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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1586**

Rufus Cornelius Loyd, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 2, 2018
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 27-CR-13-12167

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

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this postconviction appeal, appellant argues that the district court abused its discretion by denying his postconviction petition to withdraw his guilty plea. We affirm.

FACTS

On April 13, 2013, Brooklyn Park police officers found appellant Rufus Cornelius Loyd apparently asleep next to a car with the key in the ignition and its engine running. Loyd was arrested on suspicion of driving while impaired (DWI). Loyd agreed to take a breath test, which showed an alcohol concentration of 0.03. Because this low reading was inconsistent with the extent of impairment they observed, officers asked Loyd to take a blood test, and he refused. Loyd was charged with felony test refusal based on his history of three prior alcohol-related convictions.

At trial, the jury failed to reach a verdict on the test-refusal charge. After the trial, Loyd's attorney withdrew because Loyd failed to pay his attorney fees, and a new attorney, Richard LeRoy, represented Loyd.

In an off-the-record discussion at a hearing that was originally scheduled to consider a new trial date, LeRoy suggested that, in light of the hung jury, the district court should (1) permit Loyd to enter a guilty plea to an amended DWI charge of being in control of a motor vehicle while under the influence of alcohol and (2) stay imposition of sentence. When the prosecutor raised no objection, the district court agreed to do so. But, at sentencing, the prosecutor objected to the stay of imposition of sentence because Loyd was subject to a mandatory minimum sentence of 180 days of incarceration. The district court nevertheless stayed imposition of sentence. The state filed a sentencing appeal in this court; thereafter, the state filed a motion in the district court, seeking to vacate Loyd's conviction under *State v. Anyanwu*, 681 N.W.2d 411, 414-15 (Minn. App. 2004). The state then dismissed the appeal and proceeded with its motion in the district court.

At the hearing on the state's motion, Loyd withdrew his plea to DWI; LeRoy advised him to do so after "reviewing the State's potential appellate motion and District Court[] motion." When the judge asked Loyd if he understood what was going on, Loyd said, "Somewhat, yeah." Loyd then conferred with LeRoy, and the district court asked Loyd, "So you're going to withdraw your plea and then start all over; you understand that?" Loyd replied, "Yes." The district court scheduled the matter for a pretrial hearing.

At the pretrial hearing on December 9, 2014, Loyd entered a new guilty plea to DWI, with the understanding that he would receive a stay of execution of a 48-month sentence and remain on probation for four years and five months, in recognition of the fact that he had already been on probation. The sentencing agreement also included a 180-day jail sentence, with 104 days stayed and credit for the 76 days that Loyd had already served. Loyd acknowledged that he understood the terms of the agreement.

During the hearing, LeRoy explained to the court that, although Loyd had pleaded guilty and apparently agreed to the sentence, Loyd was dissatisfied, because "he went through a full trial where it was a hung jury. He had several months after that. We had a contentious plea the first time." He felt "like the system has kind of trampled upon him." The court acknowledged Loyd's frustration, and Loyd agreed to proceed to sentencing. The court sentenced Loyd in accordance with the sentencing agreement.

On November 21, 2016, Loyd filed a pro se postconviction petition, alleging that LeRoy had forced him to agree to the withdrawal of his initial guilty plea and to the entry of a new guilty plea and sentence. Loyd asked to withdraw his guilty plea and proceed to trial on the original test-refusal charge.

At the postconviction evidentiary hearing, Loyd's probation officer testified that Loyd was "frustrated and angry" on the day of the second guilty plea. The probation officer also testified that he had spent "a couple of office visits" before the guilty plea explaining to Loyd why he was being called back to court. The probation officer stated that Loyd has a "process gap" that makes him slower to assimilate information, but the probation officer spent a lot of time explaining. He described Loyd as "cognitively . . . very functional."

Loyd testified that he did not understand the various proceedings after the hung jury. He thought that LeRoy told him that he would go to jail if he refused to agree to the second guilty plea. Loyd wanted to return to his original deal of a stay of imposition of sentence. Loyd said that he did not understand what was taking place during his second guilty plea and that LeRoy kept elbowing him to remain quiet.

LeRoy testified that he was an experienced attorney who had handled approximately 15,000 criminal cases. LeRoy did not remember individual details of Loyd's case, but he described his usual routine with new clients. This included explaining the charges and the possible sentences, the trial process, and the plea process. If a defendant was offered a plea agreement, LeRoy would go over the details of the agreement and would fill out a plea petition, explaining every paragraph and repeating explanations until he believed that each client understood.

LeRoy said he remembered the first guilty plea, because he wanted to take advantage of the hung jury. He suggested a stay of imposition of sentence, and was "shocked" when the district court agreed to it and the prosecuting attorney indicated that he would not appeal the stay of imposition. LeRoy stated that he explained the agreement

to Loyd, who indicated that he understood. LeRoy knew that the sentence did not conform to the mandatory minimum incarceration period required by the statute.

After the state appealed and then moved to vacate the conviction, LeRoy explained to Loyd that the sentence was incorrect and that he should agree to withdraw his plea, enter a new guilty plea, and receive a sentence that reflected the mandatory minimum. LeRoy further explained that he believed the state would succeed on a sentencing appeal and that if Loyd agreed to withdraw his guilty plea, it would “mak[e] the matter continue . . . moving forward . . . [r]ather than delaying it for the 90 days of appeal.” Loyd initially told LeRoy that he wanted to go to trial but then agreed to enter a new guilty plea because he was almost done with his probationary period. LeRoy believed that Loyd understood. LeRoy described Loyd as an active and engaged client who was able to raise concerns. LeRoy stated that he went over the plea petition with Loyd and that he had never in 30 years of practice threatened a client with jail or elbowed a client into silence.

The district court denied Loyd’s postconviction petition, concluding that Loyd had not demonstrated that LeRoy’s conduct fell below an objective standard of reasonableness. Loyd appeals from this order.

D E C I S I O N

We review the postconviction court’s denial of a petition for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). In doing so, we review legal issues de novo and factual findings for clear error. *Id.* “A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Id.*

(quotation omitted). The petitioner has the burden of producing evidence that entitles him to relief. *Carridine v. State*, 867 N.W.2d 488, 492 (Minn. 2015).

Loyd argues that he should be permitted to withdraw his second guilty plea because he was deprived of effective assistance of counsel. A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). But a court must permit a defendant to withdraw a guilty plea in order to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid. To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *Raleigh*, 778 N.W.2d at 94 (citation omitted). A plea is not intelligent unless a defendant understands the charges, the rights he is waiving, and the consequences of entering the plea. *Id.* at 96. A plea is not voluntary if a defendant succumbs to improper pressure or coercion, considering all relevant circumstances. *Id.* Loyd argues that his second guilty plea was not intelligent because he did not receive effective assistance of counsel and was not voluntary because his attorney improperly pressured him to enter the plea.

To establish a claim of ineffective assistance of counsel, a defendant must prove “(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)). An appellate court need not address both prongs of the *Strickland* test if one is dispositive. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).

“In evaluating claims of ineffective assistance of counsel, there is a strong presumption that counsel’s performance was reasonable.” *Id.* Generally, an appellate court does not review matters of trial strategy. *Id.*

Loyd asserts four bases for his belief that he received ineffective assistance of counsel: (1) LeRoy advised him to enter the first guilty plea, despite knowing that the district court had agreed to impose an unauthorized sentence; (2) LeRoy advised him to withdraw his guilty plea and enter into a new, less beneficial, plea agreement in response to the state’s motion to vacate, despite the fact that the state’s motion was improper; (3) LeRoy pressured Loyd into entering the second guilty plea by threatening him with jail time; and (4) LeRoy failed to adequately explain to Loyd what was happening during the second guilty plea, including the charge and the consequences of pleading guilty.

LeRoy advised Loyd to plead guilty the first time despite knowing that a stay of imposition of sentence was not authorized. The decision to enter a plea with a guarantee of an unauthorized sentence is similar to trial strategy—because the prosecutor originally indicated that he would not appeal the sentence, the outcome would have been favorable for Loyd. *See id.* (stating that an appellate court generally does not review matters of trial strategy). And even if we assume that advising Loyd to plead guilty and accept an unauthorized sentence fell below an objective standard of reasonableness, later events undermine Loyd’s ineffective-assistance-of-counsel claim.

The state filed a sentencing appeal with this court, challenging the unauthorized sentence; it then dismissed the appeal and, instead, pursued a motion to vacate the

conviction in the district court.¹ Instead of challenging the state's motion, LeRoy advised Loyd to withdraw his guilty plea, and, at the hearing on the state's motion, the district court permitted Loyd to withdraw his plea, which, in effect, resolved the state's motion.

When considering the state's motion to vacate, it was not reasonable for LeRoy to expect that the unauthorized sentence that Loyd initially received would not eventually be corrected. See Minn. R. Crim. P. 27.03, subd. 9 (stating that district court "may at any time correct a sentence not authorized by law"). Thus, LeRoy's advice that Loyd withdraw his guilty plea did not fall below an objective standard of reasonableness even if we assume that the state's motion to vacate the conviction was improper. Challenging the state's motion would not have prevented the sentence from being corrected, and withdrawing the plea put Loyd in the same position that he was in before he pleaded guilty, which means that there is not a reasonable probability that LeRoy's earlier advice to plead guilty had any effect on Loyd.

After Loyd withdrew his first guilty plea, the district court scheduled a pretrial hearing. At the pretrial-hearing, Loyd chose to enter a new guilty plea after being advised of, and waiving, his rights. Loyd claims that LeRoy pressured him into agreeing to the second guilty plea by threatening him with jail and pressuring him to remain silent. During the postconviction evidentiary hearing, Loyd testified to this effect, and LeRoy denied it. This is essentially a credibility determination, which is the province of the postconviction

¹ The state relied on *Anyanwu*, 681 N.W.2d at 414-15, in which this court held that a guilty plea is per se invalid when the district court improperly injects itself into plea negotiations. Although *Anyanwu* was overruled by *Wheeler v. State*, 909 N.W.2d 558, 568 (Minn. 2018), at the time of the hearing, the state believed *Anyanwu* to be valid.

court. See *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012) (“An evidentiary hearing provides the postconviction court the means of evaluating the credibility of a witness.”).

Finally, Loyd claims that LeRoy failed to explain the charge and the consequences of entering a second guilty plea. The district court found that LeRoy adequately explained the second plea to Loyd, and that Loyd “made a knowing, intelligent, and voluntary waiver and provided a sufficient factual basis for a finding of guilty.” The record supports this finding. During his testimony at the postconviction evidentiary hearing, Loyd stated that he did not want to go to trial but wanted his original deal of a stay of imposition.² That deal, however, included an unauthorized sentence and, therefore, was not available.

Loyd has failed to sustain his burden of proving that he is entitled to postconviction relief. See *Carridine*, 867 N.W.2d at 492. Loyd had the burden of showing both that LeRoy’s performance fell below an objective standard of reasonableness and that there was a reasonable probability that the outcome would have been different but for LeRoy’s errors. The district court did not abuse its discretion in concluding that counsel’s performance did not fall below an objective standard of reasonableness.

Affirmed.

² This is sufficient to distinguish this matter from *Lee v. United States*, 137 S. Ct. 1958, 1963 (2017), in which the defendant consistently insisted at every stage of the proceedings that he wanted to go to trial if there was any chance he would be deported after pleading guilty.