

*This opinion is nonprecedential except as provided by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
A19-1220**

State of Minnesota,
Respondent,

vs.

Matt Monoleetio Vogel,
Appellant.

**Filed April 12, 2021
Affirmed
Cleary, Judge***

Beltrami County District Court
File No. 04-CR-18-3567

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

David L. Hanson, Beltrami County Attorney, David P. Frank, Chief Assistant County Attorney Bemidji, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and
Cleary, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

CLEARY, Judge

In this reinstated direct appeal of a conviction for domestic assault, following denial of a postconviction petition seeking withdrawal of his guilty plea, appellant argues that (1) his guilty plea was not intelligently made because he did not know that by pleading guilty, he waived his right to appellate review of a pretrial ruling, and (2) the district court abused its discretion when it determined that appellant did not suffer prejudice from his trial counsel's ineffective assistance. Because we determine that appellant's guilty plea was intelligent, and the district court did not abuse its discretion, we affirm.

FACTS

Background

In October 2018, appellant Matt Monoleetio Vogel “grabbed [his girlfriend’s] arm” with enough force to “cause[] a bruise on her arm.” The state also alleged that he “placed his hand over her mouth and nose, preventing her from breathing,” and “burned some of her belongings.” Sheriff’s deputies arrested Vogel, and the state charged him with domestic assault under Minn. Stat. § 609.2242, subd. 4 (2018); domestic assault by strangulation under Minn. Stat. § 609.2247, subd. 2 (2018); and fifth-degree arson under Minn. Stat. § 609.5632 (2018).

On November 19, 2018, Vogel pleaded not guilty and demanded a speedy trial. The district court scheduled trial to begin on January 3, 2019; however, on that date, the state could not locate Vogel’s girlfriend for trial. Based on the state’s efforts in attempting to locate the girlfriend and “Vogel’s apparent participation in discussions regarding these

people being—making themselves scarce,” the district court found good cause to continue the trial to February 19.

Before the new trial date, Vogel moved to dismiss the charges against him, alleging a violation of his right to a speedy trial. At the February 19 hearing, the district court orally denied Vogel’s motion to dismiss and continued the case to February 22 to address the state’s argument that Vogel’s right to confront his girlfriend should be forfeited as a result of his own wrongdoing.

Guilty plea

At the February 22 hearing, before the district court ruled on the forfeiture-by-wrongdoing matter, the parties informed the district court that they had reached a plea agreement. Vogel agreed to plead guilty to domestic assault, and in exchange the state agreed to dismiss the arson and domestic-assault-by-strangulation charges. Vogel would then be sentenced to the guideline 21-month stayed prison sentence.

After Vogel agreed that it was his “decision to give up the right to a trial and take care of it today,” the district court asked Vogel if he had “any questions you want to ask me or [trial counsel] before we go forward?” Vogel responded, “No. [Trial counsel] was very detailed about explaining everything.” After that questioning, Vogel pleaded guilty to felony domestic assault.

Before entering a factual basis for the plea, the prosecutor reviewed the charges with Vogel, noted that Vogel had an attorney, and asked if Vogel was “satisfied with his [trial counsel’s] services?” Vogel responded, “Yes, I am very satisfied with his services.” The prosecutor then reviewed the trial rights that Vogel would waive by pleading guilty,

however there was no mention that Vogel would also waive his right to appellate review of his speedy-trial claim. Vogel then admitted to a factual basis for the domestic assault charge, and the district court continued the case for sentencing following a presentence investigation. Later, in May 2019, the district court accepted Vogel's guilty plea and entered a judgment of conviction, sentencing Vogel to 21 months in prison, stayed for five years.

Postconviction proceedings

Vogel directly appealed his conviction, but later moved to stay the appeal pending postconviction proceedings. We stayed the appeal, and Vogel argued in his postconviction petition that his plea was not intelligent and that he received ineffective assistance of counsel.

The district court held an evidentiary hearing where both Vogel and his trial counsel testified. Trial counsel testified that he consulted with Vogel about the rights that he would be waiving by pleading guilty, but did not offer a plea petition in the case because "in Beltrami County . . . it was not the general practice to do a felony plea petition." Trial counsel testified that he discussed with Vogel "the possibility that by pleading guilty, he would not be able to appeal the denial of the speedy trial motion." Trial counsel told Vogel he was "not sure at that point, but that there was a . . . distinct possibility that by pleading guilty, he would waive that right."

Trial counsel testified that he did not conduct further research into the question, but did consult with another attorney about the issue before speaking with Vogel, though "she wasn't sure about the issue yet, either, at that point." Vogel did not request that trial counsel

conduct further research or consult with another attorney. Vogel also testified at the hearing, though the district court found his testimony “inconsistent and not credible.”

The district court denied postconviction relief in a written order and memorandum. First, in addressing Vogel’s ineffective-assistance-of-counsel claim, the district court agreed that trial counsel’s failure to “advise [Vogel] *with certainty* that by pleading guilty he would be waiving his right to appeal [the district] [c]ourt’s denial of his motion to dismiss” fell below an objective standard of reasonable representation. While trial counsel “did not provide [Vogel] with *incorrect* advice, his advice was not as certain as it should and would have been had he conducted relevant legal research.” However, the district court found that Vogel failed to show that, but for trial counsel’s advice, he would not have pleaded guilty, and therefore failed to show prejudice.

On Vogel’s motion, we dissolved the stay and reinstated this appeal.

DECISION

I. Vogel’s guilty plea was intelligent, and therefore valid.

“To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010) (citing *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S. Ct. 160, 164 (1970)). A defect in any of these three components invalidates a guilty plea. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Here, Vogel argues only that his plea was unintelligent, thus we focus our analysis on that factor.

“The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Raleigh*,

778 N.W.2d at 96 (citing *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983)). “A defendant bears the burden of showing his plea was invalid.” *Id.* at 94. “Assessing the validity of a plea presents a question of law that we review de novo.” *Id.*

Vogel’s argument rests on the expansive protections of the Minnesota constitution and Minnesota state law. He points out that, unlike in the federal system, in Minnesota criminal defendants are entitled to one state appellate or postconviction review as “an example where the State law affords greater rights than the U.S. Constitution. Because Minnesota defendants are afforded the right to appellate review, Minnesota law affords criminal defendants greater appellate rights than under federal law.” *See, e.g., Deegan v. State*, 711 N.W.2d 89, 95-96 (Minn. 2006) (commenting that rights to appellate review are broader under the Minnesota Constitution than under the U.S. Constitution). Therefore, Vogel argues, “Minnesota law on the validity of a guilty plea affords greater protections than minimum requirements under the United States Constitution.”

We agree with Vogel, to a point. Minnesota Rule of Criminal Procedure 15.01 requires that the district court “ensure defense counsel has told the defendant and the defendant understands,” among other things, (1) his right to a unanimous verdict by jury or by the district court; (2) his presumption of innocence; (3) his right to confront witnesses against him; (4) his right to subpoena and call witnesses; (5) his right to testify or not testify; and (6) the maximum and minimum penalty. While this is a more expansive list than the federal requirements that a defendant understand (1) his right against self-incrimination, (2) his right to jury trial, and (3) his right to confrontation, *see Boykin v. Alabama*, 395 U.S. 238, 243, 89 S. Ct. 1709, 1712 (1969), the Minnesota rules do not

reference a defendant's right to appeal nonjurisdictional pretrial rulings or the waiver of that right. *See* Minn. R. Crim. P. 15. Nowhere in rule 15 is there a requirement that a criminal defendant be told that by pleading guilty, he waives his right to appeal nonjurisdictional pretrial rulings. Indeed, the language of the model plea petition rather closely resembles the advice trial counsel gave to Vogel. *See* Minn. R. Crim. P. 15, Appendix A (“[A]ny appeal or other court action I may take claiming error in the proceedings *probably* would be useless and a waste of my time and the court's time.” (emphasis added)).¹

Vogel makes three additional arguments; and we address each in turn. First, Vogel argues that “the record of [his] guilty plea did not establish his understanding that he was also waiving his right to appeal pre-trial issues.” Vogel concedes that “the prosecutor examined [him] on his understanding of the trial rights he waived by pleading guilty,” but argues that “the absence of any confirmation of [Vogel's] understanding that his guilty plea waived the right to appeal the speedy-trial issue was insufficient to satisfy the intelligence prong.”

However, as discussed above, rule 15.01 does not require that a defendant be told that he waives his right to appeal pretrial issues for a plea to be intelligent. Trial counsel

¹ While not required by rule or relevant to our review here, we are concerned that as a “general practice” the district courts of Beltrami County do not require the use of felony plea petitions. This “general practice” runs contrary to the advisory committee's suggestion “that the defendant sign a Petition to Plead Guilty in the form appearing in the Appendices to these rules (which contain in an even more detailed form the information showing the defendant's understanding of defense rights and the consequences of pleading [guilty]).” Minn. R. Crim. P. 15 cmt.

“is not required to advise the defendant of *every* consequence for the defendant’s plea to be intelligent,” *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016), but the defendant must know of the direct consequences of a plea, which are “definite, immediate, and automatic and are punitive and a part of a defendant’s sentence.” *State v. Brown*, 896 N.W.2d 557, 561 (Minn. App. 2017) (quotation omitted), *review denied* (Minn. July 18, 2017). Direct consequences of a guilty plea primarily include “the maximum sentence and fine.” *Raleigh*, 778 N.W.2d at 96. Here, Vogel was advised of the trial rights he was waiving and the possible sentences, but still pleaded guilty. As the state argues, and trial counsel’s testimony shows, Vogel was at least “on notice” that his prospects for appeal were dubious at best. When asked if he had any clarifying questions for the district court, he replied, “No. [Trial counsel] was very detailed about explaining everything.” The record shows that Vogel was aware of the “distinct possibility” that by pleading guilty, he waived his right to appeal the speedy-trial issue.

Second, Vogel argues that the district court’s postconviction decision “is erroneous because it impermissibly shifted the burden to [Vogel] to independently inquire into the rights he waived.” While we agree with Vogel that the district court’s responsibility for ensuring a defendant understands the rights waived must be “ubiquitous,” Vogel fails to recognize that the rights covered by rule 15.01, subd. 1(6), do not include the right of appellate review of pretrial issues. The district court ensured that Vogel was made aware of the rights described in rule 15.01, ensuring his plea was intelligently made.

Finally, Vogel argues that because his counsel’s advice fell below an objective standard of reasonableness, “[i]n addition to a silent record on the waiver of his appellate

rights, trial counsel's failure to properly advise or research the same leads only to the conclusion that [Vogel] affirmatively did not understand that pleading guilty waived his right to appellate review" of the speedy-trial issue. To the contrary, the record includes trial counsel's repeated statement that he made Vogel aware of the "distinct possibility" that a guilty plea would result in a waiver.

Vogel asks us, in effect, to create a new requirement that "an intelligent plea must therefore include the defendant's understanding that his guilty plea curtails the scope of appellate review otherwise guaranteed to him." This rule does not currently exist in the rules of procedure or Minnesota caselaw. "The comments to Minn. R. Crim. P. 15.01, and Minnesota case law establish that failure to interrogate a defendant as set forth in [r]ule 15.01 or to fully inform him of all constitutional rights does not invalidate a guilty plea." *State v. Doughman*, 340 N.W.2d 348, 351 (Minn. App. 1983), *review denied* (Minn. Mar. 15, 1984). "What is important is . . . whether the record is adequate to establish that the plea was intelligently and voluntarily given." *Id.* We are not in a position to create a new, intelligent-plea requirement or rewrite the rules of criminal procedure. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.").² The record reflects that Vogel was examined on the rights outlined by rule 15.01 and was told that there was a "distinct possibility" he would waive

² Arguably, it is time for the supreme court rules committee to amend rule 15 to reflect the best practice, instructing the district court to ensure that defense counsel has told the defendant and the defendant understands that he is waiving the right to appeal nonjurisdictional pretrial rulings.

his right to a review of the speedy-trial issue by pleading guilty. On this record, Vogel has failed to show that his plea was unintelligent and thus invalid. We therefore affirm the district court's postconviction ruling.

II. Vogel was not prejudiced by his trial attorney's performance.

In our review of a denial of postconviction relief claiming ineffective assistance of counsel, we “consider the court’s factual findings that are supported in the record,” and “conduct a de novo review of the legal implication of those facts.” *State v. Nicks*, 831 N.W.2d 493, 504 (Minn. 2013). We will then “either affirm the court’s decision or conclude that the court abused its discretion because postconviction relief is warranted.” *Id.* at 504. Here, Vogel does not dispute the district court’s factual findings, therefore we are limited to a de novo review of the legal implications of those findings.

Criminal defendants have a constitutional right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984). To succeed on an ineffective-assistance-of-counsel claim, a defendant must show that (1) his attorney performed deficiently, and (2) “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694, 104 S. Ct. at 2068. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* The two-prong *Strickland* test applies to ineffective-assistance-of-counsel claims involving guilty pleas. *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S. Ct. 366, 370 (1985). The district court found, and the state concedes, that trial counsel’s performance fell below an objective standard of reasonableness. Therefore,

our review is limited to whether the district court erred when it determined that Vogel did not suffer prejudice.

Vogel makes two arguments that he suffered prejudice, and we address each in turn. First, Vogel argues that prejudice should be presumed in his case, citing *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S. Ct. 1029, (2000). In *Flores-Ortega*, the Supreme Court held that when an attorney’s performance results in the loss of a defendant’s ability to file an appeal that the defendant would have otherwise pursued, prejudice should be presumed “with no further showing from the defendant of the merits of his underlying claims.” *Id.*, at 484, 120 S. Ct. at 1038. There, counsel failed to file a notice of appeal within the required timeframe, resulting in a loss of the right to appeal. *Id.* at 474, 120 S. Ct. at 1033. Later, in *Garza v. Idaho*, 139 S. Ct 738, 743, 749 (2019), the same rule was applied when counsel failed to file an appeal even after repeated requests from the defendant. Vogel acknowledges that “*Garza* and *Flores-Ortega* present different factual circumstances . . . [b]ut, the impact is the same. . . . In either circumstance, counsel denied their client appellate review.”

Unlike in *Garza* and *Flores-Ortega*, here, trial counsel did not entirely fail to act. Trial counsel told Vogel that there was a “distinct possibility” that his right to appeal would be waived upon a guilty plea. While this was poor legal advice—as the district court noted, Vogel should have been given an affirmative response—it is factually distinct from a

failure to act on a client's instructions. Therefore, we do not presume prejudice in Vogel's case.³

Second, Vogel argues that the district court erred because "[u]nder the facts of this case, trial counsel's 'entirely credible' testimony was sufficient to satisfy *Strickland*'s prejudice prong, which requires proof by a preponderance of the evidence that there is a reasonable probability that trial counsel's deficient performance adversely impacted the proceedings." Credibility determinations are within the sound determination of the district court. *See State v. Kramer*, 668 N.W.2d 32, 38 (Minn. App. 2003), *review denied* (Minn. Nov. 18, 2003). Here, the district court found that Vogel's testimony was "inconsistent and not credible," but found trial counsel's testimony credible.

Vogel's argument that trial counsel's testimony was sufficient to satisfy *Strickland*'s prejudice prong must be weighed against trial counsel's unchanging statements that he told Vogel there was a distinct possibility that he waived the right to appeal by pleading guilty. The district court did not abuse its discretion by crediting this consistent testimony. The overall record supports the district court's conclusion that it is unlikely that, had Vogel been told he *affirmatively* waived his right to appeal by pleading guilty—rather than that a *distinct possibility* of waiver existed—there would have been a different outcome.

³ The Supreme Court's discussion of appellate waivers in *Garza* is helpful. In *Garza*, appellant signed two plea agreements which contained a clause stating that he "waive[d] his right to appeal." *Id.* at 742. Despite this, the Supreme Court noted that "no appeal waiver serves as an absolute bar to all appellate claims." *Id.* at 744. This is borne out here by Vogel's appeal. While his guilty plea acted as a waiver of nonjurisdictional pretrial matters, it did not affect his right to a review of the validity of the guilty plea itself.

During the plea hearing, Vogel had no questions for the district court and noted that his trial counsel was “very detailed about explaining everything.” Vogel also stated, “Yes, I am very satisfied with [trial counsel’s] services.” Trial counsel agreed that he told Vogel “that by pleading guilty, that, in fact, he may be jeopardizing his ability to appeal the [district] [c]ourt’s denial of the speedy trial demand,” however Vogel “responded that he still wished to plead guilty.” At no point during the plea or sentencing hearing did Vogel bring up the fact that he was contemplating appealing the speedy-trial claim, and there is no reference in the record to any of the approved mechanisms for entering a guilty plea while preserving the ability to appeal. *See* Minn. R. Crim. P. 26.01, subd 4.

We agree with the district court that it “makes absolutely no sense” that Vogel would not have sought further guidance from trial counsel, another attorney, or the district court, before “diving into an ‘unsure’ future.” On this record, the district court did not abuse its discretion in finding that, even though trial counsel’s performance fell below an objective standard of reasonableness, Vogel still would have pleaded guilty had he been affirmatively informed that his guilty plea would preclude review of the speedy-trial claim.

Affirmed.