

*This opinion is nonprecedential except as provided by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
A21-1672**

State of Minnesota,
Respondent,

vs.

Wade Scott Reinhard,
Appellant.

**Filed January 29, 2024
Affirmed
Reyes, Judge**

Wright County District Court
File No. 86-CR-19-4903

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

Brian A. Lutes, Wright County Attorney, Jennifer K. Buske, Greg Kryzer, Assistant
County Attorneys, Buffalo, Minnesota (for respondent)

Barry S. Edwards, Max A. Keller, Keller Law Offices, Minneapolis, Minnesota (for
appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Klaphake,
Judge.*

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

NONPRECEDENTIAL OPINION

REYES, Judge

Following his convictions of two counts of first-degree criminal sexual conduct, appellant argues that the postconviction court abused its discretion by denying his petition for postconviction relief without an evidentiary hearing and alternatively that the district court abused its discretion by denying his motion for a downward dispositional departure on his sentence. We affirm.

FACTS

In September 2019, appellant Wade Scott Reinhard was arrested for criminal sexual conduct involving three minor children. Following a *Miranda* warning,¹ appellant admitted to criminal sexual conduct with two of the victims and sexual contact with the third. Respondent State of Minnesota charged appellant with 13 counts of criminal sexual conduct.

The week before trial, appellant and the state agreed to a plea deal. Prior to a plea hearing, appellant signed a petition to enter a guilty plea.

At the plea hearing, appellant's counsel restated the plea agreement on the record. Appellant would plead guilty to two counts, and in exchange, the state would dismiss the remaining charges and agree to a "cap of 288 months." Appellant would be free to argue

¹ A *Miranda* warning is required when an individual is in custody and subject to questioning. *Miranda v. Arizona*, 384 U.S. 436, 478 (1966). The warning notifies individuals that they have the right to remain silent, that anything they say can be used against them in court, that they have the right to an attorney, and that if they cannot afford an attorney, one will be appointed. *Id.* at 479.

for a downward departure and other terms and conditions would be for the district court to decide. The district court verified that appellant understood the agreement and was competent to proceed. Appellant then pleaded guilty to the two counts and offered a factual basis for the plea. The district court scheduled a sentencing hearing for an entire afternoon to allow for victim-impact statements and to allow appellant to call witnesses of his own.

At the sentencing hearing, the state presented oral argument and three victim-impact statements. Appellant's attorney also presented oral argument, requesting a downward dispositional departure to probation based on the factors from *State v. Trog*, 323 N.W.2d 28 (Minn. 1982). His attorney also read a statement written by appellant. The district court asked appellant whether he would like to say anything, and appellant said, "No." The district court sentenced appellant to two consecutive terms of imprisonment of 144 months for a total of 288 months.

Appellant filed a direct appeal, which we stayed while he pursued postconviction relief. He sought to withdraw his guilty plea due to ineffective assistance of counsel, alleging that his trial attorney had not adequately informed him of the risk of a prison sentence and that his attorney's arguments at the sentencing hearing fell below an objective standard of reasonableness. Appellant provided an affidavit in support of his petition as well as several affidavits from his family and friends. Appellant provided his trial attorney's file to the postconviction court, which reviewed the file *in camera* and disclosed a number of documents to the state. The postconviction court then held oral arguments on whether it should conduct an evidentiary hearing on appellant's petition for postconviction

relief. The postconviction court determined that an evidentiary hearing was not necessary and denied appellant's petition.

We reinstated his appeal, which includes issues from his direct appeal and the postconviction proceeding.

DECISION

I. The postconviction court did not abuse its discretion by denying appellant an evidentiary hearing on his petition for postconviction relief.

Appellant argues that (1) the postconviction court abused its discretion by erroneously applying the test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), to deny him an evidentiary hearing rather than the lower burden of a “fair preponderance of the evidence” and (2) he made a sufficient showing under the proper legal standard to merit an evidentiary hearing. We disagree.

“[Appellate courts] review a postconviction court’s summary denial of a petition for postconviction relief for an abuse of discretion.” *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018). An abuse of discretion occurs when a court’s “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).

Under Minn. Stat. § 590.04 (2022), the postconviction court need not hold an evidentiary hearing if “the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” To determine if a hearing is required, “a postconviction court considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner.” *Andersen*, 913 N.W.2d at 422-23 (quotation

omitted). “To receive an evidentiary hearing on a postconviction claim of ineffective assistance of [trial] counsel, a defendant is required to allege facts that, if proven by a fair preponderance of the evidence, would satisfy the two-prong test announced in *Strickland*.” *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012). Under the *Strickland* test, appellant must show that his trial counsel’s representation (1) “fell below an objective standard of reasonableness” and (2) “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” 466 U.S. at 688, 694.

A. The postconviction court used the correct legal standard when it denied appellant an evidentiary hearing on his petition for postconviction relief.

Appellant asserts that the postconviction court applied the wrong standard. Appellant’s argument is unavailing.

Here, the postconviction court quoted the standard from Minn. Stat. § 590.04, subd. 1. It also cited *Bobo*, stating that “the showing required for an evidentiary hearing is lower than that required for a new trial” and that “[a]ny doubts about whether to conduct an evidentiary hearing should be resolved in favor of the petitioner seeking relief.” 820 N.W.2d at 516. Finally, the postconviction court cited and applied the two-prong *Strickland* test. We conclude that the postconviction court applied the correct legal standard to appellant’s petition.

B. The postconviction court did not abuse its discretion by determining that appellant failed to make sufficient allegations to merit an evidentiary hearing on his petition for postconviction relief.

Appellant argues that the postconviction court abused its discretion by determining that his trial counsel had adequately informed him of the risk of prison time and made an adequate argument at sentencing. The record belies his argument.

1. The record supports the postconviction court's determination that appellant's attorney adequately informed him of the risk of prison time.

The postconviction court considered the affidavits that appellant provided. Appellant stated in his affidavit that he did not understand the plea agreement, that his trial attorney had not informed him that a lengthy prison sentence was a real possibility, and that he had offered to prepare a statement or witnesses for the plea hearing and his attorney assured him that it would not be necessary. Several of appellant's relatives and friends also submitted affidavits stating that, prior to the sentencing hearing, appellant did not behave as though he believed that he would receive a lengthy prison sentence. The postconviction court, however, determined that appellant's trial counsel had no control over what arrangements appellant took prior to sentencing, or whether appellant was potentially in a state of denial, stating that these are "beyond the scope of trial counsel's objective standard of reasonableness."

Although postconviction courts cannot find an affiant unreliable without first holding an evidentiary hearing to assess the affiant's credibility, *Anderson*, 913 N.W.2d at 423, the only support for appellant's claim that his trial counsel had not adequately informed him of the risk of prison time is his own self-serving affidavit. *See Davis v. State*,

784 N.W.2d 387, 391 (Minn. 2010) (stating that allegations in a petition for postconviction relief must be more than argumentative assertions without factual support). And defendants are “not entitled to an evidentiary hearing if [their] allegations lack factual support and are directly refuted by [their] own testimony in the record.” *Williams v. State*, 760 N.W.2d 8, 14 (Minn. App. 2009), *rev. denied* (Minn. Apr. 21, 2009); *see also State v. Irestone*, 166 N.W.2d 345, 346 (Minn. 1969) (noting that unsupported allegations that are “unequivocally refuted by the record” are mere “argumentative assertions”).

The record categorically refutes appellant’s unsupported allegations. The postconviction court found that appellant’s trial attorney had informed him of the sentence under the plea offer and of the potential sentence should appellant not accept the plea offer. The postconviction court’s finding is supported in the record by a letter appellant received from his trial counsel, which states that, under the plea offer, appellant would be

sentenced consecutively for a total of 288 months (24 years) with a commit to prison. . . . If you proceed to trial and lose . . . [the district court] could very well sentence you to 688 months in prison (57 years) if the jury finds the *Blakely* factors are met . . . In this case, the aforementioned factors do not weigh in your favor.

(Emphasis added). The postconviction court also found that appellant “understood the charges [and] the consequences of the plea.” Prior to the plea hearing, appellant signed a petition to enter a guilty plea. The petition included a paragraph stating that, “The maximum penalty that the court could impose for this crime (taking into consideration any prior conviction or convictions) is *imprisonment for 30 years*. If a minimum sentence is required by statute the [district] court may impose a sentence of not less than – months for

this crime.” (Emphasis added). The plea petition also included a handwritten paragraph stating the plea deal: “Plea to Counts 1 and 6, dismiss remaining Counts. Cap of 288 months. Defense free to argue for downward departure. Other terms/conditions to the Court.”

At the plea hearing, appellant’s counsel orally reiterated the agreement. Appellant would plead guilty to two counts, and in exchange the state would dismiss the remaining charges and agree to a “cap of 288 months.” Under the agreement, appellant was allowed to argue for a downward departure while other terms and conditions were left “to the court.” When questioned by the district court, appellant agreed that he understood the agreement and that he discussed the case with his trial counsel. Appellant confirmed that he knew that his sentence “ha[d] a potential to be 288 months as a maximum sentence under this plea agreement.”

Under oath, appellant agreed that he had signed the petition to enter a guilty plea and that he had gone through the petition “line by line” with his trial counsel. Appellant also responded that he had no questions for his attorney, the prosecutor, or the district court about the plea process or with “what’s going on with this plea agreement.” Appellant agreed when the district court asked him if he had read the entire plea petition and signed the petition himself. In sum, the record supports the postconviction court’s finding that appellant’s attorney sufficiently informed him of the risk of prison time.

We conclude that the postconviction court did not abuse its discretion because the record supports its determination that appellant had not alleged facts that, if proved true, would show that his trial counsel performed deficiently.

2. As an appellate court, we do not review appellant's argument that his trial counsel's strategy was deficient.

Appellant next argues that he was entitled to an evidentiary hearing because his trial counsel did not make an adequate argument at his sentencing hearing. We disagree.

The postconviction court determined that appellant's "trial counsel made strategic decisions regarding how to handle the case up to and including the sentencing hearing." The postconviction court stated that "[t]rial counsel worked with Petitioner to draft a statement to provide to the Court, obtained a statement from a favorable witness, and argued for a departure in line with what Petitioner was requesting," but noted that "in the final analysis, the sentence was left to the discretion of the Court per the plea agreement."

Trial counsel has wide latitude to determine the best strategy for a client. *State v. Nicks*, 831 N.W.2d 493, 506 (Minn. 2013). Appellate courts generally do not review attacks on trial counsel's strategy. *See Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004) (noting that appellate courts are poorly placed to second guess decisions of trial counsel). Appellant's trial attorney made strategic decisions on how to argue for a downward departure at the sentencing hearing. The postconviction court did not abuse its discretion by denying appellant an evidentiary hearing because he did not allege facts that, if proved true, would show that his trial counsel performed deficiently by failing to make sufficient argument at sentencing.

II. The postconviction court did not abuse its discretion by denying appellant's petition for postconviction relief.

Appellant argues that the district court abused its discretion by determining that he had not satisfied the *Strickland* test to show ineffective assistance of counsel. We disagree.

Appellate courts review a postconviction court's denial of a petition for postconviction relief for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). As noted above, appellant must meet both the reasonableness and the prejudice prongs of the *Strickland* standard to prevail. 466 U.S. at 669; *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017). “There is a strong presumption that counsel’s performance was reasonable.” *State v. Rhodes*, 627 N.W.2d 74, 86 (Minn. 2001).

As to his first claim, appellant had the burden to show that his trial counsel had not informed him of the risk of substantial prison time. *See* Minn. Stat. § 590.04, subd. 3 (2022) (“[T]he burden of proof of the facts alleged in the petition shall be upon the petitioner.”). The record contains a letter from his trial counsel, informing appellant that the current plea offer was for a 24-year prison sentence and that if he was found guilty at a trial, the sentencing judge could deviate upward to a 57-year prison sentence. Appellant signed this letter to confirm that he had received and understood the information. Appellant’s trial counsel adequately informed appellant of the risk of prison time, and appellant confirmed that understanding at the plea hearing.

As to appellant’s second claim, that his trial counsel made deficient arguments at the sentencing hearing, the record shows that appellant’s trial counsel made a strategic decision of how to present argument at the sentencing hearing, which we do not review. *See Opsahl*, 677 N.W.2d at 421. We conclude that the postconviction court did not abuse its discretion by denying appellant’s petition for postconviction relief.

III. The district court did not abuse its discretion by denying appellant's request for a downward dispositional departure.

Appellant argues that the district court abused its discretion by denying him a downward dispositional departure because he was “amenable to probation” as shown by him having been on conditional release for two years with no violations and because he meets all of the *Trog* factors. We disagree.

Appellate courts “‘afford the [district] court great discretion in the imposition of sentences’ and reverse sentencing decisions only for an abuse of that discretion.” *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014) (quoting *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999)). Appellate courts will affirm the district court’s refusal to grant a downward departure “as long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination.” *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. 1985). We will reverse the imposition of a presumptive sentence “[o]nly in a rare case.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011).

A downward dispositional departure can be based on a defendant’s “particular amenability to individualized treatment in a probationary setting.” *Trog*, 323 N.W.2d at 31. Mere “amenability” to probation, however, is not sufficient; the defendant must be “*particularly* amenable” to probation. *Id.* (Emphasis added).

The record supports the district court’s findings because, although appellant “ha[d] no criminal record[,], his remorse was apparent in his statement . . . , and the support of family and friends was well illustrated by their willingness . . . to testify or write letters in support of a lesser sentence,” the district court stated that it had “taken all the arguments

seriously,” and it could not “find substantial and compelling reasons to depart from the Minnesota Sentencing Guidelines.” The district court carefully considered the information presented in sentencing appellant. This is not the “rare case” in which the district court acted outside its discretion given that it imposed a guidelines sentence. *See Pegel*, 795 N.W.2d at 253. We therefore conclude that the district court did not abuse its discretion by denying appellant a downward dispositional departure.

Affirmed.