arrington's attorney advised postponing to allow time to look into the DNA evidence, Arrington elected to proceed with the trial as scheduled.

¹ An *Alford* plea allows a defendant to plead guilty while maintaining innocence of the charged offense because there is sufficient evidence for a jury to find him guilty at trial. *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977) (discussing *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970)).

Four days later, after jury selection but before opening statements, Arrington entered an *Alford* plea to one count of first-degree criminal sexual conduct and waived his right to a *Blakely* jury trial² on the state's request for an upward sentencing departure in exchange for a maximum executed sentence of 324 months and dismissal of the remaining counts.

After the state's offer of proof at the plea hearing, Arrington expressed concerns about inconsistencies in the anticipated witness testimony. Based on these reservations, the district court had Arrington meet privately with his attorney to confirm that he wished to proceed with his plea. Upon returning to court, Arrington reiterated multiple times that he wished to proceed with the plea and that the state had shown sufficient evidence to convict him. Before accepting the plea, the district court had Arrington confirm for a final time that he was satisfied that his attorney had been "up to speed" and that he was not being "forced" into a plea. The district court accepted the plea and, at sentencing, imposed a 324-month sentence based upon four aggravating factors.

Arrington appealed, challenging his sentence as unduly exaggerating the criminality of his conduct and seeking to withdraw his plea due to ineffective assistance of counsel because, he asserted, counsel pressured him to enter the plea. *State v. Arrington*, No. A14-1945, 2016 WL 102476, at *1, *3 (Minn. App. Jan. 11, 2016), *review denied* (Minn. Mar. 29, 2016). We affirmed Arrington's sentence, but, because the record was insufficient to determine whether the plea was invalid based on ineffective assistance of

² *Blakely v. Washington*, 542 U.S. 296, 301-04, 124 S. Ct. 2531, 2536-37 (2004), holds that a defendant is entitled to a jury determination on whether there are aggravating factors warranting an upward durational sentencing departure. *State v. Dettman*, 719 N.W.2d 644, 647 (Minn. 2006).

counsel, we preserved that issue for postconviction proceedings. *Id.* at *2-3. Following that decision, Arrington filed a petition for postconviction relief seeking to withdraw his plea due to ineffective assistance of counsel and manifest injustice. Arrington based his claims on alleged statements that his attorney had made to him at their out-of-court discussions surrounding his plea deal.

An evidentiary hearing was held in November 2016. Arrington testified that his attorney told him that he would lose at trial because it was an “election year,” that the system was “rigged,” and that he had “no chance at winning.” He also claimed his attorney told him that the judge would not give him an upward departure and that he was generally unaware that he could receive a 324-month sentence under the plea agreement. The attorney testified that she had never made any of the alleged statements regarding Arrington’s chance of success at trial or stated that he would not receive an upward dispositional departure. She testified that, in fact, she had told Arrington just the opposite—that he would get an upward departure—although she could not predict exactly what the departure would be.

The postconviction court found Arrington’s testimony not credible. The court found that Arrington “understood the plea, understood he was giving up the right to challenge the [s]tate’s evidence and was agreeing that there was a substantial likelihood a jury would convict him, even though he questioned perceived inconsistencies in the statements of one witness.” The court also found that Arrington’s attorney was “clearly proficient in the facts” and “prepared to try the case.” Accordingly, the postconviction court concluded that there was no basis for Arrington to withdraw his plea and denied his petition for relief.

Arrington appeals.

DECISION

A person convicted of a crime may petition the district court for relief from his conviction or sentence based on a claim that “the conviction obtained or the sentence . . . violated the person’s rights under the Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1(1) (2016). We review the denial of postconviction relief for an abuse of discretion. *Gulbertson v. State*, 843 N.W.2d 240, 244 (Minn. 2014). “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.” *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted). In reviewing a postconviction court’s decision to deny relief, issues of law are reviewed de novo and issues of fact are reviewed for “whether the postconviction court’s findings are supported by sufficient evidence.” *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). “A petitioner seeking postconviction relief has the burden of establishing, by a fair preponderance of the evidence, facts that would warrant relief.” *Ferguson v. State*, 645 N.W.2d 437, 442 (Minn. 2002).

I. Arrington’s plea was not invalid based on ineffective assistance of counsel.

As the first basis for withdrawing his plea, Arrington argues that he received ineffective assistance of counsel. To prevail on an ineffective-assistance-of-counsel claim, a defendant must show “(1) that his counsel’s representation ‘fell below an objective standard of reasonableness’; and (2) ‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Nissalke v. State*, 861 N.W.2d 88, 94 (Minn. 2015) (quoting *Strickland v. Washington*, 466 U.S. 668,

688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)). “The objective standard of reasonableness is defined as representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances.” *State v. Vang*, 847 N.W.2d 248, 266-67 (Minn. 2014) (quotations omitted). Trial counsel’s performance is presumed reasonable, *Schneider v. State*, 725 N.W.2d 516, 521 (Minn. 2007), and appellant bears the burden of proving both prongs of the *Strickland* test, *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987).

We review the denial of postconviction relief premised upon a claim of ineffective assistance of counsel de novo because such a claim involves a mixed question of law and fact. *See Hawes v. State*, 826 N.W.2d 775, 782 (Minn. 2013) (citing *Strickland*, 466 U.S. at 698, 104 S. Ct. at 2070). Here, the district court found that Arrington’s testimony was “not credible” and concluded that his counsel was “not deficient and was certainly within the range of competence demanded of attorneys in criminal cases.”

Arrington’s ineffective-assistance-of-counsel claim, as it was argued at his postconviction hearing, was premised upon his attorney’s alleged representations to Arrington during their private conference in the middle of his plea hearing. The claim thus turns on the district court’s determinations about the credibility of the two competing witnesses. “Because the postconviction court is in the best position to evaluate witness credibility, we review its credibility determinations under the clearly erroneous standard.” *Bobo v. State*, 860 N.W.2d 681, 684 (Minn. 2015) (citations and quotation omitted). Under this standard, “[w]e will not disturb the postconviction court’s findings of fact if reasonable evidence supports those findings.” *Id.* at 685 (citations and quotation omitted).

Reasonable evidence supports the postconviction court's decision to credit the attorney's testimony over Arrington's. Arrington's attorney had been a public defender for over 10 years. She was ordered to prepare to try the case while serving as advisory counsel over a month before trial and had created her own trial notebook. On the day of trial, she confirmed that she was prepared and ready to proceed with a theory of the case. Reiterating her preparation at the postconviction evidentiary hearing, she testified that, although she would have liked additional time to look into the DNA evidence, Arrington wanted to proceed with the trial as scheduled and she was prepared to accommodate this request. Based on the record, Arrington's attorney was clearly prepared to try the case on schedule. She thus had no apparent motive to force a plea deal. Moreover, Arrington's attorney testified unequivocally that she never told Arrington the things he claimed.

In addition, as the postconviction court found, Arrington's allegations at the postconviction hearing "clearly contradict[ed]" his earlier sworn testimony. At the plea hearing, Arrington testified that he was "clearheaded" and making a "knowing, voluntary and intelligent decision." He specifically agreed he was not "being forced into this plea because things went too fast" and confirmed that no one had made "promises or threats" to him regarding the plea agreement. The plea petition, which Arrington signed and acknowledged at the plea hearing, also stated that no one, including his attorney, had threatened him or made any promises in order to obtain the plea.

On this record, the postconviction court had ample basis to believe the attorney, and not Arrington, whose unsupported assertions of coercive statements contradicted his own sworn testimony at the plea hearing. The postconviction court thus did not clearly err in

finding that Arrington’s counsel did not pressure him into pleading guilty, nor did the court err in concluding that Arrington’s plea was not invalid based on ineffective assistance of counsel.

II. Arrington’s plea was accurate, voluntary, and intelligent.

As a second basis for postconviction relief, Arrington argues that his plea was not accurate, voluntary, or intelligent.³ A court must allow a defendant to withdraw a guilty plea if it is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a guilty plea is not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997).

Accurate

Arrington argues that he did not believe there was a substantial likelihood that the state’s evidence, if introduced at trial, would lead a jury to convict him. For a guilty plea to be accurate, a proper factual basis must be established. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). In a typical guilty-plea case, a factual basis is established by the defendant testifying to and admitting the facts of the crime. *State v. Johnson*, 867 N.W.2d 210, 215 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015). In the case of an *Alford*

³ The bases for Arrington’s challenge to his guilty plea appear to exceed the scope of issues that this court preserved for postconviction review on Arrington’s direct appeal, *see Arrington*, 2016 WL 102476, at *3 (preserving “the issue of whether Arrington’s guilty plea is invalid based on ineffective assistance of counsel”), and may be procedurally barred under *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976) (holding that, once a petitioner has had a direct appeal of a conviction, all matters that were or should have been raised are barred from further postconviction review). However, because the state did not make that objection and the postconviction court decided the issues on the merits, we, too, will address the issues.

plea, however, the defendant maintains his or her innocence; in that case an adequate factual basis exists if the defendant “agrees that evidence the [s]tate is likely to offer at trial is sufficient to convict.” *Id.* Because of the inherent conflict between pleading guilty and maintaining innocence, caselaw requires a “strong factual basis for an *Alford* plea.” *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007).

Here, Arrington pleaded guilty to first-degree criminal sexual assault. *See* Minn. Stat. § 609.342, subd. 1(c) (2012) (stating that a person is guilty of first-degree sexual conduct crime if he engages in sexual penetration with another person, causing reasonable fear of great bodily harm). The state made an offer of proof spanning nearly 15 pages of transcript, including anticipated testimony of an eyewitness who saw the abduction, a detailed recounting of the sexual assault by the victim, and DNA evidence matching Arrington’s profile. After hearing the state’s case on the record, Arrington agreed there was sufficient evidence to establish a substantial likelihood that he would be convicted by the jury at trial. Later, after meeting privately with his attorney during the middle of the plea hearing, Arrington confirmed that he wanted to proceed with the plea, specifically acknowledging that he would no longer be able to challenge inconsistencies in witnesses’ statements. These facts are sufficient to establish a strong factual basis for the plea and thus satisfy the accuracy requirement.

Voluntary

At his postconviction hearing, Arrington argued that his attorney coerced him into pleading guilty by telling him that he would not receive a fair trial and had no chance of winning and by making false promises about the sentence he would receive. Courts

determine whether a plea is voluntary by considering all relevant circumstances and ensuring the defendant did not plead guilty due to improper pressure or coercion. *State v. Raleigh*, 778 N.W.2d 90, 96 (Minn. 2010). As discussed above, the postconviction court properly concluded, based on findings supported by the evidence, that Arrington’s counsel did not pressure him to plead guilty. Arrington’s claim that his plea was involuntary is without merit.

Intelligent

Finally, at the postconviction hearing, Arrington argued that his plea was unintelligent because he did not know he could receive a 324-month sentence under the plea deal and that he was misled about the length of the sentence he would receive. For a plea to be intelligent, the defendant must understand the charges against him, the rights he is waiving, and the consequences of the plea. *Id.* The postconviction court found not credible Arrington’s claim that “he did not see ‘324 months’ on the Plea Petition” and noted that “[t]he transcript from the plea hearing is full of references to the potential of a 324 month sentence.”

As the district court observed, the record includes a number of instances in which Arrington had his plea agreement explained in detail and confirmed that he understood it. At the plea hearing, Arrington was reminded of the possible 324-month sentence at least three different times. First, the state explained the plea deal, specifically stating the “maximum sentence the defendant could receive under this agreement would be 324 months in prison. The defense is free to argue for anything below that.” Later, Arrington’s attorney reviewed the substance of the plea agreement, specifically reminding Arrington

that “[the agreement is] limited in the sentence that [the judge] could give you of up to 324 months.” Finally, prior to accepting his plea, the district court summarized the substance of Arrington’s proposed plea and confirmed that he understood the rights he was waiving and his potential sentence:

THE COURT: You understand that part of this plea agreement is you’re waiving your right to the trial and you agree that the State can submit to me the evidence that they have and I’ll make the determination whether those aggravating factors exist?

[ARRINGTON]: Yes, ma’am.

THE COURT: And in making that determination, that’s how I’ll decide if we go up to the max 324 months.

In addition, the signed plea petition, which Arrington acknowledged reviewing with his attorney and understanding fully, outlines his plea deal, including the maximum sentence.

Overall, these facts amply support the postconviction court’s findings that Arrington understood the charges against him, the rights he was waiving, and the consequences of his guilty plea, notably that he was facing up to 324 months in prison. Because the postconviction court properly determined that Arrington’s plea was accurate, voluntary, and intelligent, the court did not err in denying Arrington’s request to withdraw his guilty plea.

III. Arrington’s remaining claims fail.

Arrington asserts, for the first time, claims involving prosecutorial misconduct and false statements by witnesses in the case. We ordinarily will not consider matters raised for the first time on appeal. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Pro se litigants generally are held to the same standards as attorneys. *Liptak v. State ex rel. City*

of New Hope, 340 N.W.2d 366, 367 (Minn. App. 1983). Moreover, these claims are procedurally barred since Arrington should have known of these issues at the time of his direct appeal, yet he failed to raise them. *See Leake*, 737 N.W.2d at 535. As these claims are not properly before us, we decline to address them further.

Affirmed.