

*This opinion is nonprecedential except as provided by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
A20-1357**

State of Minnesota,
Respondent,

vs.

Cassandra Lynn Sheimo,
Appellant.

**Filed December 20, 2021
Affirmed
Florey, Judge**

Mower County District Court
File No. 50-CR-19-1651

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

Kristen Nelsen, Mower County Attorney, Heather Kjos Schmit, Assistant County Attorney, Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Florey, Judge; and John Smith,
Judge.*

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

NONPRECEDENTIAL OPINION

FLOREY, Judge

On direct appeal from a final judgment of conviction for gross-misdemeanor child endangerment, appellant argues that the district court erred by summarily denying her petition for postconviction relief seeking to withdraw her guilty plea based on her trial counsel's ineffective assistance of counsel. Because appellant's trial counsel's performance was not objectively unreasonable and because appellant failed to allege sufficient facts that would entitle her to relief on her ineffective-assistance-of-counsel claim, we affirm.

FACTS

In July 2019, appellant Cassandra Lynn Sheimo was charged with felony domestic assault by strangulation, gross-misdemeanor child endangerment, and misdemeanor domestic assault. The charges stemmed from an incident that occurred on December 16, 2018, when appellant drove her vehicle into a ditch with her daughter inside. She then made her daughter walk across a field in cold conditions, pushed her to the ground, and choked her. Appellant pleaded guilty to gross-misdemeanor child endangerment and, pursuant to the plea arrangement, the state dismissed the other charges. The district court accepted appellant's guilty plea and released her from custody with several conditions on November 27, 2019. Less than a week later, appellant violated several of the conditions, including failure to abstain from methamphetamine and marijuana, which resulted in new charges. At appellant's first appearance for her new charges, she asked the district court if "there was any way [she could] just go to prison."

Appellant's attorney filed a motion under Minnesota Rule of Criminal Procedure 20. At a hearing on the motion in January 2020, appellant's attorney informed the district court that he was "[h]aving difficulty having consistent and . . . intelligent conversations with [appellant] about the procedural posture of the case and what [they were] trying to accomplish." At the hearing, appellant told the district court that she "requested an appeal or to withdraw [her] plea" to the child-endangerment charge because she was not aware of the presentence investigation, and she was not able to "converse with [her] CHIPS lawyer." The district court ordered a competency examination to assess appellant's mental health and suspended the criminal proceedings pending the evaluation. While the matter was suspended, appellant was assigned a new public defender. According to appellant's affidavit, she informed her new attorney that she wished to withdraw her guilty plea multiple times between May 18, 2020, and June 4, 2020.

Appellant was found competent on June 4, 2020. At the competency hearing, appellant told the district court that she was "contemplating withdrawing [her] plea" in the child-endangerment case, but neither appellant nor her attorney made any plea-withdrawal motion. At the sentencing hearing, appellant requested that her sentence on the child-endangerment charge be executed. The district court sentenced appellant to 365 days in the Mower County jail.

In October 2020, appellant filed a notice of appeal from the district court's judgment of conviction. She then moved to stay the appeal to pursue postconviction relief. This court granted appellant's motion and remanded the case to the district court. In April 2021, appellant filed a petition for postconviction relief in the district court. In June 2021, the

district court summarily denied appellant's request to withdraw her guilty plea. Following the district court's order, this court granted appellant's motion to reinstate her direct appeal.

DECISION

I. Ineffective assistance of counsel

When an appellant first files a direct appeal but later moves for an order staying the direct appeal to proceed with a postconviction hearing, we apply the standard for direct appeal. *Santiago v. State*, 644 N.W.2d 425, 439 (Minn. 2002). Because an ineffective-assistance-of-counsel claim presents mixed questions of law and fact, our review is de novo. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003).

Criminal defendants have a constitutional right to the assistance of counsel. U.S. Const. amend. VI; *see also* Minn. Const. art. I, § 6. This right is the “right to the effective assistance of counsel.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984). This court analyzes ineffective-assistance-of-counsel claims under a two-prong test set forth in *Strickland*. *State v. Ellis-Strong*, 899 N.W.2d 531, 535 (Minn. App. 2017). To prevail on such a claim, appellant must demonstrate (1) that “counsel’s performance fell below an objective standard of reasonableness” and (2) that there is “a reasonable probability that, but for counsel’s errors, ‘the result of the proceedings would have been different.’” *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020) (quoting *Davis v. State*, 784 N.W.2d 387, 390 (Minn. 2010)). A court need not address both prongs of the test if one prong is determinative. *Id.*

Under the first prong, appellant must show that counsel’s “representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 688. An objective

standard of reasonableness is the level of “the customary skills and diligence that a reasonably competent attorney would employ under similar circumstances.” *Leake v. State*, 767 N.W.2d 5, 10 (Minn. 2009). There is “a strong presumption that counsel’s performance was reasonable.” *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016).

Appellant asserts that it was objectively unreasonable for her attorneys to ignore her requests to withdraw her guilty plea because the decision to plead guilty or withdraw a guilty plea belongs to the client.

It is true that the decision to plead guilty belongs to the defendant and that the attorney’s role is limited to informing the defendant’s decision. *See McCoy v. Louisiana*, 138 S. Ct. 1500, 1508 (2018) (recognizing that an improper concession of guilt conflicts with a defendant’s autonomy to decide the objective of their defense). However, a defendant is not competent to enter a plea, stand trial, or be sentenced if he or she lacks the ability to “(a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense” due to mental illness or deficiency. Minn. R. Crim. P. 20.01, subd. 2. If reason exists to doubt the defendant’s competency, the district court is required to suspend the criminal proceedings. *Id.* at subd. 3.

According to appellant’s affidavit, she made multiple requests to withdraw her guilty plea between November 27, 2019, and June 4, 2020. However, the criminal proceedings against appellant were suspended from January 22, 2020, until June 4, 2020, pending a rule 20 evaluation. Because appellant could not withdraw her guilty plea while the matter was suspended, it was not objectively unreasonable for her attorneys to ignore such requests.

Further, appellant did not request to withdraw her plea any time after she was found competent. At her competency hearing, she told the district court that she was “contemplating” withdrawing her plea. She then appeared at three subsequent court hearings. On July 9, 2020, appellant did not indicate that she wished to withdraw her guilty plea, but rather, requested that the district court execute her sentence for the gross-misdemeanor child-endangerment charge. On July 30, 2020, she again appeared in court but did not request or move to withdraw her guilty plea. Lastly, at her sentencing hearing on August 3, 2020, appellant did not indicate she wished to withdraw her guilty plea. Because appellant only requested to withdraw her guilty plea at times when her competency was in question, her attorneys’ failure to file a pre-sentencing plea-withdrawal motion was not objectively unreasonable.¹

Because appellant’s requests to withdraw her guilty plea occurred either while her case was suspended or when there were serious doubts as to her competency, defense counsel’s decision not to move to withdraw her guilty plea was not objectively

¹ Appellant maintains that her attorneys’ deficient performance is established by their failure to honor her request to withdraw her guilty plea prior to sentencing pursuant to *Anderson v. State*, 746 N.W.2d 901 (Minn. App. 2008), *overruled on other grounds by Wheeler v. State*, 909 N.W.2d 558 (Minn. 2018). Appellant interprets *Anderson* to stand for the proposition that the deficient-performance prong is established when an attorney fails to file a pre-sentencing plea-withdrawal motion when a client requests to do so. However, in *Anderson*, the attorney’s performance was deficient because he affirmatively advised the appellant to wait to withdraw her guilty plea until after sentencing without adequately advising her of the higher standard applied to plea-withdrawal motions filed after sentencing. Here, unlike in *Anderson*, appellant’s attorneys did not affirmatively advise her to file a post-sentencing plea withdrawal. Instead, they did not file a pre-sentencing plea-withdrawal motion due to continued doubts as to appellant’s competency. Accordingly, *Anderson* is not dispositive of appellant’s case.

unreasonable. Thus, the first *Strickland* prong is not met: appellant's defense counsel's representation was not constitutionally deficient. Because appellant's claim fails to satisfy the performance prong, we decline to consider the prejudice prong. See *Peltier*, 946 N.W.2d at 372.

II. Evidentiary hearing

Alternatively, appellant argues that the district court abused its discretion by denying her request for an evidentiary hearing on the issue of whether her defense counsel's failure to move to withdraw the guilty plea was due to concerns with her mental competency. Because appellant did not allege facts that, if true, would entitle her to relief under the statutory standard, we disagree.

A court may dismiss a petition for postconviction relief without conducting an evidentiary hearing if "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 (2020). To determine whether an evidentiary hearing is required, the postconviction court must consider the facts alleged in the petition as true and view them in "the light most favorable to the petitioner." *Anderson v. State*, 913 N.W.2d 417, 422-23 (Minn. 2018) (quotation omitted). If there are material facts in dispute and "the allegations in the petition, if true, would entitle the petitioner to relief, then the court must schedule an evidentiary hearing." *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013). Conversely, the postconviction court need not hold an evidentiary hearing "if the petitioner fails to allege facts that are sufficient to entitle him or her to the relief requested." *Leake*, 737 N.W.2d at 535. In the context of an ineffective-assistance-of-counsel claim, a postconviction petitioner seeking an

evidentiary hearing must “allege facts that, if proven by a fair preponderance of the evidence,” would meet the two-prong *Strickland* test. *Chavez-Nelson v. State*, 948 N.W.2d 665, 671 (Minn. 2020) (citing *Strickland*, 466 U.S. at 687). A petitioner will not meet her burden if she merely offers “conclusory, argumentative assertions, without factual support.” *State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007).

Based on our thorough review of the record, we determine that the postconviction court did not abuse its discretion by determining that the petition and records of the proceeding conclusively show that appellant is not entitled to relief on her ineffective-assistance-of-counsel claim. Appellant offered no specific factual support for her claim that her defense attorneys ignored her requests to withdraw the guilty plea at a time when withdrawal was appropriate and permitted. Further, counsel’s subjective belief as to appellant’s competency is not necessarily at issue because the standard for ineffective-assistance-of-counsel claims is whether “counsel’s performance fell below an *objective* standard of reasonableness.” *Strickland*, 466 U.S. at 688 (emphasis added).

Affirmed.