

*This opinion is nonprecedential except as provided by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
A21-0213**

Andrew Will Alexander, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 27, 2021
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-18-18045

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that the postconviction court abused its discretion by summarily denying his postconviction petition to withdraw his guilty plea because he received ineffective assistance of counsel when his counsel did not inform him of the possibility of

collaterally challenging a prior implied-consent license revocation for enhancement purposes. Appellant also argues that he is entitled to an evidentiary hearing. We affirm.

FACTS

In 2013, respondent State of Minnesota charged appellant Andrew Will Alexander with driving while impaired (DWI), driving with a blood alcohol concentration (BAC) over 0.08 within two hours, and careless driving. Appellant filed a motion to suppress the evidence, arguing that the police unconstitutionally expanded the scope of the stop and that the police lacked probable cause to arrest him. The district court denied appellant's motion to suppress, determining that the stop and expansion of the stop were constitutional. On the day of the trial, the state requested a continuance, which the district court denied. The district court dismissed the case without prejudice, and the state did not file new charges. Appellant never challenged the implied-consent license revocation (first qualified prior-impaired-driving incident) based on the same conduct underlying the criminal charge.

Appellant received another implied-consent license revocation in 2017, with an accompanying criminal case (82-CR-17-4571) (second qualified prior-impaired-driving incident) that was pending at the time of this current offense. In January 2018, the district court convicted appellant of a gross misdemeanor DWI (07-CR-16-3241) (third qualified prior-impaired-driving incident) arising from an incident different than the second prior qualified incident.

In July 2018, a police officer arrested appellant for suspicion of driving under the influence after observing signs of intoxication and appellant failing a preliminary breath test. A subsequent breath test at the police station revealed a BAC of 0.11. The state

charged appellant with one count of felony DWI (current offense) based on the three qualified prior-impaired-driving incidents within ten years. The complaint noted the dismissal of the 2013 DWI charge but identified the three qualified prior-impaired-driving incidents.

At appellant's first appearance for the current offense, his counsel noted that "at least one of the prior DWI's [sic] was dismissed, but [appellant] did not challenge the implied consent, and so therefore ended up having an implied consent on his record that is now being used to enhance this case. But given the dismissal, that may have been [] able to have been dismissed."

On September 10, 2018, appellant waived his trial rights and pleaded guilty to the current offense. At the hearing, appellant stated on the record that his mind was clear, "no one coerced" him, and that he understood "[e]very little bit" of the proceedings. Appellant also stated on the record that the 2013 implied-consent license revocation for operating a vehicle with a BAC over 0.08 was correct and that the qualified prior-impaired-driving incidents were all within ten years of the current offense. The district court then imposed a 36-month sentence, which represents a downward durational departure from the 54-month presumptive sentence.

On September 3, 2020, appellant filed a petition for postconviction relief, requesting to withdraw his guilty plea. Appellant argued solely that his counsel provided him ineffective assistance by not informing him that he could have collaterally challenged the state's use of his first qualified prior-impaired-driving incident. He also requested an evidentiary hearing. On December 22, 2020, the district court denied appellant's petition

without an evidentiary hearing, concluding that his collateral-challenge claim was meritless and that therefore his counsel's performance was not ineffective. This appeal follows.

DECISION

I. The postconviction court did not abuse its discretion by denying appellant's postconviction request to withdraw his guilty plea.

Appellant argues that the postconviction court abused its discretion by denying his postconviction petition to withdraw his guilty plea as unintelligent and involuntary because his counsel provided ineffective assistance by not informing him that he could collaterally challenge the state's use of his first qualified prior-impaired-driving incident. We disagree.

A person is guilty of first-degree felony DWI if that person "commits the violation within ten years of the first of three or more qualified prior impaired driving incidents." Minn. Stat. § 169A.24, subd. 1(1) (2018); Minn. Stat. § 169A.20 (2018) (defining DWI crimes). A "qualified prior impaired driving incident" means "prior impaired driving convictions and *prior impaired driving-related losses of license*." Minn. Stat. § 169A.03, subd. 22 (2018) (emphasis added). This includes implied-consent license revocations. *Id.*, subd. 21(a)(1) (2018).

We review a denial of postconviction relief for an abuse of discretion. *Crow v. State*, 923 N.W.2d 2, 9 (Minn. 2019). "A postconviction 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, or exercises its discretion in an arbitrary or capricious manner." *Id.* (quotation

omitted). We review the “postconviction court’s legal determinations de novo, and its factual findings for clear error.” *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017).

Under Minn. R. Crim. P. 15.05, subd. 1, a postconviction court must allow a defendant to withdraw a guilty plea if it is necessary to correct a manifest injustice. A manifest injustice exists when a plea is not constitutionally valid because it is not accurate, voluntary, and intelligent. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A guilty plea is not voluntary and intelligent if the defendant’s counsel’s advice fell below an objective standard of reasonableness. *Hill v. Lockhart*, 474 U.S. 52, 56-57, 106 S. Ct. 366, 369 (1985) (citing *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064 (1984)). The constitutional validity of a guilty plea is a question of law that this court reviews de novo. *Raleigh*, 778 N.W.2d at 94.

Under *Strickland*, the petitioner must prove both that (1) his counsel’s representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for the alleged errors of his counsel, he would not have pleaded guilty. *Id.*; see *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). If a claim fails to satisfy the first *Strickland* requirement, we need not consider the second requirement. *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

“The objective standard of reasonableness 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. Vang*, 847 N.W.2d 248, 266-67 (Minn. 2014) (quotation omitted). “[T]here is a strong presumption that counsel’s performance was reasonable.” *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).

“Counsel does not act unreasonably by not asserting claims that counsel could have legitimately concluded would not prevail.” *Wright v. State*, 765 N.W.2d 85, 91 (Minn. 2009).

Appellant contends that his counsel’s performance fell below an objective standard of reasonableness solely because his counsel did not inform him that “he could have collaterally challenged the state’s use of the implied-consent revocation.” But this contention lacks merit because (1) neither appellant’s petition nor his brief articulate a previously recognized basis on which to collaterally challenge his first implied-consent revocation and (2) caselaw indicates that his counsel could have legitimately concluded that collaterally attacking that revocation would not prevail.

Collateral attacks on prior offenses for enhancement purposes are disfavored because they “weaken the finality of judgments.” *State v. Warren*, 419 N.W.2d 795, 798 (Minn. 1988). Accordingly, “a collateral attack will be allowed only in unique cases.” *Id.* These “unique cases” have been limited to constitutional violations. *See, e.g., id.* (considering uncounseled guilty plea); *State v. Mellet*, 642 N.W.2d 779, 789 (Minn. App. 2002) (considering license revocation obtained after alleged lack of opportunity to consult counsel), *review denied* (Minn. July 16, 2020); *Anderson v. Comm’r of Pub. Safety*, 878 N.W.2d 926, 930 (Minn. App. 2016) (noting that fact that Anderson was found mentally incompetent at time of revocations may constitute unique case in which he may collaterally attack revocations).

Appellant acknowledges that these “unique cases” in which collateral attacks are permitted have been “largely limited to uncounseled guilty pleas or some license

revocations obtained in violation of the defendant's limited right to counsel prior to taking a breath test" but argues "they have never been expressly limited to that context." See *Mellet*, 642 N.W.2d at 789. Appellant does not argue that his circumstances fit previously recognized "unique cases," but essentially argues that objectively reasonable counsel would have advised him of the possibility of arguing a new unique case.

Appellant argues that his circumstances could establish a "unique case" because (1) he had no opportunity to appeal the district court's denial of his motion to suppress, finding the stop constitutional; (2) he labored under the mistaken belief that "if he went to trial on the DWI and won, the implied-consent revocation would also go away;" and (3) his young age.

First, it is unclear how appellant's opportunity to appeal a motion to suppress in the dismissed criminal proceeding would factor into making his case "unique." Appellant did not successfully show that his constitutional rights had been violated. And the adverse decision on his motion to suppress in the criminal proceeding did not prevent appellant from challenging the license revocation in a separate civil proceeding.

Second, even accepting as true appellant's mistaken belief, it does not explain why he did not challenge the implied-consent revocation. Accepting his allegation as true, he mistakenly believed that winning *at trial* on the criminal charges would make the implied-consent revocation "go away." His mistaken belief was not that the implied-consent revocation would be resolved in his favor if the district court dismissed the criminal case without prejudice *before trial*.

Third, appellant appears to suggest that *Anderson* provides support that his young age could serve as a circumstance making this a “unique case.” 878 N.W.2d at 930. But in *Anderson*, the defendant had been found mentally incompetent to stand trial and was committed as mentally ill during the criminal DWI proceedings. *Id.* *Anderson* raised the issue outside of a collateral attack for enhancement purposes and, consequently, this court expressed no opinion on the outcome of a future collateral attack. *Id.* But the facts here, of a 21-year-old’s misunderstanding of the law, are significantly different from a case in which the defendant was found mentally incompetent to stand trial for the criminal proceedings.

Because appellant’s counsel “could have legitimately concluded” that this collateral attack would not prevail, his performance was not objectively unreasonable. *Wright*, 765 N.W.2d at 91. And because failure to satisfy either *Strickland* prong is dispositive, the postconviction court did not abuse its discretion by denying appellant’s petition based on ineffective assistance of counsel. *Mosley*, 895 N.W.2d at 591.

II. The postconviction court did not abuse its discretion by denying appellant’s petition without holding an evidentiary hearing.

Appellant also argues that the postconviction court abused its discretion by denying his petition without an evidentiary hearing, and he requests that we remand for an evidentiary hearing. “[T]o receive an evidentiary hearing on a postconviction claim of ineffective assistance of counsel, a defendant is required to allege facts that, if proven by a fair preponderance of the evidence, would satisfy the two-prong [*Strickland*] test.” *State v. Nicks*, 831 N.W.2d 493, 504 (Minn. 2013) (quotation omitted). Because appellant

cannot meet the *Strickland* test, the postconviction court did not abuse its discretion by denying his request.

Affirmed.