

*This opinion is nonprecedential except as provided by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
A19-1527**

State of Minnesota,
Respondent,

vs.

Deandre Lamond Jones,
Appellant.

**Filed May 2, 2022
Affirmed
Reilly, Judge**

Stearns County District Court
File No. 73-CR-17-7569

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this direct appeal from the judgment of conviction for the promotion of prostitution, and following a remand for postconviction proceedings, appellant argues that (1) Minnesota lacked jurisdiction to prosecute the offense for which he was charged, and

(2) he received ineffective assistance of counsel. Because jurisdiction was proper and appellant did not receive ineffective assistance of counsel, we affirm.

FACTS

In August 2017, respondent State of Minnesota charged appellant Deandre Lamond Jones with one count of aiding and abetting the promotion of prostitution of a person under the age of 18. The complaint against him alleged that in July 2017, Jones and two other adults transported 17-year-old Child A from Stearns County, Minnesota, to Fargo, North Dakota, to engage in prostitution. The complaint also alleged that, after Child A was dropped off at a “call,” Jones picked her up and received a portion of the money she made.

Jones moved to dismiss for lack of jurisdiction. The district court held a contested omnibus hearing on Jones’s motion to dismiss and denied it. The district court determined that it had jurisdiction over Jones because the alleged act of aiding and abetting the promotion of prostitution began in Stearns County, Minnesota, and the charged offense included transportation of the minor to aid in prostitution.

Jones and the state reached a plea agreement. Under that agreement, after Jones pleaded guilty, he would be granted conditional release pending sentencing. If Jones did not violate any conditions of release, then he would receive a sentence of 60 months in prison, a downward durational departure. But if he violated a condition of release, he would be sentenced to 128 months, a guideline sentence. Following his guilty plea, the district court found that Jones “made a knowing and intelligent waiver of [his] rights” and “provided an adequate fact basis to support [his] plea” and entered a conviction.

Shortly after his release, the state alleged that Jones violated multiple conditions of his release. Jones admitted the violations. The district court held a bail hearing during which Jones told the district court that he was “being misrepresented” by his counsel and that he wanted to take back his plea. But the district court told Jones that he needed to have a legal basis to withdraw his plea.

At the sentencing hearing, the state asked the district court to follow the plea agreement and commit Jones to prison for 128 months because he violated his conditional release. Jones, through his attorney, asked the district court to sentence him to the lower sentence of 60 months, arguing that Jones made mistakes but accepted responsibility and that receiving 68 more months for a minor violation would be unjust. The district court imposed a sentence of 128 months. In doing so, the district court stated: “[U]nfortunately, Mr. Jones, I don’t think I have a choice. I reviewed the plea agreement, and [your attorney] made it really clear because you wanted to get out pending sentencing . . . if you mess[ed] up you [don’t] qualify for the durational departure and you agreed to that. So I don’t have a choice.” Jones asked if he could withdraw his original guilty plea, but the district court stated there was no way to withdraw it at this point in the legal proceedings.

Jones filed a direct appeal to this court. This court stayed the appeal while Jones petitioned for postconviction relief. In his postconviction petition, Jones argued that his guilty plea was invalid and that his sentence must be vacated. First, he contended that Minnesota lacked jurisdiction to prosecute him for a crime committed in North Dakota. Second, he asserted that he received ineffective assistance of counsel because his attorney failed to honor his request to withdraw his guilty plea and misadvised him that he could

still receive a 60-month sentence despite violating the conditions of his release. The district court held an evidentiary hearing on the issue of ineffective assistance of counsel. Both Jones and his trial attorney testified. Jones testified that after he violated the conditions of his release, he told his attorney he wanted to withdraw his guilty plea because he did not want to receive 128 months and because he felt like he did not get all the information and evidence necessary before making the plea. His attorney testified that she advised him against withdrawing his plea because she did not think that he had a legal basis and because she could still argue for the 60-month sentence at sentencing.

The district court denied Jones's postconviction petition. The district court held that the state had jurisdiction because Jones traveled from Stearns County to go to North Dakota to commit the crime. The district court also determined that Jones had not received ineffective assistance of counsel because his counsel's representation did not fall below an objective standard of reasonableness. This appeal follows.

DECISION

I. The State of Minnesota had jurisdiction to prosecute Jones.

Jones first argues that Minnesota lacked jurisdiction¹ over him because the offense was committed in North Dakota. Both the United States and Minnesota Constitutions provide that a criminal defendant has a right to trial in the state, county, or district where

¹ Jones argues that the district court lacked "territorial jurisdiction." Because Jones is arguing that the operative elements of the charged crime occurred outside of Minnesota, we analyze his argument as one of lack of subject-matter jurisdiction. *See State v. Simion*, 745 N.W.2d 830, 839 (Minn. 2008) (holding that the district court lacked subject-matter jurisdiction over the prosecution because no operative element of the crime occurred in Minnesota).

the crime was committed. U.S. Const. amend VI; Minn. Const. art. I, § 6. Consistent with these constitutional principles, “some part of the crime charged must be ‘committed’ within the jurisdiction.” *State v. Smith*, 421 N.W.2d 315, 319 (Minn. 1988). Jurisdiction is the court’s “power to hear and decide disputes.” *Id.* at 318. We review issues of jurisdiction de novo. *Simion*, 745 N.W.2d at 837.

Minnesota has jurisdiction over a person when the individual:

- (1) commits an offense in whole or in part within this state;
or
- (2) being without the state, causes, aids or abets another to commit a crime within the state; or
- (3) being without the state, intentionally causes a result within the state prohibited by the criminal laws of this state.

Minn. Stat. § 609.025 (2016). Jones argues that jurisdiction did not exist on any of these three statutory grounds. He argues that his actions in the charged offense of promoting prostitution occurred solely within North Dakota.

Courts look to the elements of the charged offense when determining whether all or part of the offense was committed in Minnesota. *Simion*, 745 N.W.2d at 837. The relevant statute reads: “Whoever, while acting other than as a prostitute or patron, intentionally does any of the following may be sentenced to imprisonment . . . (2) promotes the prostitution of an individual under the age of 18 years.” Minn. Stat. § 609.322, subd. 1(a)(2) (2016). “Promotion of prostitution” includes when a person knowingly “transports an individual from one point within this state to another point either within or without this state, or brings an individual into this state to aid the prostitution of the individual.” Minn. Stat. § 609.321, subd. 7(6) (2016).

The district court found that it had power to exercise jurisdiction over Jones because Jones helped transport Child A from Stearns County in Minnesota to North Dakota to engage in prostitution. Thus, a relevant portion of the offense occurred within the boundaries of this state. The district court came to this conclusion based on Minn. Stat. § 609.321, subd. 7(6), and Minn. R. Crim. P. 24.02, subd. 1: “when an offense occurs within the state on a conveyance, and doubt exists as to where the offense occurred, the case may be prosecuted in any county through which the conveyance traveled in the course of the trip during which the offense was committed.”

We agree that the district court had the power to exercise jurisdiction over Jones because Jones committed part of the offense in Minnesota. At the plea hearing, Jones admitted that he knew the purpose of the trip from St. Cloud to Fargo was to have one of the female passengers engage in prostitution in North Dakota. While Jones testified that he did not know that Child A was a minor, the lack of knowledge of age is not a relevant defense. Jones knowingly transported Child A from one point within the State of Minnesota to another point outside the state to aid in the prostitution of Child A. This action supports the finding that the district court had jurisdiction to convict Jones of the crime charged.² Thus, the district court did not err in finding it had jurisdiction to prosecute Jones for the charged crime.

² We note that the district court erred in deciding it had jurisdiction over Jones under Minnesota Rule of Criminal Procedure 24.02 because that rule establishes *venue* and not *jurisdiction*. See *Smith*, 421 N.W.2d at 320 (“Jurisdiction is a threshold inquiry that must be established before the question of venue is reached.”). That said, this error is harmless and is not grounds for reversal. *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987).

II. Jones received effective assistance of counsel.

Jones next argues that he received ineffective assistance of counsel. A defendant has a right to the effective assistance of counsel in all criminal prosecutions. U.S. Const. amend. VI; Minn. Const. art I, § 6; *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016).

We examine ineffective-assistance-of-counsel claims under the two-prong test set forth in *Strickland v. Washington*. 466 U.S. 668, 687 (1984); *State v. Ellis-Strong*, 899 N.W.2d 531, 535 (Minn. App. 2017). Under the *Strickland* test, a defendant “must demonstrate that (1) his counsel’s performance fell below an objective standard of reasonableness, and (2) that a reasonable probability exists that the outcome would have been different but for counsel’s errors.” *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). “If a claim fails to satisfy one of the *Strickland* requirements, [this court] need not consider the other requirement.” *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017) (citation omitted). “Application of the *Strickland* test involves a mixed question of law and fact, which we review de novo.” *State v. Mouelle*, 922 N.W.2d 706, 715 (Minn. 2019).

The objective standard of reasonableness for an attorney in Minnesota 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. Gassler*, 505 N.W.2d 62, 70 (Minn. 1993). There is a strong presumption that an attorney’s “performance falls within the wide range of reasonable professional assistance.” *State v. Miller*, 754 N.W.2d 686, 709 (Minn. 2008).

Jones contends that his counsel’s performance fell below an objective standard of reasonableness for two reasons: (1) counsel offered inaccurate advice on sentencing

consequences, and (2) counsel failed to adequately advise Jones on how to withdraw his guilty plea. The district court determined that Jones did not meet his burden of proof to show that his counsel's representation fell below an objective standard of reasonableness. We agree. As to Jones's first argument—that he received inaccurate advice—Jones testified at the plea hearing that he understood that if he violated the conditions of release, he could serve 128 months. And in the postconviction evidentiary hearing, Jones testified that his attorney told him that a sentence of 128 months was possible if he violated conditional release but that she would still argue for 60 months. He also stated that she repeated that advice after the violation occurred.

Jones's attorney also testified at the evidentiary hearing and the district court found her to be credible. The attorney testified that she told Jones she would try to work with the prosecution to see if they would still honor the original 60-month agreement or, at the sentencing hearing, she would ask the judge to sentence him to 60 months instead of 128 months despite the violation. She testified that she told Jones the judge may be willing to agree with her argument because it was a "minor violation," but that she would "never guarantee that." She also testified that she made it clear to Jones that he would likely be sentenced to 128 months in prison. At the sentencing hearing, Jones's attorney tried to negotiate the lower sentence on his behalf. Thus, there is no evidence that Jones's counsel offered inaccurate advice as to sentencing consequences.

Nor is there any evidence that Jones's attorney failed to advise or provided inaccurate advice about Jones's desire to withdraw his guilty plea. When Jones's attorney received a letter from him stating he was considering withdrawing his plea, she informed

him that he needed to have a sufficient basis to withdraw his plea, such as proof of coercion. She also told Jones that he could not just withdraw a guilty plea simply because he wanted to. The attorney testified that when they spoke further about a plea withdrawal, Jones did not offer any basis that would allow her to submit a motion to withdraw the guilty plea. Instead, she testified that the only basis he provided her for withdrawal was because he now thought the plea was a bad deal.

The attorney advocated for Jones's interests in reaching a plea agreement with the state for a downward departure of 60 months, if Jones complied with the terms of his conditional release pending sentencing. And Jones testified that he understood what would happen if he violated the conditions of release under the plea agreement. Yet Jones violated those conditions of release. Only after the violation did Jones express his desire to withdraw his guilty plea. But, as his attorney testified, Jones did not provide a sufficient basis to withdraw the plea. Thus, his attorney advised him of his remaining option—to try to advocate for the lesser sentence despite his violation of his conditional release. Because there is no evidence that Jones's attorney's performance fell below an objective standard of reasonableness, Jones cannot meet the first prong of the *Strickland* test. And because Jones's claim fails to satisfy the first prong of the *Strickland* test, we need not analyze the prejudice to Jones, if any. For these reasons, Jones failed to prove that he received ineffective assistance of counsel.

Affirmed.