

*This opinion is nonprecedential except as provided by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
A20-1389**

State of Minnesota,
Respondent,

vs.

Mitchell Curtis Madsen,
Appellant.

**Filed September 7, 2021
Affirmed
Cochran, Judge**

Washington County District Court
File No. 82-CR-19-1259

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

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Mark D. Kelly, Law Offices of Mark D. Kelly, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Cochran, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant pleaded guilty to receiving stolen property. Before sentencing, appellant retained new counsel and moved to withdraw his guilty plea. The district court denied the

motion. In this direct appeal, appellant argues that the district court abused its discretion by denying his motion to withdraw his plea prior to sentencing. We affirm.

FACTS

In March 2019, respondent State of Minnesota charged appellant Mitchell Curtis Madsen with receiving stolen property under Minn. Stat. § 609.53, subd. 1 (2018), and possession of burglary or theft tools under Minn. Stat. § 609.59 (2018). According to the complaint, a police officer observed a pickup truck leave a gas station without signaling a turn. Shortly thereafter, the truck suddenly cut across all lanes of traffic and headed in the other direction. The officer then initiated a traffic stop. The officer identified the driver as Madsen. When the officer requested the vehicle's registration, Madsen told the officer that he did not have the registration because he had recently acquired the truck through a "trade-in." After checking the vehicle identification number, the officer learned that the truck had been reported as stolen. Police arrested Madsen. During a search incident to the arrest, police found a "punch ignition key" in Madsen's jacket. Police also found a bag on the passenger seat of the truck containing two similar "punch[] ignition keys" and dozens of car keys. The complaint alleges that "[p]unch ignition keys are commonly used to steal motor vehicles."

Madsen obtained counsel, and his case was scheduled for trial. On the day his trial was scheduled to begin, Madsen informed the district court that he would enter a guilty plea pursuant to a plea agreement with the state. Madsen pleaded guilty to receiving stolen property, and the state dismissed the remaining charge.

At the plea hearing, Madsen's counsel presented a plea petition completed by Madsen and discussed the petition with Madsen on the record. Madsen testified that he did not have title to the vehicle, that he did not know the registered owner of the vehicle, and that he never received permission from the registered owner to possess or operate the vehicle. He then answered "Yes" when the district court asked, "[G]iven all of the circumstances, you're agreeing you knew or had reason to know that this vehicle was not legitimately in your possession?" Following Madsen's testimony, the district court accepted the factual basis for the plea.

Prior to sentencing, Madsen obtained new counsel and moved to withdraw his guilty plea. The motion was supported by an affidavit of Madsen's new counsel. In the affidavit, Madsen's new counsel states that Madsen gave "numerous documents in support of his defense" to his original counsel and "provided his [c]ounsel with the names and contact information for witnesses in support of his defense." According to the affidavit, Madsen's original counsel did not interview the witnesses or provide the necessary notice to the state so that the documents and witness testimony could be received at trial. The affidavit further states that Madsen received a plea proposal from the state just prior to the start of trial. Madsen "was disinclined to accept" the offer, but his original counsel "convinced" him to plead guilty. The affidavit asserts that Madsen's decision to plead guilty "was influenced in large part by his perception that his attorney was not prepared to present his case to a jury."

The district court held a hearing on Madsen's motion to withdraw. Only Madsen testified. During his testimony, he adopted the statements made by his new counsel in the

affidavit. Madsen also testified that he owns a car dealership and that, at the time of his arrest, he had title to approximately 55 vehicles that he had been holding for resale. He claimed that he sent copies of the titles to his original counsel and that he also sent “a bullet point list regarding some things . . . to look at for the trial.” According to Madsen, this information would have shown that he was in the business of buying and selling vehicles and that he was unaware that the truck he was driving was stolen. Madsen further testified that on the day that trial was scheduled to begin, he learned that his counsel had not filed an exhibit list or a witness list. As a result, he believed that if he went to trial, his counsel would not have been able to introduce the information that Madsen had provided to him. Madsen did not testify as to how he came to this belief but stated that it affected his decision to plead guilty rather than go to trial because he felt he “wasn’t being represented.”

On cross-examination, Madsen acknowledged that he had gone through the plea petition with his original counsel prior to pleading guilty and had signed the petition. He further acknowledged that the plea petition states that he was satisfied that his attorney had represented his interests and fully advised him of his rights. And he agreed that he never asked for more time to speak with his original counsel during the plea process and that it was not until after he pleaded guilty that he changed his mind.

Following Madsen’s testimony, his new counsel argued that the testimony demonstrated that Madsen’s original counsel was ineffective. He asserted that the documents that Madsen provided to his original counsel would have explained “the nature of how [Madsen] came into possession of th[e] vehicle [and] the short period of time he had possession of the vehicle,” and demonstrated that Madsen did not have the requisite

knowledge to be convicted of receiving a stolen vehicle. Madsen's new counsel contended that it would be fair and just to allow Madsen to withdraw his plea due to "lack of trial counsel preparation."

After hearing Madsen's testimony and arguments from both attorneys, the district court denied Madsen's motion to withdraw his plea. The district court explained that it had not noted any concerns about the factual basis for Madsen's plea during the plea hearing. The district court also emphasized that the failure of Madsen's original counsel to file a witness list or exhibit list did not provide a basis for withdrawing the plea. The district court noted that criminal defense counsel "hardly ever" file such lists and the court has "never excluded" witnesses or exhibits for that reason. The district court concluded that Madsen had not shown that it would be "fair and just" to permit him to withdraw his plea.

In accordance with the plea agreement, the district court imposed a stayed 15-month sentence and placed Madsen on probation. Madsen appeals.

DECISION

Madsen challenges the district court's denial of his motion to withdraw his plea. We review a district court's decision to deny a plea-withdrawal motion for an abuse of discretion. *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). "A district 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." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). We will reverse the denial of a plea-withdrawal motion "only in the rare case." *Raleigh*, 778 N.W.2d at 97 (quotation omitted).

“A defendant has no absolute right to withdraw a guilty plea after entering it.” *Id.* at 93. But, where a defendant moves to withdraw a plea prior to sentencing, the district court “may allow” withdrawal “if it is fair and just to do so.” Minn. R. Crim. P. 15.05, subd. 2. Under the fair-and-just standard, the district court must give “due consideration” to two factors: “(1) the reasons a defendant advances to support withdrawal and (2) prejudice granting the motion would cause the [s]tate given reliance on the plea.” *Raleigh*, 778 N.W.2d at 97; *see also* Minn. R. Crim. P. 15.05, subd. 2. However, the district court does not need to find prejudice to the state to deny a plea-withdrawal motion when the defendant fails to provide any “substantiated reasons for withdrawal of his plea.” *Raleigh*, 778 N.W.2d at 98; *see also State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013) (“Even when there is no prejudice to the state, a district court may deny plea withdrawal under rule 15.05, subdivision 2, if the defendant fails to advance valid reasons why withdrawal is fair and just.”), *review denied* (Minn. Dec. 31, 2013). The defendant bears the burden of advancing reasons to support withdrawal, while the state bears the burden of demonstrating prejudice. *Raleigh*, 778 N.W.2d at 97.

Madsen contends that the district court abused its discretion by denying his request to withdraw his plea because he established that he would not have pleaded guilty but for ineffective assistance of counsel. The United States and Minnesota Constitutions guarantee criminal defendants the right to effective assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. A guilty plea based on ineffective assistance of counsel is constitutionally invalid. *State v. Ellis-Strong*, 899 N.W.2d 531, 541 (Minn. App. 2017). To demonstrate ineffective assistance of counsel, a defendant must satisfy a two-prong

test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020). First, the defendant “must show that counsel’s performance fell below an objective standard of reasonableness.” *Id.* (quotation omitted). There is “a strong presumption that counsel’s performance was reasonable.” *Zornes v. State*, 880 N.W.2d 363, 370 (Minn. 2016). Second, the defendant must establish prejudice by showing that “there was a reasonable probability that, but for counsel’s errors, the result of the proceedings would have been different.” *Peltier*, 946 N.W.2d at 372 (quotation omitted). In the context of a plea withdrawal, the defendant can establish prejudice by showing “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). When one prong of the *Strickland* test is determinative, an appellate court need not address the other prong. *Peltier*, 946 N.W.2d at 372.

Madsen argues that he met his burden under the fair-and-just standard before the district court because both prongs of the *Strickland* test were met. He contends that his original counsel’s performance fell below an objective standard of reasonableness because the attorney failed to properly investigate and interview Madsen’s proposed witnesses and subsequently failed to disclose those witnesses and certain documents to the state and district court prior to trial. He argues that those alleged errors were prejudicial to him because he would not have pleaded guilty if his original counsel had properly investigated and introduced this evidence, which Madsen contends would have established his innocence. For the reasons discussed below, we conclude that the district court did not

abuse its discretion by denying Madsen's motion to withdraw his plea based on ineffective assistance of counsel.

Which witnesses to call and which evidence to present are decisions that lie within the discretion of trial counsel. *Leake v. State*, 737 N.W.2d 531, 539 (Minn. 2007). Similarly, when considering an alleged failure to investigate, the extent of an attorney's investigation constitutes trial strategy that "should not be readily second-guessed." *State v. Nicks*, 831 N.W.2d 493, 506 (Minn. 2013). Nonetheless, "a failure to investigate a potential defense may constitute ineffective assistance if it results not from counsel's considered choice but rather from inattention or neglect." *Swaney v. State*, 882 N.W.2d 207, 218 (Minn. 2016).

Madsen did not demonstrate to the district court that his attorney's alleged lack of investigation of Madsen's proposed witnesses resulted from inattention or neglect as opposed to a considered choice. Madsen did not provide any evidence to shed light on his original counsel's reason, or lack of a reason, for purportedly not interviewing his proposed witnesses. He further did not provide any evidence, such as affidavits from his proposed witnesses, to show that testimony from those witnesses would have supported a viable defense. Rather, Madsen merely provided the sworn statement of his new counsel that "[t]hese witnesses were not interviewed by defense counsel." This assertion is not sufficient to show that the extent of his original counsel's investigation into his proposed witnesses was objectively unreasonable.

Madsen's testimony that his counsel did not file a witness list prior to trial is likewise insufficient to establish that his counsel acted unreasonably by failing to do so.

Madsen presented no evidence as to *why* his counsel refrained from submitting a witness list. Counsel may have had sound strategic reasons for not listing the individuals identified by Madsen on a witness list. Additionally, the district court's statement that counsel for criminal defendants "hardly ever" file witness lists prior to trial further undermines Madsen's claim that his original counsel's performance was objectively unreasonable, as courts look to "prevailing professional norms" in the legal community to determine whether an attorney's representation was reasonable. *Ellis-Strong*, 899 N.W.2d at 539 (quotation omitted).

Similarly, Madsen provided no support for his assertion that his attorney acted unreasonably by not including certain documents on an exhibit list. Madsen established that his attorney did not provide an exhibit list to opposing counsel or the district court prior to trial, but he did not present any evidence to explain *why* his attorney did not include certain documents on an exhibit list. Without such a showing, Madsen provided no reason for the district court to conclude that his counsel did not have a strategic reason for declining to provide notice of that evidence. Furthermore, because Madsen never offered the documents into the record, Madsen's claim that the documents would have demonstrated his innocence is speculative. Without the documents themselves, the district court had no basis upon which to conclude that counsel's decision to refrain from filing an exhibit list fell below an objective standard of reasonableness. Madsen failed to

demonstrate to the district court that his counsel acted unreasonably by declining to file a witness list or exhibit list.¹

Madsen contends that he discovered his counsel's alleged errors on the day trial was scheduled to begin and he decided to plead guilty under the "mistaken belief" that his counsel would not be able to present his evidence to the jury. But Madsen did not assert that his mistaken belief was due to any misrepresentation by his original counsel, and he did not otherwise provide any information about how he developed that belief. And, based on the district court's statement that it has "never excluded" evidence due to the lack of a witness or exhibit list, Madsen's belief at the time of his guilty plea that he would be prejudiced by the lack of such a filing is unsupported by the record. Rather, the record supports the district court's suggestion that Madsen's desire to withdraw his guilty plea was likely based on "regrets about entering his plea."

In sum, Madsen failed to present sufficient evidence to the district court to establish that his original counsel's performance fell below an objective standard of reasonableness. Because Madsen did not meet the first prong of the *Strickland* test, we need not address the second prong. See *Peltier*, 946 N.W.2d at 372. And, because Madsen did not advance a valid reason for withdrawing his plea, we also need not address the second factor of the

¹ In its brief, the state relies on a memorandum it submitted to the district court in opposition to Madsen's plea-withdrawal motion. In the memorandum, the state purported to recount statements that Madsen's original counsel made to the prosecutor relating to the original counsel's reasons for declining to pursue certain witnesses or admit the documents that Madsen provided to him. Because the state neglected to include any of those statements in an affidavit or have any individual testify to them at the motion hearing, we have no basis on which to accept them as fact.

fair-and-just standard—prejudice to the state. *See Cubas*, 838 N.W.2d at 224. Accordingly, we conclude that the district court did not abuse its discretion by denying Madsen’s motion to withdraw his guilty plea.

Affirmed.