

*This opinion is nonprecedential except as provided by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
A19-1076**

State of Minnesota,
Respondent,

vs.

Nashid Asmir Abdul-Zahir,
Appellant.

**Filed March 1, 2021
Affirmed
Bratvold, Judge**

Nicollet County District Court
File No. 52-CR-18-320

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

Michelle M. Zehnder Fischer, Nicollet County Attorney, Megan E. Gaudette Coryell,
Assistant County Attorney, St. Peter, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Reilly,
Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant seeks review of the district court’s order denying his petition for postconviction relief. Appellant pleaded guilty to a drug crime and filed a direct appeal, which this court stayed to permit appellant to file a postconviction petition and “develop a

record on the terms of the plea agreement.” After the district court’s summary order denying relief, we reinstated his appeal. Appellant argues that the district court erred by failing to hold an evidentiary hearing on his petition that sought specific performance of the plea agreement, which he alleged did not include a fine. Because appellant’s petition conclusively shows that he is not entitled to relief, the district court did not abuse its discretion. Thus, we affirm.

FACTS

After a July 2018 traffic stop in St. Peter, the state charged appellant Nashid Asmir Abdul-Zahir with fifth-degree marijuana possession, driving after license revocation, and possessing drug paraphernalia. In April 2019, Abdul-Zahir entered into an agreement with the state that he would plead guilty to fifth-degree possession of a controlled substance. The state agreed to dismiss the other charges and recommend a 21-month sentence. The agreement did not discuss imposing a fine.

The district court heard the parties’ plea agreement, and received Abdul-Zahir’s written plea petition. Before accepting the plea, the district court informed Abdul-Zahir that the maximum sentence was five years in prison and the maximum fine was \$10,000. Abdul-Zahir confirmed that he wanted to enter into the plea agreement and entered a guilty plea, which the district court accepted. The district court then sentenced Abdul-Zahir to 21 months in prison and imposed a \$500 fine.

After pronouncing the sentence, the district court asked, “Any clarification on any of that?” To which Abdul-Zahir’s attorney responded, “[Abdul-Zahir is] wondering about the fine given that he’s doing all the prison time. He’s asking that the Court waive any

monetary conditions?” The court responded, “I understand that’s the request Mr. Abdul-Zahir, but my practice is to go ahead and . . . impose a fine. So, I do go ahead and do that.” Abdul-Zahir made no other comment or objection.

After this court stayed his direct appeal, Abdul-Zahir filed a postconviction petition in December 2019 and submitted an accompanying affidavit. The affidavit stated that “[Abdul-Zahir’s] understanding of the plea agreement was that [he] would not be required to pay an additional fine as part of [his] sentence,” his attorney did not advise him otherwise, and the imposition of the “fine was contrary to [his] understanding of the plea agreement.” Abdul-Zahir asked that the district court correct his sentence and “reduce [the] fine to the statutory minimum of \$50 so that the sentence [would be] consistent with the plea agreement.”

The district court held a hearing in December to discuss how the petition should proceed and, after the scheduled hearing, scheduled an evidentiary hearing. Three days before the hearing, the state filed an answer to Abdul-Zahir’s petition for postconviction relief, arguing that an evidentiary hearing was unnecessary. The district court held a telephone conference with both parties on the morning of the scheduled hearing and then cancelled the evidentiary hearing. Abdul-Zahir submitted a written reply to the state’s arguments. The district court’s order denied postconviction relief.

DECISION

Abdul-Zahir raises one issue on appeal: whether the district court erred by denying his petition for postconviction relief without an evidentiary hearing. We note that Abdul-Zahir’s brief to this court does *not* argue whether his plea was unintelligent and

therefore invalid. *See Nelson v. State*, 880 N.W.2d 852, 858 (Minn. 2016) (“The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea.”) (quoting *State v. Raleigh*, 778 N.W.2d 90, 96 (Minn. 2010)). We also note that Abdul-Zahir does not ask for plea withdrawal; his requested relief is specific performance of the plea agreement.¹ We therefore address *only* whether the district court erred by denying the petition without an evidentiary hearing.

“We review the ultimate decision by the postconviction court to grant or deny an evidentiary hearing for an abuse of discretion.” *Caldwell v. State*, 853 N.W.2d 766, 770 (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.” *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018).

A court will hold an evidentiary hearing for a postconviction petition “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2018); *see Henderson v. State*, 906 N.W.2d 501, 507 (Minn. 2018), *cert. denied*, 139 S. Ct. 271 (2018). In postconviction proceedings, the district court should consider the “facts alleged in the petition as true and construe[] them in the light most favorable to the petitioner.” *Brown v. State*, 895 N.W.2d

¹ We have acknowledged in prior cases that a plea agreement may be invalid because it is unintelligent if the defendant did not understand the direct consequences of the plea, including the defendant’s sentence. *State v. Noreen*, 354 N.W.2d 77, 78 (Minn. App. 1984). If a plea agreement is invalid, a court “must allow a defendant to withdraw a guilty plea.” *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007) (citing Minn. R. Crim. P. 15.05, subd. 1).

612, 618 (Minn. 2017). “An ‘evidentiary hearing is not required unless the petitioner alleges such facts which, if proved by a fair preponderance of the evidence, would entitle him or her to the requested relief.’” *Id.* (quoting *Sutherlin v. State*, 574 N.W.2d 428, 436 (Minn. 1998)).

Here, the district court denied an evidentiary hearing because it determined that the issue presented was governed by *Blondheim v. State*, 573 N.W.2d 368 (Minn. 1998). In *Blondheim*, the Minnesota Supreme Court reversed this court and reinstated the district court’s decision in an order opinion. *Id.* at 369. Blondheim’s postconviction appeal claimed that he was entitled to withdraw his plea, in part, because the district court imposed a fine contrary to the plea agreement. *Id.* The supreme court reasoned that the fine was not mentioned in the plea agreement and Blondheim did not object to the district court’s imposition of a fine during sentencing. *Id.* at 368-69. The supreme court, therefore, reinstated the district court’s decision to deny Blondheim’s postconviction petition. *Id.* at 369.

In Abdul-Zahir’s case, the district court considered the affidavit attesting that Abdul-Zahir “believed that his sentence would not include a fine.” But the district court concluded that *Blondheim* controlled the issue:

[B]ased on *Blondheim*, . . . where a plea agreement is silent about the imposition of a fine, the district court has been left with the discretion to decide whether a fine should be imposed, along with the amount of fine to impose. As such, the [district court] does not view its decision herein as being contrary to law, nor does it represent an abuse of such discretion.

On appeal, Abdul-Zahir does not argue that *Blondheim* is not binding or that it should be overruled. Rather, Abdul-Zahir argues that the district court abused its discretion by failing to grant an evidentiary hearing because there is a factual dispute about whether Abdul-Zahir understood that the plea agreement did not address imposing a fine. Abdul-Zahir argues that if this factual dispute is decided in his favor, he would be entitled to relief.

Abdul-Zahir's affidavit asserts that he *understood* there would not be a fine. Even taking this as true, as we must during our review of postconviction proceedings, it does not show Abdul-Zahir is entitled to relief. *Blondheim* does not refer to a party's understanding, and instead instructs us to focus solely on whether the fine was part of the plea agreement and whether the defendant objected during sentencing. Also, the caselaw cited in Abdul-Zahir's brief does not support his claim that a difference between the plea agreement and his understanding creates a factual dispute that could entitle him to relief.

Here, the district court correctly applied *Blondheim* and determined that the plea agreement was silent regarding a fine so the court had discretion to impose the fine. Abdul-Zahir's opening brief states that "[t]he written plea petition" has "no reference to a fine." His brief also states that, after the district court imposed his sentence, his attorney "asked the court not to impose the fine," but the district court denied the request.

We conclude that Abdul-Zahir's claim that there was a difference between the plea agreement and his understanding would not entitle him to relief under *Blondheim*. Thus, the district court acted within its discretion by denying Abdul-Zahir an evidentiary hearing.

Affirmed.