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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-0835**

Felix Kasper Piah, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed February 3, 2020  
Affirmed in part, reversed in part, and remanded  
Hooten, Judge**

Hennepin County District Court  
File No. 27-CR-16-2187

Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and Bryan, Judge.

**UNPUBLISHED OPINION**

**HOOTEN, Judge**

In this appeal from the denial of a petition for postconviction relief, appellant argues that he is entitled to withdraw his guilty plea for ineffective assistance of counsel because

his attorney: (1) failed to inform him of the immigration consequences of his guilty plea, and (2) argued against his request to withdraw his plea. Additionally, appellant claims that the postconviction court erred when it determined that the district court applied the correct standard when assessing his pre-sentencing plea withdrawal request. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

## **FACTS**

In December 2014, appellant Felix Kasper Piah entered the United States from his home country of the Republic of Liberia on a temporary visa. Although his temporary visa expired in June 2015, Piah remained in the United States and moved to Minnesota to live with his father. Piah is not a legal resident of the United States.

On the night of January 21, 2016, police officers were dispatched to Northeast Minneapolis following a report of a domestic assault with a weapon. Upon reaching the scene, officers were flagged down by Piah's father, who was standing barefoot outside, and who informed the police that after he chastised Piah, Piah charged at him with a 16-inch kitchen knife held above his head. The father successfully wrested the knife away from Piah, but obtained a deep laceration on his left palm and a cut on his right finger from the struggle.

Later that same evening, police made contact with Piah, who acknowledged the struggle and claimed that his father had possibly cut himself when he tried to grab the knife. Piah was arrested and the state charged him with second-degree assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1 (2014).

On November 9, 2016, Piah pleaded guilty to one count of misdemeanor domestic assault with intent to cause fear under Minn. Stat. § 609.2242, subd. 1(1) (2014). The plea petition signed by Piah included the provision, “My attorney has told me and I understand that if I am not a citizen of the United States this plea of guilty may result in deportation, exclusion from admission to the United States of America or denial of citizenship.”

At his plea hearing, the district court and Piah’s counsel confirmed with Piah that he was making a voluntary and intelligent plea, but the district court did not address any possibility of immigration consequences based on his plea. Piah’s attorney informed him that “the negotiation was the best we could do to protect him in immigration proceedings . . . but that he could still be deported because he had no legal status,” and that the plea “would make [applying for asylum] at least possible.” Piah later reported that his attorney advised him that he would be ineligible for asylum if he went to trial and was convicted of second-degree assault.

At his sentencing hearing, without first consulting with his attorney, Piah requested to withdraw his guilty plea, claiming that he was unsatisfied with the process, was confused when he agreed to the plea, and was not a criminal. Piah did not ask the district court to withdraw his plea because of any immigration consequences he faced.

The district court explained to Piah that the reasons he asserted were not legally valid reasons to withdraw a plea. The district court informed Piah that valid reasons to withdraw a plea include not being properly represented and not making a “knowing and intelligent plea.” The district court asked Piah several times if he had any reasons to withdraw his plea. When Piah did not present any reasons in response to the district court’s

questioning, the district court concluded that Piah had not “told [the district court] anything that leaves [it] to conclude that [Piah] did not make a knowing and intelligent plea in this case.” When the district court asked Piah’s attorney if she had anything to add, she responded that she did not have anything to add but went on to say:

Mr. Piah has always been concerned with the consequences, but I think they’re really minimal compared to the 21-month prison sentence that he’s facing. And his father was very willing to come forward, and had some very compelling testimony. This is an excellent deal for Mr. Piah.

The district court denied Piah’s request to withdraw his plea for failure to provide the district court with “any legal basis” to grant his request and proceeded to sentencing. In June 2017, Piah was arrested for allegedly violating his probation and was transferred from state custody to federal immigration custody.

On January 3, 2019, Piah filed a petition for postconviction relief claiming that he was entitled to withdraw his guilty plea because his attorney failed to inform him of the immigration consequences of his plea and argued against his plea withdrawal request. Additionally, Piah claimed that the district court erred by applying the incorrect standard when it denied his motion to withdraw his guilty plea. The postconviction court denied Piah’s petition. This appeal follows.

## **D E C I S I O N**

Piah argues that the postconviction court abused its discretion when it denied his postconviction petition for relief because he received ineffective assistance of counsel. Additionally, Piah contends that the postconviction court erred when it determined that the district court analyzed his motion to withdraw his guilty plea under the correct standard

because the district court allegedly applied the stricter manifest-injustice standard rather than the more lenient fair-and-just standard.

In reviewing a postconviction court’s denial of a claim of ineffective assistance of counsel, this court applies a clear-error standard of review to the postconviction court’s factual findings, a de novo standard of review to the postconviction court’s legal conclusions, and an abuse-of-discretion standard of review to the postconviction court’s ultimate decision whether to grant relief. *Sanchez v. State*, 890 N.W.2d 716, 719–20 (Minn. 2017).

**I. The postconviction court abused its discretion when it denied Piah’s petition for postconviction relief based on ineffective assistance of counsel.**

Piah argues that his guilty plea is presumptively invalid as a matter of law because he received ineffective assistance of counsel. As the plea is invalid, Piah argues, he is entitled to withdraw it.

“In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” U.S. Const. amend. VI; *see also* Minn. Const. art. I, § 6. This right is the “right to the effective assistance of counsel.” *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984). To prevail on an ineffective assistance of counsel claim, *Strickland* dictates that a defendant must demonstrate two elements: (1) “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.” *Strickland*, 466 U.S. at 688, 694, 104 S. Ct. at 2064, 2068. “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).

The two-part *Strickland* test applies to a claim that a defendant received ineffective assistance of counsel in connection with a guilty plea. *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S. Ct. 366, 370 (1985). A plea based on ineffective assistance of counsel is invalid as a matter of law. *State v. Ellis-Strong*, 899 N.W.2d 531, 541 (Minn. App. 2017).

*A. Piah’s attorney’s failure to inform Piah of the immigration consequences of his plea fell below an objective standard of reasonableness.*

The first prong of *Strickland* requires a defendant to demonstrate to a reviewing court that “counsel’s representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2064. There is a strong presumption that counsel’s performance was reasonable. *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016).

In *Padilla v. Kentucky*, the United States Supreme Court held that the Sixth Amendment’s right to counsel requires a criminal defense attorney to advise a noncitizen client of the immigration consequences of pleading guilty—including the risk of deportation. 559 U.S. 356, 367–68, 130 S. Ct. 1473, 1482–83 (2010). If the applicable immigration statute “is not succinct and straightforward,” rendering the deportation consequences of a plea to be unclear, an attorney need only advise a client that “pending criminal charges may carry a risk of adverse immigration consequences.” *Id.* at 369, 130 S. Ct. at 1483. However, if the deportation consequences of a guilty plea are “truly clear,” an attorney has a duty to accurately advise a client of those consequences. *Id.*

The Minnesota Supreme Court has summarized an attorney's obligations to advise his or her client under *Padilla*:

*Padilla* establishes that criminal-defense attorneys must take some affirmative steps before allowing a noncitizen client to accept a plea deal. First, at a minimum, an attorney must review the relevant immigration statutes to determine whether a conviction will subject the defendant to a risk of removal from the United States. Second, if conviction of the charged offense *clearly subjects the defendant to removal from the United States, the attorney has a constitutional obligation to advise the defendant of this fact before he or she enters a guilty plea*. If it does not, then a general advisory warning about the possible immigration consequences of a guilty plea is sufficient.

*Sanchez*, 890 N.W.2d at 721 (emphasis added).

A showing that an attorney failed to advise a noncitizen client of “truly clear” deportation consequences is sufficient to satisfy the first prong of *Strickland*. *Padilla*, 559 U.S. at 369, 130 S. Ct. at 1483.

Under 8 U.S.C. § 1227(a)(2)(E)(i) (2012), “[a]ny alien who at any time after admission is convicted of a crime of domestic violence . . . is deportable.” The statute goes on to define crimes of domestic violence as “any crime of violence (as defined in section 16 of title 18) . . . committed . . . by any other individual against a person who is protected from that individual’s acts under the domestic or family violence laws of the United States or any State.” 8 U.S.C. § 1227(a)(2)(E)(i). Minnesota’s misdemeanor domestic assault with intent to cause fear is a crime of violence under 18 U.S.C. § 16(a). *Ramirez-Barajas v. Sessions*, 877 F.3d 808, 810 (8th Cir. 2017) (applying *Schaffer* to 8 U.S.C.

§ 1227(2)(E)(i)); *United States v. Schaffer*, 818 F.3d 796, 798–99 (8th Cir. 2016) (holding that a conviction under Minn. Stat. § 609.2242, subd. 1(1), qualifies as a crime of violence). Because 8 U.S.C. § 1227(a)(2)(E)(i) explicitly defines domestic assault as a deportable offense, and the Eighth Circuit has confirmed that Minn. Stat. § 609.2242, subd. 1(1), fits squarely within the category of deportable crimes of violence, the immigration consequences of Piah’s plea were truly clear and his attorney had a constitutional obligation to advise Piah of this fact before he entered his plea. *See, e.g., Sanchez*, 890 N.W.2d at 725 (holding that the sexual abuse of a minor, though a presumptively deportable offense under federal immigration law, was not truly clear as it had not been defined in statute and has not been interpreted by the Eighth Circuit). Therefore, under the first prong of *Strickland*, the objective reasonableness of Piah’s attorney’s representation turns on whether or not she adequately communicated to Piah the specific risk of presumptive deportation associated with his plea.

It is clear that Piah received a general warning about the possibility of his plea leading to immigration consequences. The plea petition he signed included a statement noting “[m]y attorney has told me and I understand that if I am not a citizen of the United States this plea of guilty *may* result in deportation, exclusion from admission to the United States of America or denial of citizenship.” (Emphasis added.) Although this general warning suffices when the immigration consequences of a plea are unclear, this warning is insufficient when the immigration consequences are truly clear. *Padilla*, 559 U.S. at 369, 130 S. Ct. at 1483

Instead, *Padilla* and *Sanchez* instruct that Piah was entitled to receive a specific warning that his plea will result in presumptive deportation. Piah argues that his attorney did not inform him that his plea would automatically render him subject to presumptive deportation or that the subsequent conviction would make him a higher priority for deportation. Indeed, Piah's attorney merely informed Piah that "the negotiation was the best we could do to protect him in immigration proceedings . . . but that he *could* still be deported *because he had no legal status*." (Emphasis added.)

Although the postconviction court determined that this warning was sufficient because it informed Piah that the United States government had the legal authority to deport him, we hold that the attorney's language was insufficient to communicate to Piah that his plea, and not his underlying legal status, subjected him to a higher risk of deportation than he otherwise faced. As the plea clearly subjected Piah to presumptive deportation, his attorney was required to warn him of this fact before he entered his plea. A general warning that he was still subject to deportation due to this immigration status, and not because of the plea itself, was insufficient when the deportation consequences of his plea were truly clear.

In light of *Padilla* and *Sanchez*, we hold that his attorney's general warning was insufficient to warn Piah of the truly clear immigration consequences of his plea and therefore was objectively unreasonable under the first prong of *Strickland*. The postconviction court erred when it determined otherwise.

*B. An evidentiary hearing on the second prong of Strickland is required to determine if Piah's plea was presumptively invalid due to ineffective assistance of counsel.*

To satisfy the second prong of *Strickland* in the context of a guilty plea, a defendant must prove “that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill*, 474 U.S. at 59, 106 S. Ct. at 370. A defendant is entitled to an evidentiary hearing on an ineffective-assistance-of-counsel claim if the defendant alleges facts that, if proven by a fair preponderance of the evidence, would satisfy both prongs of *Strickland*. *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012).

Piah has the burden of proving that, but for his attorney’s unreasonable conduct, he would have pleaded differently. In his affidavit, Piah stated that he “would not have pleaded guilty if [he] had known that [the plea] would subject [him] to presumptive deportation.” However, we cannot simply rely on Piah’s post hoc proclamations. *See Lee v. United States*, 137 S. Ct. 1958, 1967 (2017) (noting that a reviewing court “should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies”). Instead, we must examine the circumstances of the plea “to substantiate a defendant’s expressed preferences.” *Id.*

Piah was informed that he was at risk of deportation regardless of his plea. And yet, Piah argues that the opportunities available to him in the United States, and specifically, the immediate threat of violence he reportedly faces should he immediately return to Liberia, would have persuaded him not to make a plea that subjected him to a presumption

of imminent deportation. These facts, if proven by a preponderance of the evidence, may support a finding that Piah would not have pleaded guilty but for his counsel's errors.

Because the postconviction court determined that Piah's attorney's immigration warning did not fall below an objective standard of reasonableness, it did not address the second prong of *Strickland*. See *Nissalke v. State*, 861 N.W.2d 88, 94 (Minn. 2015) (noting that a reviewing court "may dispose of a claim on one prong without considering the other"). Yet, as we hold that the postconviction court erred when it determined that the warning provided by Piah's attorney was sufficient, and Piah has alleged facts that, if proven by a preponderance of the evidence, may support a finding that he would not have pleaded guilty but for his attorney's insufficient warning, we remand this issue with instructions for the district court to vacate Piah's sentence and hold an evidentiary hearing on the second prong of *Strickland*. Should the postconviction court determine that the second prong of *Strickland* is met, Piah's plea is presumptively invalid as a matter of law and he must be permitted to withdraw it. See *Ellis-Strong*, 899 N.W.2d at 541 (providing that a plea based on ineffective assistance of counsel is invalid as a matter of law).

*C. The statements of Piah's attorney at the sentencing hearing did not fall below an objective standard of reasonableness.*

Although we have concluded that the ineffective assistance of counsel claim should be remanded for an evidentiary hearing on the second prong of *Strickland*, in the interest of judicial economy and in order to narrow the issues on remand, we also hold that the statements of Piah's attorney at the sentencing hearing did not fall below an objective standard of reasonableness.

A defendant has a right to decide whether or not to plead guilty. *McCoy v. Louisiana*, 138 S. Ct. 1500, 1508 (2018). An attorney's role is limited to informing a defendant's decision to plead guilty. *Anderson v. State*, 746 N.W.2d 901, 909 (Minn. App. 2008), *overruled on other grounds by Wheeler v. State*, 909 N.W.2d 558 (Minn. 2018). For an attorney's actions to be objectively reasonable under the first prong of *Strickland*, the actions must be commensurate with those of a reasonably competent attorney under similar circumstances. *Vang*, 847 N.W.2d at 267; *State v. Jorgensen*, 660 N.W.2d 127, 132 (Minn. 2003) (noting that when a defendant's attorney admits guilt without a defendant's consent, the attorney's "performance is deficient and prejudice is presumed" when applying *Strickland*).

The postconviction court determined that the statements of Piah's attorney at the sentencing hearing did not breach the attorney's duty of loyalty to her client by arguing against his motion to withdraw. We agree that her statements did not fall below an objective standard of reasonableness. Despite not receiving any notice from Piah of his intent to request to withdraw his plea, Piah's attorney allowed her client to make his request, did not attempt to prevent Piah from making his request, and did not argue that Piah was not entitled to withdraw his plea or that he was guilty. *See, e.g., McCoy*, 138 S. Ct. at 1505 (holding that counsel's performance violates the Sixth Amendment when he or she concedes a party's guilt despite the defendant insisting on innocence); *Jorgensen*, 660 N.W.2d at 132. Instead, her role was to inform her client about the considerations and consequences of his decision to bring a motion to withdraw his guilty plea. *See Anderson*, 746 N.W.2d at 908 (providing that defendant's counsel must inform defendant of

consequences of entering a guilty plea). Acting in conformity with this role, Piah's attorney informed her client and the court about the potential prison sentence he faced and the strength of the state's evidence against him.

Because the statements of Piah's attorney did not fall below an objective standard of reasonableness, the postconviction court did not err. Accordingly, we need not consider the impact of the statements under the second prong of *Strickland*. *Nissalke*, 861 N.W.2d at 94.

**II. The postconviction court did not err when it determined that the district court applied the correct standard in assessing Piah's motion to withdraw his guilty plea.**

Piah argues that the postconviction court erred when it determined that the district court applied the correct standard when it assessed Piah's motion to withdraw his guilty plea. Although we have concluded that the ineffective assistance of counsel claim should be remanded for an evidentiary hearing on the second prong of *Strickland*, in the interest of judicial economy and in order to narrow the issues on remand, we will address Piah's argument.

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). Guilty pleas may be withdrawn only if one of two standards are met: (1) at any time, including after sentencing, a plea must be withdrawn when there is a manifest injustice; or (2) before sentencing, a plea may be withdrawn when it is fair and just to do so. See Minn. R. Crim. P. 15.05, subds. 1, 2 (2018) (establishing the manifest-injustice and fair-and-just standards).

To meet the manifest-injustice standard, the defendant must show that the plea was “not accurate, voluntary, and intelligent.” *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). To meet the fair-and-just standard, a district court must duly consider: “(1) the reasons a defendant advances to support withdrawal and (2) prejudice granting the motion would cause the State given reliance on the plea.” *Raleigh*, 778 N.W.2d at 97. A district court should also consider, “the entire context in which [the defendant’s] plea of guilty occurred, as demonstrated by the record.” *State v. Abdisalan*, 661 N.W.2d 691, 695 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003).

Although the fair-and-just standard “is less demanding than the manifest injustice standard, it does not allow a defendant to withdraw a guilty plea for simply any reason.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (quotation omitted). The decision to allow a defendant to withdraw a guilty plea “is left to the sound discretion of the trial court, and it will be reversed only in the rare case in which the appellate court can fairly conclude that the trial court abused its discretion.” *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). However, a district court’s apparent evaluation of a pre-sentencing motion to withdraw a plea under the manifest-injustice standard, rather than the fair-and-just standard, may warrant a new hearing when the record is insufficient for this court to determine if relief is warranted on appeal. *State v. Lopez*, 794 N.W.2d 379, 385 (Minn. App. 2011) (noting that no hearing is necessary when the record supports that a defendant is entitled to relief under the fair-and-just standard).

At the sentencing hearing, the district court told Piah, “You pled guilty. You admitted to the facts in this case during the plea, and I accepted that plea. Is there

something I should know where I shouldn't have done that? . . . [w]hat about the plea[] was wrong?" To this prompting, Piah responded that he was not a criminal. The district court replied:

[T]hat's not a reason. So, a reason to withdraw a plea is that you weren't properly represented, and it appeared that you were very well represented; that you didn't understand what was going on at the time . . . You seem like a very intelligent person to me. You're talking about going to college and biology, so I'm having a hard time believing that you have the inability to understand what's happening here.

The district court once again asked if there were any other reasons to withdraw the plea. The defendant explained to the court that he was very confused at the time he entered his plea and that he wanted to go to trial to explain his side of the events. In response, the district court stated:

[T]here's only certain things that I can do. . . . And when I take a plea, I have to see [] is the person understanding what's happening? Are they making a knowing and intelligent plea? And you haven't told me anything that leaves me to conclude that you did not make a knowing and intelligent plea in this case. Actually, I find otherwise.

The district court denied Piah's request to withdraw his plea—noting that Piah had not “given [the district court] any legal basis to [withdraw the plea] at this time.”

Even though Piah requested to withdraw his plea before he was sentenced, allowing the district court to apply the less-restrictive fair-and-just standard, the district court did not explicitly state which standard it applied when it denied his request. In its questioning of Piah, the district court used some language associated with the manifest-injustice standard by commenting on Piah's intelligence and affirming that Piah made a knowing

and voluntary plea. And yet, the district court did not indicate that it made its decision based on those categories alone. Although Piah was given the opportunity to explain to the district court any additional reasons as to why he believed he should be allowed to withdraw his plea, he failed to do so. The district court listened to all of Piah's reasons, considered them, and simply determined that they were insufficient to warrant granting his request. *See, e.g., Theis*, 742 N.W.2d at 646 (noting that the fair-and-just standard, while a relaxed standard compared to the manifest-injustice standard, “does not allow a defendant to withdraw a guilty plea for simply any reason”). Because the district court considered all of the reasons submitted by Piah and found that those reasons were insufficient, we are not persuaded that the district court erred by applying an incorrect standard when it assessed Piah's plea withdrawal request.

Based upon this record, we hold that the postconviction court did not err when it determined that the district court evaluated Piah's plea withdrawal request under the correct fair-and-just standard. Accordingly, upon remand, the district court is only required to consider whether Piah satisfies the prejudice prong of *Strickland*.

**Affirmed in part, reversed in part, and remanded.**