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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0901**

Esteban Trevino, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 10, 2020
Reversed and remanded
Florey, Judge**

Kandiyohi County District Court
File No. 34-CR-16-982

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Shane D. Baker, Kandiyohi County Attorney, Aaron P. Welch, Assistant County Attorney, Willmar, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Cochran, Judge; and Segal, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

This is an appeal from a postconviction court's order denying appellant's petition to withdraw his guilty plea. Appellant argues that he had ineffective assistance of trial

counsel because his public defender did not conduct a mental-health evaluation pursuant to rule 20 when she should have and that because he was actually incompetent at the time of pleading, his plea is invalid. We reverse and remand.

FACTS

The facts of this case, as found by the postconviction court, are not in dispute. Esteban Trevino was stopped and arrested for DWI in November 2016. A breath test indicated that Trevino had a blood-alcohol concentration of 0.15. Trevino was charged with one count of felony DWI and one count of gross misdemeanor DWI. After meeting with the public defender two or three times, he pleaded guilty at what began as an omnibus hearing—waiving his right to trial and accepting an offer for a “bottom-of-the-box” sentence. Thereafter, Trevino filed a petition for postconviction relief seeking withdrawal of his guilty plea on a theory of ineffective assistance of counsel.

Trevino has a not-insignificant history of severe mental illness, and he argued in his postconviction petition that his guilty plea should be withdrawn because (1) his counsel’s failure to move for a rule 20 evaluation fell below “an objective standard of reasonableness” and (2) he was thereby prejudiced because he was permitted to enter the plea while incompetent—a fact which also renders the plea invalid, he argues. The postconviction court summarily denied Trevino’s petition, and he appealed. This court reversed and remanded for an evidentiary hearing.¹ *Trevino v. State*, A17-1911, 2018 WL

¹ This court concluded that the facts alleged in the petition did not conclusively show that Trevino was *not* entitled to the relief he sought under the two-prong *Strickland* test. *Trevino*, A17-1911 at *3-4. Specifically, the facts alleged in the petition, viewed in the light most favorable to Trevino, did not (1) conclusively show that his attorney exercised

3340077 (Minn. App. July 9, 2019). After the evidentiary hearing, the postconviction court again denied the relief Trevino sought, and Trevino appealed again. That appeal is the matter presently before us.

Trevino has five prior DWI convictions going back to 1996, as well as a criminal-vehicular-operation-injury conviction from 2001. At least three of these convictions resulted in civil commitment after findings of incompetency—the most recent one being a 12-month commitment starting on July 29, 2015. This means that there was less than 13 weeks between his release from commitment and the arrest in this case. Supporting the 2015 civil commitment was an evaluation of Trevino’s legal and psychiatric history conducted by Dr. Robin Ballina, in which she lists Trevino’s long history of troubles with the law and severe psychiatric disorders. As for the latter, sometime between 2004 and 2005, Trevino began exhibiting symptoms of “bizarre beliefs and disorganized speech,” for which he was diagnosed with schizophrenia after his delusions became more prominent. The schizophrenia diagnosis has remained to date, and despite some periodic success in managing the symptoms with treatment, Trevino has remained delusional.

Around the time of her first meeting with Trevino, R.L., the public defender assigned to his case, met with Kandiyohi County Community Corrections agent Bob Tepfer, who was supervising Trevino following his recent release from commitment. R.L. testified that Tepfer advised her that Trevino was “very mentally ill” and “had a long

the customary diligence that a reasonably competent attorney would nor (2) conclusively show that he was not incompetent at the time he entered his plea and that he was therefore not prejudiced by his attorney’s alleged misconduct. *Id.*

history of mental illness.” Tepfer offered to provide R.L. with Trevino’s mental-health records, but she declined. R.L. also testified that she did not recall noticing “any particular manifestation” of Trevino’s mental illness, or “anything particularly dramatic until quite late [in the case].” Specifically, according to R.L., it was not until the day of the plea hearing that Trevino “told [her] that there was a chip planted in his brain and that law enforcement knew where he would be.” But when asked whether this delusion gave her reason to consider prior opinions with respect to Trevino’s mental health, R.L. testified that she “did not feel that it impacted his ability to understand that he was facing criminal charges, what his options were, or the roles of the parties involved.” However, R.L. also testified that, on the day of sentencing, she told Tepfer about Trevino’s abnormal statements. When asked why she disclosed a potentially privileged conversation, she testified that it was because she “was concerned about his mental health.”

When filling out the plea petition on Trevino’s behalf, R.L. checked a box that indicated that Trevino had “not talked with or been treated by a psychiatrist or other person for a nervous or mental condition.” She admitted at the postconviction hearing that this was inaccurate, and she could not recall whether Trevino had misinformed her or she had mistakenly checked the wrong box. However, she testified shortly thereafter that she was aware, at that time, that Trevino had previously been committed following a rule 20 evaluation.

After the evidentiary hearing, the postconviction court found that in spite of Trevino’s reference to a chip in his brain and other abnormal statements involving kings, messiahs, and “many knowing his truth,” Trevino “interacted appropriately with

Ms. [R.L.].” It further found that R.L. “did believe his mental health had deteriorated since the plea hearing, but she did not believe [he] was incompetent,” and “[s]he noted that [Trevino] asked appropriate questions and rationally consulted her during the time she represented him.” Ultimately, the court determined that R.L.’s decision not to inquire further into Trevino’s mental health “was reasonable under the circumstances at the time of her representation,” in part because she had spent enough time with him to believe that he understood the charges against him, his options, the roles of the different parties, and her communications with him. The postconviction court also concluded that Trevino had not shown that, even if he did receive ineffective assistance of counsel, his defense was prejudiced thereby. Trevino appealed.

D E C I S I O N

This court reviews the denial of a postconviction petition for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). “We review legal issues de novo, but on factual issues our review is limited to whether there is sufficient evidence in the record to sustain the postconviction court’s findings.” *Id.* (quotation omitted). However, ineffective-assistance appeals present mixed questions of law and fact and are therefore reviewed de novo. *State v. Hokanson*, 821 N.W.2d 340, 357 (Minn. 2012). Finally, when considering ineffective-assistance claims, “there is a strong presumption that counsel’s performance was reasonable.” *Id.* at 358.

This court applies the two-prong *Strickland* test to ineffective assistance of counsel claims, which asks whether the defendant has shown (1) that his counsel’s performance was deficient and (2) that such deficient performance prejudiced his defense. *Strickland v.*

Washington, 466 U.S. 668, 687 (1984); *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). To meet the first prong, the defendant must show “that counsel’s representation fell below an objective standard of reasonableness.” *Ecker*, 524 N.W.2d at 718. As for the second—the prejudice prong—the defendant must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* (quotation omitted). The burden of proof on such claims is a preponderance of the evidence. *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012).

I.

Trevino alleges that R.L.’s representation fell below the objective-reasonableness standard in this case because she failed to conduct a reasonable investigation into his mental health in contravention of the duty imposed by Minn. R. Crim. P. 20.01, subd. 3. While this argument—that failing to investigate a client’s mental health when there is evidence of mental illness constitutes unreasonable attorney conduct for ineffective-assistance purposes—has previously been raised on appeal, most of those cases were either dismissed on procedural grounds or relied on substantially distinct facts. However, when this court reversed this matter for an evidentiary hearing in July, we certainly did not preclude the possibility that an attorney’s failure to investigate a client’s mental health could fall below the standard of objective reasonableness:

If appellant’s attorney was aware of the prior civil commitment from communications with the probation officer, as alleged, then counsel’s inclusion of contradictory information in the plea petition and failure to further investigate or question appellant’s mental health and history may have fallen below the objective standard of reasonableness.

Trevino v. State, A17-1911, 2018 WL 3340077, at *3 (Minn. App. July 9, 2019).

There seems to be no controlling authority for this issue in this situation. Trevino makes several arguments as to why R.L.'s conduct was unreasonable, but all of the authority he cites is of persuasive value only and not controlling. First, he points to the ABA standards as a guide to what is and is not reasonable. The cited sections, however, do not add anything of substance to the already-existing duty imposed by rule 20. Trevino also cites several cases brought in federal courts of varying jurisdictions that found attorney performances to be unreasonable in ostensibly analogous circumstances.

While most of the relevant cases from this jurisdiction find the attorney's conduct reasonable, they are all factually distinguishable. Nevertheless, despite there being no precedent to guide our analysis of what a reasonable attorney in R.L.'s position might have done, the facts of this case compel us to conclude that "nothing" is not the answer. This court remanded for a hearing because "[i]f appellant's attorney was aware of the prior civil commitment from communications with the probation officer, as alleged, then counsel's inclusion of contradictory information in the plea petition and failure to further investigate or question appellant's mental health and history may have fallen below the objective standard of reasonableness." *Id.* And the hearing clearly revealed that R.L. (1) was aware of Trevino's very recent civil commitment following a finding of incompetence; (2) was advised from the outset that Trevino was not just ambiguously mentally ill, but "very" mentally ill; and (3) provided erroneous information on the plea petition when she had plenty of information to reveal its erroneousness. Any one of these considerations might well be insufficient to support a finding of unreasonable performance, but it is the

combination of them—in tandem with the fact that R.L. not only elected to refrain from even a cursory investigation of Trevino’s competency, but affirmatively declined Tepfer’s offer to hand-deliver everything she would need to conduct a thorough one—that leads us to conclude that a reasonable attorney in R.L.’s position would have acted more prudently.

Our de novo review of the record and proceedings in this case reveals conduct that we believe overcomes the “strong presumption that counsel’s performance was reasonable,” so we reverse the postconviction court’s contrary holding on the first *Strickland* prong. *Hokanson*, 821 N.W.2d at 358.

II.

The remaining issue under the *Strickland* analysis is whether Trevino has shown by a preponderance of the evidence that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Ecker*, 524 N.W.2d at 718. We have little trouble concluding that Trevino has met his burden on this prong.

An attorney’s unreasonably deficient conduct under these circumstances would almost necessarily alter the outcome and prejudice the defendant. If an attorney was required to request an evaluation of her client under rule 20, then there is reason to doubt that client’s competence; which means there is a reasonable probability that the defendant was legally incompetent and yet permitted to enter a plea or otherwise detrimentally participate in his own defense. See *Godinez v. Moran*, 509 U.S. 389, 398-99 (1993) (holding that a defendant cannot constitutionally enter a guilty plea or stand trial while incompetent). Our prior opinion in this matter suggests as much: “We also conclude that

appellant alleged sufficient facts under the second prong of the *Strickland* test . . . appellant alleged sufficient facts to demonstrate that he may have been incompetent at the time of his guilty plea.” *Trevino*, A17-1911 at *4. The fact that Trevino might have been incompetent at the time he entered the plea is itself prejudicial to his defense and leads us to conclude that there is a reasonable probability that, but for R.L.’s unprofessional errors, the outcome for Trevino would have been different.

Reversed and remanded.