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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1942**

Ronnie Bila Shaka, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 27, 2020
Reversed and remanded
Ross, Judge**

Washington County District Court
File No. 82-CR-16-3656

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

Peter J. Orput, Washington County Attorney, Stillwater, Minnesota; and

Joseph Van Thomme, Special Assistant County Attorney, Eckberg Lammers, P.C., Stillwater, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Appellant Ronnie Shaka pleaded guilty after contacting his wife in violation of a domestic-abuse no-contact order. He filed a postconviction petition challenging the validity of his plea, arguing among other things that his attorney was ineffective for having failed to investigate in order to challenge the stop that led to his arrest. The district court summarily denied his petition. Because the facts alleged in Shaka's affidavit warranted an evidentiary hearing, we reverse and remand for the district court to conduct a hearing.

FACTS

Woodbury police officers were patrolling in a motel parking lot in September 2016 when they saw a car and ran a check on its license plates. They learned that the car's registered owner was restricted by a domestic-abuse no-contact order. Then they saw a man who appeared to be the owner—Ronnie Shaka—speaking with a woman who matched the description of the person whom the order prohibited Shaka from contacting—Shaka's wife. The officers approached the couple and identified the woman as the one in the order. They arrested Shaka, and the state charged him with one count of gross-misdemeanor violation of a domestic-abuse no-contact order.

The criminal complaint erroneously identified Shaka as the registered owner of the car that police encountered at the motel. Shaka waived any challenge to the legality of the officer's stop after the error became apparent, and he pleaded guilty as charged. The district court accepted Shaka's plea, adjudicated him guilty, and imposed a one-year jail sentence that was suspended on probationary conditions.

Shaka petitioned for postconviction relief in March 2019, maintaining among other things that his trial counsel was ineffective for having advised him that he could not rely on the complaint's error to challenge the validity of the stop. In an affidavit accompanying the petition, Shaka avowed that he had informed his trial attorney of the error and asked whether it could provide a basis to challenge the stop. Shaka also asserted that his attorney incorrectly informed him that he could not obtain the information necessary to challenge the stop. Shaka said that, but for his counsel's misadvice about the potential challenge, he would not have pleaded guilty.

The district court denied Shaka's petition without an evidentiary hearing. It reasoned that trial counsel's decision not to challenge the stop was trial strategy and therefore unreviewable. Shaka appeals.

D E C I S I O N

Shaka challenges the district court's decision to deny his postconviction petition without an evidentiary hearing. We review this decision for an abuse of discretion. *Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). Postconviction courts must hold an evidentiary hearing on a petition for postconviction relief "[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). This means that a district court must conduct a hearing on a postconviction petition to resolve issues raised on the merits if disputed material facts exist. *Ferguson v. State*, 645 N.W.2d 437, 446 (Minn. 2002). The record informs us that, under this standard, Shaka was entitled to a hearing.

Shaka's affidavit asserts the facts in play here. Taken as true, the affidavit implies that his trial attorney rejected his request to investigate the state's database to see whether the officers had reasonable suspicion to detain and question him or whether, instead, officers only falsely asserted that their vehicle-registration check and computer search led them to suspect that Shaka and his companion were the subjects of the no-contact order. The district court summarily rejected Shaka's postconviction claim arising from the alleged failure to investigate without affording him a hearing. The district court concluded that the attorney's decision not to investigate was merely a strategic litigation decision. The conclusion is flawed.

The flaw in the district court's litigation-strategy conclusion is that, at least as it regards the preliminary question of whether to hold an evidentiary hearing, the affidavit establishes that the attorney did *not* choose to forego an investigation based on strategy. A district court considering a postconviction petition must assume the facts alleged in the affidavit are true and construe them in the light most favorable to the petitioner. *Andersen v. State*, 913 N.W.2d 417, 424 (Minn. 2018). The district court speculated that Shaka's attorney *might* have considered as a matter of strategy that further investigation *might* have delayed proceedings so as to put Shaka at risk of being detained in pretrial custody for a longer period. The affidavit undermines this speculation. Taking the affidavit as true and drawing all inferences in its favor, the attorney failed to investigate instead because he erroneously believed (or falsely informed Shaka) that it was impossible for defense counsel to acquire the police-database information necessary to investigate the basis for the stop.

By rejecting the primary assertion in the affidavit, the district court refused an evidentiary hearing based on the wrong factual premise.

We have no difficulty concluding that Shaka's affidavit provided a factual basis sufficient to warrant an evidentiary hearing on his postconviction petition claiming ineffective assistance of counsel. To receive an evidentiary hearing on a claim of ineffective assistance of counsel, a petitioner must allege facts that, if proved by a preponderance of the evidence, demonstrate that his counsel's representation fell below an objective standard of reasonableness and that he was prejudiced by his counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88, 104 S. Ct. 2052, 2064 (1984); *State v. Nicks*, 831 N.W.2d 493, 504 (Minn. 2013). Regarding the first prong of the *Strickland* test, a petitioner may establish that counsel acted unreasonably when counsel's conduct suggests that the failure to investigate resulted from inattention, not reasoned, strategic judgments. *Wiggins v. Smith*, 539 U.S. 510, 526, 123 S. Ct. 2527, 2537 (2003). An evidentiary hearing could establish whether Shaka's attorney in fact failed to investigate and, if so, whether the failure resulted from a valid strategic judgment. Regarding the second prong, a petitioner must demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Campos v. State*, 816 N.W.2d 480, 486 (Minn. 2012) (quotation omitted). Shaka's affidavit asserts that, but for his counsel's errors, he would not have pleaded guilty. The district court must accept that assertion as true when deciding whether to hold a hearing. We hold that Shaka was entitled to an evidentiary hearing.

We add separately that Shaka's petition also maintains that his attorney's performance was deficient in that he incorrectly advised Shaka that he could not challenge the legality of the officers' stop. An attorney's conduct falls below an objectively reasonable standard if he provides inaccurate or misleading advice that affects a defendant's decision to accept or reject a plea offer, *Leake v. State*, 737 N.W.2d 531, 540 (Minn. 2007), or if he provides advice "that is so substandard that it prevents [the defendant] from making a knowing and understanding decision regarding" a plea, *Anderson v. State*, 746 N.W.2d 901, 909 (Minn. App. 2008). This theory too provides a basis for a hearing.

For these reasons, we hold that the district court acted outside its discretion by denying Shaka's petition without an evidentiary hearing. We reverse the decision and remand to the district court for further proceedings.

Reversed and remanded.